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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 141

[Docket No. FAA–2006–26661; Amendment No., 141–14]

RIN 2120–AI86

Pilot, Flight Instructor, and Pilot School Certification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the **Federal Register** on August 21, 2009. That final rule revised the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. Through this technical amendment, we are clarifying the intent of § 141.5(d) and reinserting language that was inadvertently removed pertaining to special courses of training under appendix K of part 141.

DATES: This technical amendment is effective September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Craig Holmes, Airmen Certification and Training Branch, AFS–810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–5385; e-mail to *craig.holmes@faa.gov*.

For legal interpretative questions about this final rule, contact: Anne Moore, AGC–240, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, (202) 267–3123; e-mail to *anne.moore@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2009, the FAA published the "Pilot, Flight Instructor, and Pilot School Certification; Final Rule" (74 FR 12500), which revised the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. The FAA is now issuing a technical amendment to § 141.5(d) to clarify the original intent of the final rule and reinsert language that was inadvertently removed pertaining to special courses of training under appendix K of part 141.

Discussion of Technical Amendment

Section 141.5(d) establishes the quality of training standard that a provisional pilot school must meet in order to obtain a non-provisional pilot school certificate. In addition, § 141.83 requires each pilot school and provisional pilot school to meet the quality of training requirements set forth in § 141.5(d) in order to have a certificate renewed under § 141.27(a)(2).

Prior to the August 2009 rule change, § 141.5(d) permitted issuance of a pilot school certificate if the applicant (1) trained and recommended at least 10 students for a knowledge or practical test for a pilot certificate, flight instructor certificate, ground instructor certificate, an additional rating, and end-of-course test for a training course specified in appendix K to this part, and (2) achieved an 80% pass rate on the first attempt for all tests administered during the preceding 24-month period.

Due to confusion over whether the 10 students in paragraph (d) had to be 10 different people or could be one person who completed 10 training courses, the FAA sought to clarify § 141.5 in the August 2009 final rule by adding paragraph (e), which requires a pilot school to have "graduated at least 10 different people from the school's approved training courses" in the 24-month period preceding the date of the application for a pilot school certificate. Paragraph (e) was intended to clarify the "quantity" of training that must take place in order for a pilot school to warrant certification under part 141. The FAA explained in the preamble that a pilot school could not use a single person who completes ten different training courses to satisfy the quantity of training standard set forth in paragraph (e).

Having clarified the "quantity of training" through a separate requirement in paragraph (e), the FAA had intended for paragraph (d) to address the "quality of training" required for issuance or renewal of a pilot school certificate. As amended in the August 2009 final rule, paragraph (d) requires a pilot school applicant to have "trained and recommended at least 10 different people for a knowledge test or a practical test, or any combination thereof, and at least 80 percent of those persons passed their tests on the first attempt." The FAA stated in the preamble that the requirement that "at least 80 percent of those persons passed their test on the first attempt is not a change from the existing rule." 74 FR 42500, 42538.

The use of the phrase "at least 10 different people" in paragraph (d), however, unfortunately was not removed and caused confusion regarding whether the 80 percent pass rate is based only on the test results of those 10 different people or, as stated in the preamble, on "all tests administered." In addition to this confusion, the FAA removed, without explanation, the language pertaining to the "end-of-course test for a training course specified in appendix K[.]" This omission was unintended. Certain certificated part 141 pilot schools offer only specialized courses that do not result in a certificate or rating. As such, these courses do not lead to completion of the "knowledge or practical test" currently referenced in § 141.5(d).

In this technical amendment, the FAA is revising the language of § 141.5(d) to clarify that in order to meet the quality of training standard for issuance or renewal of a pilot school certificate, a pilot school must achieve a combined 80 percent pass rate for all (1) knowledge tests and practical tests leading to a certificate or rating, and (2) end-of-course tests for appendix K courses must be passed on the first attempt.

As such, if a provisional pilot school does not train and recommend 10 different people for knowledge tests, practical tests, and end-of-course tests for approved appendix K courses, then the school's pass rate is irrelevant because the school failed to meet the minimum threshold for establishing its pass rate. In addition, the technical amendment clarifies that, although the

smallest possible testing pool is 10 different people, the total testing pool for a particular school consists of all knowledge tests, practical tests, and end-of-course tests for approved appendix K that were administered in the prior 24-month period. For those schools that seek renewal of non-provisional pilot school certificates, they must continue to meet, by reference in § 141.83, the quality of training standard set forth in § 141.5(d).

This rule clarifies existing requirements and reinserts language that was inadvertently removed. Because the changes in this technical amendment result in no substantive change, we find good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 141

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

The Amendment

■ Accordingly, title 14 of the Code of Federal Regulations (CFR) part 141 is amended as follows:

PART 141—PILOT SCHOOLS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–43502.

■ 2. Amend § 141.5 by revising paragraphs (d) and (e) to read as follows:

§ 141.5 Requirements for a pilot school certificate.

* * * * *

(d) Has established a pass rate of 80 percent or higher on the first attempt for all knowledge tests leading to a certificate or rating, practical tests leading to a certificate or rating, or end-of-course tests for an approved training course specified in appendix K of this part.

(e) Has graduated at least 10 different people from the school's approved training courses.

Issued in Washington, DC on September 14, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2010–23283 Filed 9–16–10; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2009–0017]

RIN 0960–AH00

Improvements to the Supplemental Security Income Program—Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act)

AGENCY: Social Security Administration.

ACTION: Final Rule; correcting amendment.

SUMMARY: In the **Federal Register** of September 7, 2010, we published a final rule document revising our regulations to incorporate improvements to the Supplemental Security Income (SSI) program made by the HEART Act. We inadvertently stated the RIN incorrectly as 0960–AD78. This document corrects the RIN to 0960–AH00.

DATES: Effective on September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Brian J. Rudick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7102. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: We published a final rule document in the **Federal Register** of September 7, 2010, (75 FR 54285) revising our regulations to incorporate improvements to the SSI program made by the HEART Act. In this final rule, we incorrectly stated the RIN as 0960–AD78. This correction changes the RIN to 0960–AH00.

Martin Sussman,

Senior Advisor for Regulations.

[FR Doc. 2010–23183 Filed 9–16–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. FDA–2006–N–0304] (formerly Docket No. 2006N–0262)

RIN 0910–AF93

Use of Ozone-Depleting Substances; Removal of Essential-Use Designation (Flunisolide, etc.); Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of April 14, 2010 (75 FR 19213). The document amended FDA's regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers to remove the essential-use designations for flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil used in oral pressurized metered-dose inhalers (MDIs). The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Diane Sullivan, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3210, Silver Spring, MD 20993, 301–796–9171.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–8467, appearing on page 19213, in the **Federal Register** of Wednesday, April 14, 2010, the following correction is made:

1. On page 19213, in the third column, the heading "RIN 0910–AF92" is corrected to read "RIN 0910–AF93".

Dated: September 13, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–23195 Filed 9–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9502]

RIN 1545–BF90

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 883(a) and (c) of the Internal Revenue Code (Code), concerning the exclusion from gross income of income derived by certain foreign corporations from the international operation of ships or aircraft. The final regulations adopt the proposed regulations issued on June 25, 2007, (REG–138707–06) with certain modifications in response to comments

received, and remove the temporary regulations published on the same date (TD 9332).

DATES: *Effective Date:* These regulations are effective September 17, 2010.

Applicability Date: For dates of applicability, see § 1.883–5(d).

FOR FURTHER INFORMATION CONTACT: Patricia A. Bray, at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)), under control number 1545–1677.

The collections of information in these final regulations are in §§ 1.883–2(f), 1.883–3(c) and (d), and 1.883–4(e). This information is required to enable a foreign corporation to determine if it is eligible to exclude its income from the international operation of ships or aircraft from gross income on its U.S. Federal income tax return. This information will also enable the IRS to monitor compliance with the regulations with respect to the stock ownership requirements of § 1.883–1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 25, 2007, temporary regulations (TD 9332) (2007 temporary regulations) under section 883(a) and (c) were published in the **Federal Register** (72 FR 34600) revising final regulations issued on August 26, 2003 in TD 9087 (68 FR 51394) (2003 final regulations) as amended by TD 9218 (70 FR 45529). A notice of proposed rulemaking (REG–138707–06) cross-referencing the temporary regulations was published in the **Federal Register** on the same date (72 FR 34650) (proposed regulations).

The 2007 temporary regulations revised the 2003 final regulations in several respects. First, the 2007 temporary regulations provide guidance concerning the eligibility of certain controlled foreign corporations to exclude from gross income certain income from the international operation of ships or aircraft (section 883 income) under section 883 (section 883 exclusion). Second, the 2007 temporary regulations revised the provisions of the 2003 final regulations concerning the eligibility for the section 883 exclusion of certain foreign corporations organized in countries that provide an exemption from taxation for income from the international operation of ships or aircraft through an income tax convention. Third, the 2007 temporary regulations identified certain ground services as incidental to the international operation of ships or aircraft for purposes of the section 883 exclusion. Finally, the 2007 temporary regulations revised the provisions of the 2003 final regulations concerning the reporting requirements related to the qualified shareholder stock ownership test. No public hearing on the proposed regulations was requested or held, however comments were received on certain provisions of the proposed regulations. After consideration of all the comments, the proposed regulations under section 883 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

Summary of Comments and Explanation of Final Regulations

The comments received with respect to the 2007 temporary regulations focused on three areas: (1) The scope of activities considered incidental to the international operation of a ship or aircraft (incidental activities); (2) the treatment of bearer shares for purposes of the stock ownership tests; and (3) the reporting requirements of foreign corporations claiming the section 883 exclusion.

A. Incidental Activities

1. Treatment of "Other Services"

The 2003 final regulations provide that certain activities of a foreign corporation engaged in the international operation of ships or aircraft are so closely related to such operation that those activities are incidental to such operation, and therefore the income derived by the foreign corporation from such incidental activities is deemed to be derived from the international operation of ships or aircraft. The 2003 final regulations include a non-exclusive list of incidental activities eligible for the section 883 exclusion. *See* § 1.883–1(g)(1). The 2003 final regulations, however, reserved on whether certain ground, maintenance or catering services (collectively, ground services) constitute incidental activities, and on whether other services might also constitute incidental activities. *See* § 1.883–1(g)(3). After considering comments received, the 2007 temporary regulations removed the reservation with respect to ground services and identified three additional categories of incidental activities. *See* § 1.883–1T(g)(ix) through (xi). The 2007 temporary regulations continue to reserve on whether "other services" may constitute incidental activities for this purpose.

Two commentators have recommended that final regulations adopt a standard for determining whether "other services" are incidental activities based on the principles articulated in paragraph 4.2 of the Commentary to paragraph 1 of Article 8 of the Organization for Economic Co-operation and Development Model Tax Convention on Income and Capital (OECD Model Convention). Article 8 of the OECD Model Convention covers profits directly connected with the operation of an enterprise's ships or aircraft in international traffic and profits from activities "ancillary" to such operation. Paragraph 4.2 of the commentary to Article 8 of the OECD Model Convention defines ancillary activities as those activities that an enterprise "does not need to carry on for the purposes of its own operation of ships or aircraft in international traffic, but which make a minor contribution relative to such operation and are so closely related to such operation that they should not be regarded as a separate business or source of income of the enterprise."

The Treasury Department and the IRS considered but declined to adopt in the 2007 temporary regulations the standard articulated in paragraph 4.2 of the commentary to Article 8 of the OECD Model Convention out of concern that the standard could be interpreted in an inappropriately expansive manner. The Treasury Department and the IRS remain concerned and therefore the final regulations included in this document do not modify the scope of incidental activities. As noted, however, the list of incidental activities included in the regulations is non-exclusive, and therefore other activities not specifically identified may be incidental to the international operation of ships or aircraft, depending on the relevant facts and circumstances.

2. Relevance of Definitions Included in the Regulations to Treaty Interpretation

Several commentators have suggested that the scope of incidental activities under the regulations should be consistent with the scope of "ancillary" services for tax treaty purposes because the regulations could be used to determine the meaning of the treaty provisions. The Treasury Department and the IRS believe this concern is sufficiently addressed by § 1.883–1(h)(3)(iv), which provides that any definitions provided in §§ 1.883–1 through 1.883–5 shall not give meaning to similar terms used in any income tax convention, or provide guidance regarding the scope of any exemption provided by such convention, unless the income tax convention entered into force after August 26, 2003, and it, or its legislative history, explicitly refers to section 883 and guidance promulgated under that section for its meaning.

3. Provision of Equipment Used in Connection With Lighter Vessels

Another commentator questioned whether the use of equipment to transfer crude oil from a host vessel to a lighter vessel beyond the territorial waters of the United States would constitute an incidental activity for purposes of the section 883 exclusion. As described above, the list of incidental activities in the regulations is not exclusive, and therefore activities not specifically identified may be incidental to the international operation of ships or aircraft, depending on the relevant facts and circumstances. Thus, for example, the use of equipment to transfer crude oil from a large oil tanker to a lighter vessel beyond the territorial waters of the United States would generally be considered incidental to the international operation of the lighter vessel for purposes of the section 883 exclusion.

B. Reliance on Bearer Shares To Satisfy Ownership Tests

To qualify for the section 883 exclusion a foreign corporation must satisfy one of three stock ownership tests. Under existing regulations, the foreign corporation cannot rely on bearer shares issued at any level in the ownership chain to satisfy any of the three stock ownership tests. *See,* for example, § 1.883–4(b)(1)(ii). Several commentators have suggested that a foreign corporation should be permitted to consider bearer shares in determining whether an ownership test is satisfied to the extent the foreign corporation can substantiate the ownership of the bearer shares by qualified shareholders.

It has generally been difficult to reliably prove ownership of bearer shares, particularly in prior periods. However, the Treasury Department and the IRS understand that it has become increasingly common for corporations (both publicly traded and privately held) to use a dematerialized or immobilized book-entry system for maintaining their registered and bearer shares. The Treasury Department and the IRS understand that under a dematerialized book-entry system shares are represented only by book entries, and no physical certificates are issued or transferred, and that in an immobilized book-entry system the shareholder does not receive a physical certificate upon the purchase of shares but instead evidence of ownership is maintained on the books and records of a broker/financial institution or corporate issuer. Because these systems provide the ability to reliably identify the beneficial owner of bearer shares, the Treasury Department and the IRS have determined that a foreign corporation that uses a dematerialized or immobilized book-entry system to maintain its bearer shares should be permitted to take into account the ownership of bearer shares by qualified shareholders for determining whether a stock ownership test is satisfied. Accordingly, the final regulations permit a foreign corporation to take into account ownership of bearer shares for purposes of satisfying a stock ownership test, when the bearer shares are maintained in a dematerialized or immobilized book-entry system. All other bearer shares issued by the foreign corporation or any intermediary corporation in the chain of ownership may not be relied on for purposes of satisfying a stock ownership test.

Current § 1.883–4(d)(2)(ii) provides that a qualified shareholder ownership statement remains valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change in circumstances occurs that makes any information on the ownership statement incorrect. For this purpose, a change in circumstances that makes information on an ownership statement incorrect includes bearer shares ceasing to be maintained in a dematerialized or immobilized book-entry system.

C. Other Comments Received

One commentator requested that the Treasury Department and the IRS clarify the filing requirements under section 6038A for a foreign corporation that has a permanent establishment in the United States but that claims a U.S. tax exemption under the shipping and air transport article of an income tax treaty. Another commentator requested that Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," and Form W–8ECI, "Certificate of Foreign Person's Claim That Income Is Effectively Connected with the Conduct of a Trade or Business in the United States," be modified to apply to income that qualifies for the section 883 exclusion. Finally, another commentator recommended that the final regulations under section 1446 be modified to clarify that a foreign corporation's allocable share of the effectively connected taxable income of a partnership does not include income that is eligible for the section 883 exclusion by reason of an equivalent exemption referred to in § 1.883–1(h)(1). Each of these comments is beyond the scope of the final regulations included in this document, but is being considered as part of separate guidance projects.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of United States small business entities. This certification is based upon the fact that these regulations apply to foreign corporations and impose only a limited collection of information burden on certain shareholders of such corporations. United States small business entities may be shareholders of foreign corporations to which the regulations applies, however, the Treasury Department and the IRS do not anticipate the number of affected small business entities to be substantial. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It also has been determined that section 553(b), (c) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Patricia A. Bray of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.883–0 is amended by:
■ 1. Adding the entries for § 1.883–1(c)(3)(ii)(A) and (B).
■ 2. Revising the entries for § 1.883–1(g)(3) and (h)(3).
■ 3. Revising the entry for § 1.883–2(e)(2).
■ 4. Revising the entries for § 1.883–3.
■ 5. Revising the entry for § 1.883–5(d).
■ 6. Removing the entry for § 1.883–5(e).

The revisions and additions read as follows:

§ 1.883–0 Outline of major topics.

* * * * *

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(c) * * *
(3) * * *
(ii) * * *
(A) General rule.
(B) Names and permanent addresses of certain shareholders.

* * * * *

(g) * * *
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* * * * *

(h) * * *
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(iv) Independent interpretation of income tax conventions.

* * * * *

§ 1.883–2 Treatment of publicly-traded corporations.

* * * * *

(e) * * *
(2) Availability and retention of documents for inspection.

* * * * *

§ 1.883–3 Treatment of controlled foreign corporations.

(a) General rule.
(b) Qualified U.S. person ownership test.
(1) General rule.
(2) Qualified U.S. person.
(3) Treatment of bearer shares.
(4) Ownership attribution through certain domestic entities.
(5) Examples.
(c) Substantiation of CFC stock ownership.
(1) In general.
(2) Ownership statements from qualified U.S. persons.
(3) Ownership statements from intermediaries.
(4) Three-year period of validity.
(5) Availability and retention of documents for inspection.
(d) Reporting requirements.

* * * * *

§ 1.883–5 Effective/applicability dates.

* * * * *

(d) Effective/applicability dates.

§ 1.883–0T [Removed]

■ **Par. 3.** Section 1.883–0T is removed.

■ **Par. 4.** Section 1.883–1 is amended by revising paragraphs (c)(3)(i)(D), (c)(3)(i)(G), (c)(3)(i)(H), (c)(3)(i)(I), (c)(3)(ii), (g)(1)(ix), (g)(1)(x), (g)(1)(xi), (g)(3), (h)(1)(ii), and (h)(3) to read as follows:

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(c) * * *
(3) * * *
(i) * * *

(D) The applicable authority for an equivalent exemption, for example, the citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, or an income tax convention between the United States and such country in the case of a corporation described in paragraphs (h)(3)(i), (ii) and (iii) of this section;

* * * * *

(G) A statement as to whether any shares of the foreign corporation or of any intermediary corporation that are relied on to satisfy any stock ownership test described in paragraph (c)(2) of this section are issued in bearer form and whether the bearer shares are maintained in a dematerialized book-entry system in which the bearer shares are represented only by book entries and no physical certificates are issued or transferred, or in an immobilized book-entry system in which evidence of ownership is maintained on the books and records of the corporate issuer or by a broker or financial institution;

(H) Any other information required under § 1.883–2(f), § 1.883–3(d), or § 1.883–4(e), as applicable; and

(I) Any other relevant information specified in Form 1120–F, "U.S. Income Tax Return of a Foreign Corporation," and its accompanying instructions.

(ii) *Further documentation*—(A) *General rule.* Except as provided in paragraph (c)(3)(ii)(B) of this section, if the Commissioner requests in writing that the foreign corporation provide documentation or substantiate any representations made under paragraph (c)(3)(i) of this section, or under § 1.883–2(f), § 1.883–3(d), or § 1.883–4(e), as applicable, the foreign corporation must provide the requested documentation or substantiation within 60 days of receiving the written request. If the foreign corporation does not provide the requested documentation or substantiation within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the requested documentation or substantiation. Whether a failure to provide the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner based on all the facts and circumstances.

(B) *Names and permanent addresses of certain shareholders.* If the Commissioner requests the names and permanent addresses of individual qualified shareholders of a foreign corporation, as represented on each individual's ownership statement, to substantiate the requirements of the exception to the closely-held test in the publicly-traded test in § 1.883–2(e), the qualified shareholder stock ownership test in § 1.883–4(a), or the qualified U.S. person ownership test in § 1.883–3(b), the foreign corporation must provide the

requested information within 30 days of receiving the written request. If the foreign corporation does not provide the requested information within the 30-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the requested information. Whether a failure to provide the requested information was due to reasonable cause and not willful neglect shall be determined by the Commissioner based on all the facts and circumstances.

* * * * *

(g) * * *

(1) * * *

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft;

(x) The provision of containers and related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo (for this purpose, a period of five days or less shall be presumed to be short-term); and

(xi) The provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, and customer services personnel, and the provision of facilities such as passenger lounges, counter space, ground handling equipment, and hangars.

* * * * *

(3) *Other services.* [Reserved].

* * * * *

(h) * * *

(1) * * *

(ii) Provides an exemption from tax for income derived from the international operation of ships or aircraft, either by statute, decree, income tax convention, or otherwise; or

* * * * *

(3) *Special rules with respect to income tax conventions*—(i) *Countries with only an income tax convention.* If a foreign country grants an exemption from tax for profits from the international operation of ships or aircraft only under an income tax convention with the United States, that exemption shall constitute an equivalent exemption with respect to a foreign corporation organized in that country only if—

(A) The foreign corporation satisfies the conditions for claiming benefits with respect to such profits under the income tax convention; and

(B) The profits that are exempt from tax pursuant to the shipping and air transport or gains article of the income tax convention and are described within a category of income included in paragraphs (h)(2)(i) through (viii) of this section.

(ii) *Countries with both an income tax convention and an equivalent exemption*—(A) *General rule.* If a foreign country grants an exemption from tax for profits from the international operation of ships or aircraft under the shipping and air transport or gains article of an income tax convention with the United States and also by some other means (for example, by diplomatic note or domestic law of the foreign country), a foreign corporation may elect annually whether to claim an exemption from tax under section 883 or the income tax convention. Except as provided in paragraph (h)(3)(ii)(B) of this section, the foreign corporation must apply the elected exemption (section 883 or the income tax convention) to all categories of income described in paragraph (h)(2) of this section. If the foreign corporation elects to claim the exemption under section 883, it must satisfy all of the requirements for claiming the exemption under section 883. If the foreign corporation elects to claim the exemption under the income tax convention, it must satisfy all of the requirements and conditions for claiming benefits under the income tax convention. *See* § 1.883–4(b)(3) for rules concerning relying on shareholders resident in a foreign country that grants an equivalent exemption under an income tax convention to satisfy the stock ownership test of paragraph (c)(2) of this section.

(B) *Special rule for claiming simultaneous benefits under section 883 and an income tax convention.* If a foreign corporation that is organized in a country that grants an exemption from tax under an income tax convention and also by some other means (such as by diplomatic note or domestic law of the foreign country) with respect to a specific category of income described in paragraph (h)(2) of this section, and the foreign corporation elects to claim the exemption under the income tax convention, the foreign corporation may nonetheless simultaneously claim an exemption under section 883 with respect to a category of income exempt from tax by such other means if the foreign corporation—

(*1*) Satisfies the requirements of paragraphs (h)(3)(i)(A) and (B) of this section for each category of income;

(*2*) Satisfies one of the stock ownership tests of paragraph (c)(2) of this section; and

(*3*) Complies with the substantiation and reporting requirements in paragraph (c)(3) of this section.

(iii) *Participation in certain joint ventures.* If a foreign country grants an exemption for a category of income only through an income tax convention, a foreign corporation that is organized in that country and that derives income, directly or indirectly, through a participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, or other joint venture described in paragraph (e)(2) of this section, may treat that exemption as an equivalent exemption even if the foreign corporation would not be eligible to claim benefits under the income tax convention for that category of income solely because the joint venture was not fiscally transparent, within the meaning of § 1.894–1(d)(3)(iii)(A), with respect to that category of income under the income tax laws of the foreign corporation's country of residence.

(iv) *Independent interpretation of income tax conventions.* Nothing in this section nor §§ 1.883–2 through 1.883–5 affects the rights or obligations under any income tax convention between the United States and a foreign country. The definitions provided in this section and §§ 1.883–2 through 1.883–5 shall not give meaning to similar or identical terms used in an income tax convention, or provide guidance regarding the scope of any exemption provided by such convention, unless the income tax convention entered into force after August 26, 2003, and it, or its legislative history, explicitly refers to section 883 and guidance promulgated under that section for its meaning.

* * * * *

§ 1.883–1T [Removed]

■ **Par. 5.** Section 1.883–1T is removed.

■ **Par. 6.** Section 1.883–2 is amended by revising paragraphs (d)(3)(ii), (e)(2), (f)(3), and (f)(4)(ii) to read as follows:

§ 1.883–2 Treatment of publicly-traded corporations.

* * * * *

(d) * * *

(3) * * *

(ii) *Exception.* Paragraph (d)(3)(i) of this section shall not apply to a class of stock if the foreign corporation can establish that qualified shareholders, as defined in § 1.883–4(b), applying the attribution rules of § 1.883–4(c), own

sufficient shares in the closely-held block of stock to preclude nonqualified shareholders in the closely-held block of stock from owning 50 percent or more of the total value of the class of stock of which the closely-held block is a part for more than half the number of days during the taxable year. Any shares that are owned, after application of the attribution rules in § 1.883–4(c), by a qualified shareholder shall not also be treated as owned by a nonqualified shareholder in the chain of ownership for purposes of the preceding sentence. A foreign corporation must obtain the documentation described in § 1.883–4(d) from the qualified shareholders relied upon to satisfy this exception. However, no person otherwise treated as a qualified shareholder under § 1.883–4(b) may be treated for purposes of this paragraph (d)(3) as a qualified shareholder if such person's interest in the foreign corporation, or in any intermediary corporation, is held through bearer shares that are not maintained during the relevant period in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G).

(e) * * *

(2) *Availability and retention of documents for inspection.* A foreign corporation seeking qualified foreign corporation status must retain the documentation described in paragraph (e)(1) of this section until the expiration of the statute of limitations for its taxable year to which the documentation relates. The foreign corporation must make such documentation available for inspection at such time and such place as the Commissioner requests in writing under § 1.883–1(c)(3)(ii)(A) or (B).

(f) * * *

(3) A description of each class of stock relied upon to meet the requirements of paragraph (d) of this section, including whether the class is issued in registered or bearer form and whether any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G), the number of shares issued and outstanding in that class as of the close of the taxable year, and the relative value of each class in relation to the total value of all shares of stock of the corporation that are outstanding as of the close of the taxable year;

(4) * * *

(ii) With respect to all qualified shareholders that own directly, or by application of the attribution rules in § 1.883–4(c), shares of the closely-held block of stock and that the foreign corporation relies on to satisfy the exception provided by paragraph (d)(3)(ii) of this section—

(A) The number of such qualified shareholders;

(B) The total percentage of the value of the shares owned, directly or indirectly, by such qualified shareholders by country of residence, determined under § 1.883–4(b)(2) (residence of individual shareholders) or § 1.883–4(d)(3) (special rules for residence of certain shareholders); and

(C) The number days during the taxable year of the foreign corporation that such qualified shareholders owned, directly or indirectly, their shares in the closely held block of stock.

* * * * *

§ 1.883–2T [Removed]

■ **Par. 7** Section 1.883–2T is removed.

■ **Par. 8.** Section 1.883–3 is revised to read as follows:

§ 1.883–3 Treatment of controlled foreign corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if it satisfies the qualified U.S. person ownership test in paragraph (b) of this section and the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A foreign corporation that fails the qualified U.S. person ownership test of paragraph (b) of this section can satisfy the stock ownership test of § 1.883–1(c)(2) if it meets either the publicly-traded test of § 1.883–2(a) or the qualified shareholder stock ownership test of § 1.883–4(a).

(b) *Qualified U.S. person ownership test*—(1) *General rule.* A foreign corporation satisfies the qualified U.S. person ownership test only if the following two conditions are satisfied concurrently during more than half the days in its taxable year:

(i) The foreign corporation is a controlled foreign corporation (within the meaning of section 957(a)).

(ii) One or more qualified U.S. persons own more than 50 percent of the total value of all the outstanding stock of the foreign corporation (within the meaning of section 958(a) and paragraph (b)(4) of this section).

(2) *Qualified U.S. person.* For purposes of this section, a *qualified U.S. person* is a United States citizen or resident alien, a domestic corporation, or a domestic trust described in section 501(a), but only if the person provides the controlled foreign corporation an ownership statement described in paragraph (c)(2) of this section, and the controlled foreign corporation meets the reporting requirements of paragraph (d) of this section with respect to that person.

(3) *Treatment of bearer shares.* For purposes of paragraph (b)(1)(ii) of this section, any shares of the foreign corporation or of any intermediary corporation that are issued in bearer form, shall be treated as not owned by qualified U.S. persons if the bearer shares are not maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G).

(4) *Ownership attribution through certain domestic entities.* For purposes of paragraph (b)(1)(ii) of this section, stock owned, directly or indirectly, by or for a domestic partnership, a domestic trust not described in section 501(a), or a domestic estate, shall be treated as owned proportionately by the partners, beneficiaries, grantors, or other interest holders, respectively, under the rules of section 958(a), which shall be applied by treating each domestic entity as a foreign entity. Stock that is considered owned by a person under this paragraph (b)(4) shall, for purposes of applying this paragraph (b)(4) to such person, be treated as actually owned by such person.

(5) *Examples.* The following examples illustrate the qualified U.S. person ownership test of paragraph (b)(1) of this section:

Example 1. Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) for more than half the days of its taxable year and is organized in a qualified foreign country. A domestic partnership owns all of the outstanding stock of Ship Co for the entire taxable year. All of the partners in the domestic partnership are residents of foreign countries and not citizens of the United States. Ship Co does not satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because qualified U.S. persons do not own shares of Ship Co stock with a value that is greater than 50 percent of the total value of the outstanding stock of the corporation for at least half the days of Ship Co's taxable year. Therefore, to satisfy the stock ownership test of § 1.883–1(c)(2) and constitute a qualified foreign corporation, Ship Co must meet the qualified shareholder stock ownership test of § 1.883–4(a).

Example 2. Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) for more than half the days of its taxable year and is organized in a qualified foreign country. Ship Co has a single class of stock outstanding. For Ship Co's entire taxable year, a foreign corporation (Corp A), that is wholly owned by a resident of a foreign country who is not a U.S. citizen, owns 40 percent of the outstanding Ship Co stock. During that same period, a domestic partnership owns the remaining 60 percent of the outstanding Ship Co stock. The domestic partnership is wholly owned by 20 United States citizens, each of whom owns a 5-

percent partnership interest for Ship Co's entire taxable year. Ship Co meets the qualified U.S. person ownership test of paragraph (b)(1) of this section because during more than half the days in its taxable year it was a controlled foreign corporation within the meaning of section 957(a), and, applying the ownership attribution rules of paragraph (b)(4) of this section, qualified U.S. persons (the partners in the domestic partnership) owned Ship Co stock with a value that is greater than 50 percent of the total value of all the outstanding Ship Co shares. Therefore, Ship Co will meet the stock ownership test of § 1.883–1(c)(2) if it satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section with respect to the partners in the domestic partnership. Alternatively, if four or more partners in the domestic partnership were not qualified U.S. persons, Ship Co would not meet the qualified U.S. person ownership test of paragraph (b)(1) of this section because, even though during more than half the days in its taxable year it would have been a controlled foreign corporation within the meaning of section 957(a), qualified U.S. persons would not have owned Ship Co stock with a value that is greater than 50 percent of the total value of all the outstanding Ship Co shares during that period.

Example 3. Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) and is organized in a qualified foreign country. Ship Co has two classes of stock outstanding, Class A representing 60 percent of the vote and value and Class B representing the remaining 40 percent of the vote and value of all the shares outstanding of Ship Co. The Class A stock is issued in bearer form and is maintained in a dematerialized book-entry system, as described in § 1.883–1(c)(3)(i)(G). The Class B stock is also issued in bearer form, but is not maintained in a dematerialized or immobilized book-entry system. For Ship Co's entire taxable year, a United States citizen A holds all the Class A stock and nonresident alien individual B owns all the Class B stock. Although the Class A stock is issued in bearer form, Ship Co will satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because the Class A stock is maintained in a dematerialized book-entry system on behalf of A. The Class B stock is not owned by a qualified U.S. person but is taken into account in determining the total value of Ship Co's outstanding stock. Alternatively, if the Class B stock were owned by a qualified U.S. person, the results would be similar. Class B stock would not be taken into account in determining if the qualified U.S. person ownership test were satisfied, but would be taken into account in determining the total value of Ship Co's outstanding stock.

(c) *Substantiation of CFC stock ownership*—(1) *In general.* A controlled foreign corporation must establish all of the facts necessary to demonstrate to the Commissioner that it satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section by obtaining a written ownership statement (described in paragraph (c)(2) or (3) of this section, as applicable), signed under penalties of perjury by an individual authorized to sign that person's Federal tax or information return, from—

(i) Each qualified U.S. person whose ownership of stock of the controlled foreign corporation is taken into account for purposes of meeting the qualified U.S. person ownership test; and

(ii) Each domestic intermediary described in paragraph (b)(4) of this section, each foreign intermediary (including a foreign corporation, partnership, trust, or estate), and mere legal owners or record holders acting as nominees in the chain of ownership between each such qualified U.S. person and the controlled foreign corporation, if any.

(2) *Ownership statements from qualified U.S. persons.* An ownership statement from a qualified U.S. person must include—

(i) The qualified U.S. person's name, permanent address, and taxpayer identification number;

(ii) If the qualified U.S. person directly owns shares in the controlled foreign corporation, the number of shares of each class of stock of the controlled foreign corporation owned by the qualified U.S. person, whether any shares are issued in bearer form, whether any bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G), and the period (or periods) in the taxable year of the controlled foreign corporation during which the qualified U.S. person owned the shares;

(iii) If the qualified U.S. person indirectly owns shares in the controlled foreign corporation through a foreign or domestic intermediary described in paragraph (c)(1)(ii) of this section, the name of each intermediary, the amount and nature of the qualified U.S. person's interest in each intermediary, the period (or periods) in the taxable year of the controlled foreign corporation during which the qualified U.S. person held such interest, and, with respect to any intermediary foreign corporation, whether any shares are issued in bearer form and whether any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G); and

(iv) Any other information specified in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(3) *Ownership statements from intermediaries.* An ownership statement from a domestic or foreign intermediary must include:

(i) The intermediary's name, permanent address, and taxpayer identification number, if any.

(ii) If the intermediary directly owns stock in the controlled foreign corporation, the number of shares of each class of stock of the controlled foreign corporation owned by the intermediary, whether such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G), and the period (or periods) in the taxable year of the controlled foreign corporation during which the intermediary owned the shares.

(iii) If the intermediary indirectly owns the stock of the controlled foreign corporation, the name and address of each intermediary in the chain of ownership between it and the controlled foreign corporation, the period (or periods) in the taxable year of the controlled foreign corporation during which the intermediary owned the shares, the percentage of its indirect ownership interest in the controlled foreign corporation, and, if any intermediary in the chain of ownership is a foreign corporation, whether any shares of such intermediary are issued in bearer form and if any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G).

(iv) Any other information specified in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(4) *Three-year period of validity.* The rules of § 1.883–4(d)(2)(ii) shall apply for determining the validity of the ownership statements required under paragraph (c)(2) of this section.

(5) *Availability and retention of documents for inspection.* The foreign corporation seeking qualified foreign corporation status must retain the ownership statements described in this paragraph (c) until the expiration of the statute of limitations for its taxable year to which the ownership statements relate. The ownership statements must be made available for inspection at such time and place as the Commissioner may request in writing in accordance with § 1.883–1(c)(3)(ii).

(d) *Reporting requirements.* A controlled foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must include the following information (in addition to the information required by § 1.883–1(c)(3)) with its Form 1120–F, "U.S. Income Tax Return of a Foreign Corporation", filed for its taxable year.

This information must be consistent with the ownership statements obtained by the controlled foreign corporation pursuant to paragraph (c) of this section and must be current as of the end of the corporation's taxable year—

(1) The relative value of the shares of the controlled foreign corporation that are owned (directly, and indirectly applying the rules of paragraph (b)(4) of this section) by all qualified U.S. persons identified in paragraph (c)(2) of this section as compared to the value of all outstanding shares of the corporation;

(2) The period (or periods) in the taxable year during which such qualified U.S. persons held such shares;

(3) The period (or periods) in the taxable year during which the foreign corporation was a controlled foreign corporation;

(4) A statement as to whether the controlled foreign corporation or any intermediary corporation had bearer shares outstanding during the taxable year, and whether any such bearer shares taken into account for purposes of satisfying the qualified U.S. person ownership test are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G); and

(5) Any other information specified by Form 1120–F, and its accompanying instructions, or in published guidance by the Internal Revenue Service (*see* § 601.601(d)(2) of this chapter).

§ 1.883–3T [Removed]

■ **Par. 9.** Section 1.883–3T is removed.

■ **Par. 10.** Section 1.883–4 is amended by revising paragraphs (b)(1)(ii), (c)(1), (d)(1), (d)(4)(i)(C), (d)(4)(i)(D), (e)(2), and (e)(3) to read as follows:

§ 1.883–4 Qualified shareholder stock ownership test.

* * * * *

(b) * * *

(1) * * *

(ii) Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of paragraph (c) of this section, unless such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G); and

* * * * *

(c) * * *

(1) *General rules for attribution.* For purposes of applying paragraph (a) of this section and the exception to the closely-held test in § 1.883–1(d)(3)(ii), stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders, as provided in paragraphs (c)(2) through (7) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through the chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c). Stock issued in hearer form will not be treated as owned proportionately by its shareholders unless the shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G).

* * * * *

(d) * * *

(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders for the relevant period. If a foreign corporation relies upon bearer shares in the chain of ownership to satisfy one of the stock ownership tests, the foreign corporation must also establish all of the facts necessary to satisfy the Commissioner that such shares are maintained in a dematerialized book-entry system, as described in § 1.883–1(c)(3)(i)(G), for the benefit of the relevant shareholder.

* * * * *

(4) * * *

(i) * * *

(C) If the individual directly owns shares of stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation owned by the individual, whether any such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G), and the period (or periods) in the taxable year of the foreign corporation during which the individual owned the shares;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate, or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or the amount and nature of the interest that the individual holds in such intermediary, and, if the intermediary is a corporation, whether any such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G), and the period (or periods) in the taxable year of the foreign corporation seeking qualified foreign corporation status during which the individual held such interest;

* * * * *

(e) * * *

(2) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total number of such qualified shareholders as defined in paragraph (b)(1) of this section; the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by such qualified shareholders by country of residence or organization, whichever is applicable; and the period during the taxable year of the foreign corporation that such stock was held by qualified shareholders; and

(3) Any other relevant information specified by the Form 1120–F, "U.S. Income Tax Return of a Foreign Corporation," and its accompanying instructions, or in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

§ 1.883–4T [Removed]

■ **Par. 11.** Section 1.883–4T is removed.

■ **Par. 12.** Section 1.883–5 is amended by revising paragraph (d) and removing paragraph (e) to read as follows:

§ 1.883–5 Effective/applicability dates.

* * * * *

(d) *Effective/applicability date.* Except as otherwise provided in this paragraph (d), §§ 1.883–1, 1.883–2, 1.883–3, and 1.883–4 apply to taxable years of the foreign corporation beginning after June 25, 2007, and may be applied to any open taxable years of the foreign corporation beginning on or after December 31, 2004. The portion of any provision concerning bearer shares maintained in a dematerialized or immobilized book-entry system, as described in § 1.883–1(c)(3)(i)(G), applies to taxable years of a foreign corporation beginning on or after September 17, 2010.

§ 1.883–5T [Removed]

■ **Par. 13.** Section 1.883–5T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 14.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 15.** In § 602.101, paragraph (b) is amended by removing the entries for §§ 1.883–1T, 1.883–2T, 1.883–3T, 1.883–4T, and 1.883–5T from the table and adding an entry for § 1.883–0 to the table in numerical order to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* *
§ 1.883–0	1545–1677
* * *	* *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: September 3, 2010.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0534]

RIN 1625–AA08

Special Local Regulation; Monongahela River, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation from mile marker 2.2 (Southside Riverfront Park Boat Ramp) on the Monongahela River to mile marker 2.7 (27th Street), extending 100 feet out from the left descending bank. This special local regulation is needed to safeguard participants of the Pittsburgh Dragon Boat Festival from the hazards imposed by marine traffic. Entry into the regulated area is prohibited, unless specifically authorized by the Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective from 11:30 a.m. to 4:30 p.m. on September 18, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0534 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0534 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail ENS Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412–644–5808 Ext. 2140, e-mail *Robyn.G.Hoskins@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM). A NPRM would be impracticable with respect to this rule because immediate action is needed to safeguard participants during the Pittsburgh Dragon Boat Festival from the hazards imposed by marine traffic, and re-scheduling the event is contrary to the public interest of participants, spectators and vendors in having the event proceed as scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because waiting 30 days would be impracticable since immediate action is needed to safeguard participants during the Pittsburgh Dragon Boat Festival from the hazards imposed by marine traffic, and re-scheduling the event is contrary to the public interest of participants, spectators and vendors in having the event proceed as scheduled.

Basis and Purpose

The Coast Guard is establishing a special local regulation from mile marker 2.2 (Southside Riverfront Park Boat Ramp) on the Monongahela River to mile marker 2.7 (27th Street), extending 100 feet out from the left descending bank. This special local regulation is needed to safeguard participants during the Pittsburgh Dragon Boat Festival from the hazards imposed by marine traffic.

Discussion of Rule

Vessels shall not enter into, depart from, or move within the regulated area without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels requiring entry into or passage through the regulated area must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule is effective from 11:30 a.m. to 4:30 p.m. on September 18, 2010. The Captain of the Port Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the planned schedule.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule will be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit that portion of the waterways from mile marker 2.2 (Southside Riverfront Park Boat Ramp) on the Monongahela River to mile marker 2.7 (27th Street), extending 100 feet out from the left descending bank, from 11:30 a.m. to 4:30 p.m. on September 18, 2010.

This regulated area will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced on a weekend day and when traffic is low.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T08–0534 to read as follows:

§ 100.T08–0534 Pittsburgh Dragon Boat Festival, Monongahela River, Pittsburgh, PA.

(a) *Location.* The following area is a regulated area: All waters of the Monongahela River, from mile marker 2.2 (Southside Riverfront Park Boat Ramp) on the Monongahela River to mile marker 2.7 (27th Street), extending 100 feet out from the left descending bank.

(b) *Effective date.* This section is effective from 11:30 a.m. through 4:30 p.m. on September 18, 2010, and each year thereafter on a date and time published in a **Federal Register** document.

(c) *Periods of enforcement.* This section is effective from 11:30 a.m. through 4:30 p.m. on September 18, 2010. The Captain of the Port Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the planned schedule.

(d) *Regulations.*

(1) In accordance with the general regulations in § 100.35 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Pittsburgh.

(2) Persons or vessels requiring entry into, departure from, or passage through a regulated area must request permission from the Captain of the Port Pittsburgh or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: August 13, 2010.

S.T. Higman,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Pittsburgh.

[FR Doc. 2010–23279 Filed 9–16–10; 8:45 am]

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Copyright Office

37 CFR Part 201

[Docket No. RM 2010–2]

Implementation of the Satellite Television Extension and Localism Act of 2010

ACTION: Interim Rule.

SUMMARY: The Copyright Office amends its rules governing statements of account for cable systems and satellite carriers to reflect changes resulting from the recent enactment of the Satellite Television Extension and Localism Act of 2010.

FOR FURTHER INFORMATION CONTACT: Ben E. Golant, Assistant General Counsel or Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202)–707–8366.

EFFECTIVE DATES: September 17, 2010.

SUPPLEMENTARY INFORMATION: Congress recently passed the Satellite Television Extension and Localism Act of 2010 ("STELA") which was signed by the President on May 27, 2010. See Pub. L. No. 111–175. This legislation updated and reauthorized the distant signal license for satellite carriers under Section 119 of title 17. It also amended the local–into–local satellite license and the cable statutory license in several respects. The purpose of this Interim Rule is to account for the new statutory provisions under Sections 111, 119, and 122, as discussed below.

I. SECTION 111 AMENDMENTS

A. Phantom Signals and Subscriber Groups

For the past 30 years, cable operators have paid royalties for the retransmission of non–network programming carried by distant broadcast television signals under the Section 111 statutory license. The royalties have been based on a percentage of gross receipts generated by a cable system. Under the licensing framework established by Congress in 1976, cable operators had to pay for the number of distant signals carried, even though some such signals were not received or made available to every subscriber of a particular cable system. Distant broadcast signals that were not made available on a system–wide basis, but on which operators were required to pay royalties, have been called "phantom signals." The Copyright Office has long recognized the phantom signal situation, but the matter has only recently received legislative attention.[1]

Section 104 of STELA, entitled "Modifications to Cable System Secondary Transmission Rights Under Section 111," directly addresses phantom signals. Specifically, it amended Section 111(d)(1) of the Copyright Act which sets forth the methodology for cable operators to calculate royalties. Cable operators now pay royalties only where the distant broadcast signal is actually received by subscribers rather than on a broader cable system basis as had been the case since 1978. The amendments finally resolve this enduring dispute.[2]

Specifically, the legislation amends subparagraph (C) of Section 111(d)(1) to state that if a cable system provides secondary transmissions of primary transmitters to some, but not all, communities served by the cable system, the gross receipts and distant signal equivalent values for each secondary transmission may be derived on the basis of the subscribers in those communities where the cable system actually provides such secondary transmission. Where a cable system calculates its royalties on a community–specific ("subscriber group") basis, the operator applies the methodology in Section 111(d)(1)(B)(ii)–(iv) to calculate a separate royalty for each subscriber group. However, the operator will still compute the minimum fee calculation under Section 111(d)(1)(B)(i) on a cable system basis and is required to pay no less than the minimum fee. [3]

[1] There is no legislative history accompanying STELA. However, an earlier iteration of the legislation in 2009 contained the same statutory language with respect to phantom signals and did have accompanying legislative history. *See* Satellite Home Viewer Update and Reauthorization Act of 2009, H. Rep. No. 111-319, 111th Cong., 1st Sess. (Oct. 28, 2009) at 12 ("[T]he cable television and content industries have taken different views on whether cable providers should include certain signals that are not received by every customer in the calculation of Section 111 royalty obligations. Members of the cable industry argue that providers should not have to pay for such signals because some consumers do not receive them. Members of the content industry assert that, under the law, all signals should be taken into account in the royalty rate calculation. The Committee understands that there are two different readings of the statute and that the issue should be resolved to provide certainty to both industries.")

[2] *See id.* at 23-24. ("Subsection (c) resolves the phantom signal ambiguity that required cable systems to pay royalty fees for carriage to all subscribers within the system. It allows a cable system that provides transmissions of,distant signals to some but not all communities to calculate royalty fees on the basis of the actual carriage of specific signals and the gross receipts derived from the subscribers in the community.")

[3] *See id.* at 12. ("The legislation revises and updates subparagraphs (C) and (D) of Section 111(d)(1) to resolve the so–called "phantom signal"issue. Just as the current law allows

The legislation also amends subparagraph (D) of Section 111(d)(1) to state that for any accounting period prior to the enactment of the amendments in subparagraph (C), a cable system's computation of its royalty fee consistent with the methodology described in subparagraph (C)(iii), or a cable system's use of such methodology on an amendment of a statement originally filed before the date of enactment, will not be deemed actionable as an act of infringement within the meaning of Section 111(c)(2)(B). In other words, operators who have heretofore based royalty payments on subscriber group calculations will not face liability for having done so. Moreover, the amendments also make clear that cable operators who paid for phantom signals in the past are not entitled to now seek refunds or offsets for those payments.[4]

As part of the legislative compromise on the phantom signal matter, certain cable operators agreed to the payment of additional royalty amounts directly to the Copyright Office for a five year period. These additional royalty payments are addressed in new paragraph (7) of subsection (d), which directs the Copyright Office to treat them as part of the Section 111 royalty pool attributable to the period for which they are submitted.[5]

The changes to Section 111(d) necessitate an amendment to Section 201.17 as well as a revision to the Form 3 Statement of Account. The interim rule adds a new subsection "g" to the rules to implement the statutory language regarding subscriber groups and reflect the new royalty rates (noted below). The Office has also revised SOA Form 3 to better accommodate subscriber group reporting and to recognize the additional royalties that will be submitted by certain cable operators.

subscriber group calculations for "partially local/partially distant" situations, so too may cable systems use the subscriber group methodology when calculating royalties for phantom signal situations. . . . This change shall not affect a cable system's obligation to pay the minimum fee as appropriate.")

[4] *See id.* at 12 (noting the same).

[5] *See id.* at 13. ("Finally, as a result of discussions among the parties affected by the phantom signal issue that helped lead to broad industry support for these amendments, certain cable operators agreed to the payment of additional royalty amounts directly to the Copyright Office for a 5-year period. . . . For example, if the first such additional royalty payments are submitted on the filing deadline for the first accounting period of 2010 (*i.e.*, August 29, 2010), the Office shall treat such amounts as part of the base rate royalty pool for the first accounting period of 2010 for deposit and distribution to claimants using the existing procedures.")

B. Rate Adjustments

Section 104 of STELA also revises and updates Section 111(d)(1) to adjust the royalty percentages payable by cable systems that must compute their royalty payments in accordance with subparagraph (B) of that provision. The adjusted royalty percentages were made effective as of January 1, 2010, in lieu of any adjustments in royalty percentages or gross receipts thresholds that might have been made this year in a cable royalty rate inflation adjustment proceeding pursuant to Sections 801(b)(2) and 804(b)(1).[6] The new law adjusts the existing "base" royalty rates for Form 3 systems upwards by approximately 5 percent starting with the first accounting period of 2010. Under STELA, the fee for the first distant signal equivalent increases from 1.013 percent to 1.064 percent; the fee for the second through fourth distant signal equivalent increases from 0.668 percent to 0.701 percent; and the fee for the fifth distant signal equivalent, and each additional distant signal equivalent increases from 0.314 percent to 0.330 percent. STELA does not change the rates for smaller cable systems that use the SOA Form 1–2 nor does it disturb the gross receipts thresholds for determining whether an operator should file SOA Form 3 or SOA Form 1–2. STELA also clarifies that the base rate fees, the 3.75 fee, and the syndicated exclusivity surcharge will not be subject to an adjustment again before 2015. The Office has updated Section 201.17 to reflect the rate adjustment provisions of STELA, but it does not believe any further regulatory amendments are required.

C. DTV Signals

1. *Multicasting*

Section 104 of STELA modifies particular provisions in Section 111 to accommodate the 2009 digital broadcast television transition. Digital television signals are different from analog signals in that a digital television broadcaster has the ability to air several sub–channels, or multicasts, from its single broadcast transmitter. Cable operators have retransmitted distant multicasts for a number of years under the Section 111 license. STELA clarifies that a royalty payment should be made for the retransmission of non–network television programming carried on each unique digital multicast stream of a distant digital television signal. Specifically, the definition of distant signal equivalent ("DSE") in Section 111 was changed to account for the retransmission of multicast streams. A DSE, as modified by STELA, is :

(i) the value assigned to the secondary transmission of any non–network television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming; and

(ii) computed by assigning a value of one to each primary stream and to each multicast stream (other than a simulcast) that is an independent station, and by assigning a value of one–quarter to each primary stream and to each multicast stream (other than a simulcast) that is a network station or a noncommercial educational station.

At the same time, however, STELA carves out special exceptions regarding the royalty treatment of multicast streams under Section 111. Specifically, "the royalty rates specified in Sections 256.2(c) and 256.2(d) of title 37, Code of Federal Regulations (commonly referred to as the "3.75 percent rate" and the "syndicated exclusivity surcharge" respectively), as in effect on the date of enactment of the Satellite Television Extension and Localism Act, as such rates may be adjusted, or such sections redesignated, thereafter by the Copyright Royalty Judges, shall not apply to the secondary transmission of a multicast stream." This provision, in effect, would permit a cable operator to carry multiple multicast streams without concern about exceeding its market quota of distant signals and being required to pay the 3.75% fee. In addition, no royalties are due for carrying a distant multicast stream that "simulcasts" (*i.e.*, duplicates) a primary stream or another multicast stream of the same station that the system is carrying. The amendments to Section 201.17 incorporate the relevant statutory language on multicast streams into new subpart (j) of the Copyright Office's rules.[7]

2. *Effective Dates*

Section 104 of STELA specifically delineates the effective dates with respect to the treatment of multicast

[6] On January 5, 2010, the Copyright Royalty Judges issued a Federal Register Notice commencing the 2010 Cable Rate Proceeding to adjust the gross receipt limitations and royalty rates applicable under Section 111. *See* 75 FR 455 (Jan. 5, 2010). Soon after STELA was enacted, cable operators and copyright owners filed a Joint Motion to Terminate the proceeding. The Judges have not yet issued an Order terminating the proceeding.

[7] Two years ago, the Office issued a Notice of Proposed Rulemaking to address the legal concerns raised by the retransmission of digital television signals by cable operators under the Section 111 license. *See* 73 F.R. 31399 (June 2, 2008). Multicasting was one of the prominent matters raised for comment. Now that STELA has been enacted, we will be re–examining the issues that remain in that rulemaking.

streams under the cable statutory license. First, STELA states that the Section 111 amendments, with regard to the distant signal equivalent value of the secondary transmission of the multicast stream of a primary transmitter, takes effect on the date of the enactment of the Act [*i.e.*, February 27, 2010].[8] That is, any distant multicasts first retransmitted by a cable operator on or after February 27, 2010, is subject to royalties. Second, STELA delays the implementation of the requirement to pay for carriage of a multicast stream "in any case in which a cable system was making secondary transmissions of a multicast stream beyond the local service area of its primary transmitter *before the date of enactment* of this Act [*i.e.*, February 27, 2010] and states that "a distant signal equivalent value shall not be assigned to secondary transmissions of such multicast stream that are made on or before June 30, 2010."[9] [emphasis added]. Clearly, cable operators will not have to pay royalties for any multicasts carried prior to STELA's effective date. Further, Congress has built a grace period into the statute so that those cable operators that have carried distant multicasts prior to the effective date through to June 30, 2010, do not have to pay royalties for the first accounting period of this year.[10] Finally, STELA states that "in any case in which the secondary transmission of a multicast stream of a primary transmitter is the subject of a written agreement entered into on or before June 30, 2009, between a cable system or an association representing the cable system and a primary transmitter or an association representing the primary transmitter, a distant signal equivalent value shall not be assigned to secondary transmissions of such multicast stream beyond the local service area of its primary transmitter that are made on or before the date on which such written agreement expires." This could be characterized as the "Grandfathered Agreement Exception." Here, no royalties are due for the retransmission of a distant multicast that is subject to an ongoing agreement. However, once the agreement expires, then royalties would have to be paid for such distant multicasts if they continue to be carried.

It is important to mention that a cable system that has reported secondary transmissions of a multicast stream beyond the local service area of its primary transmitter on a statement of account deposited under Section 111 before the date of the enactment of STELA is not entitled to any refund, or offset, of royalty fees paid on account of such secondary transmissions of such multicast stream.

3. Statement of Account Forms

Section 201.17(e), the rule dictating the fields and parameters of the cable statement of account forms, has to be revised to account for the changes in Section 111 due to STELA. We have identified at least two separate subsections that need to be amended to conform with the new multicast provisions of the new law. The first is the designation of "channels" under Section 201.17(e)(5). Here, we amend the regulation to recognize that a multicast stream would be considered a "channel" for Statement of Account purposes. Similarly, we amend Section 201.17(e)(9) to account for multicast streams in the "Primary Transmitters" designation in the rules. Specifically, we find it necessary to explain how to label and account for the retransmission of multicast signals on the SOA. The revised SOAs the Office has released for the 2010/1 period reflect this change and request that each multicast stream be identified by its over–the–air call sign followed by the sub–channel number assigned to it by the television broadcast licensee. It is important to note that a simulcast stream[11] is a multicast stream, and even though no royalties must be paid for its retransmission, the carriage of such still must be reported on the Statement of Account form. A simulcast stream should be properly labeled on the form (*e.g.*, WETA–simulcast) so that Licensing Division examiners are able to differentiate this type of stream from other multicast streams that may require a royalty payment.

4. Definitions

STELA amended Section 111(f) of the Copyright Act in many respects to include new definitions that relate to digital broadcast television and for other purposes. The new or modified definitions in Section 111, like the revised definition of "DSE" discussed above, focus on the technical aspects of digital signals and the ability of television stations to multicast or split its one digital signal into many sub–channels. Under STELA, the terms "primary stream," "multicast stream," and "simulcast"were added to Section 111 because of the digital television transition. The terms "independent station," "noncommercial educational station," and "network station" which have been part of Section 111 for over 33 years, were modified for the same reason. The same can be said with regard to the revised definitions of the terms "primary transmission" and "local service area of a primary transmitter," which is discussed in greater detail, below.

The definitions of "secondary transmission," and "cable system" were modified slightly and new terms "Subscribe," "Subscriber" and "Primary Transmitter" were added to Section 111(f). These new or revised definitions are simple clarifications with no direct association with the digital transition. Consequently, the Office amends Section 201.17(b)(5) to account for these new definitions and has revised the SOA forms to reflect the statutory language. *Network Stations.* There is a newly expanded definition of "network station"in STELA. It reflects the inclusion of digital television signals in the Section 111 rubric. For a digital television station's *primary stream*, the term "network station" means a "television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of the primary stream's typical broadcast day." This is the same definition that has been in Section 111(f) since 1976. However, the term "network station" is different for multicast streams, where Congress has adopted the Section 119 definition of the term. So, the second half of the new network station definition now reads as follows:

The term "network station" shall be applied to a multicast stream on which a television broadcast station transmits all or substantially all of the programming of an interconnected program service that is owned or operated by, or affiliated with, one or more of the television networks described in subparagraph (A); and offers programming on a regular basis for 15 or more hours per week to at least 25 of the affiliated television licensees

[8] The date of enactment is usually the date the President signs the bill whereas the effective date may be either earlier or later. However, STELA includes a provision that clarifies that in most instances references to "date of enactment" shall be deemed to refer to February 27, 2010, unless otherwise specified. *See* Section 307of STELA

[9] June 30, 2010, is the last day of the first accounting period for 2010 (*i.e.*, 2010/1).

[10] A cable operator that did not want to pay royalties for a multicast for the second accounting period of 2010 had to drop the signal prior to July 1, 2010 (the first day of the second accounting period), the date when a royalty obligation would commence.

[11] A simulcast is defined as "[A] multicast stream of a television broadcast station that duplicates the programming transmitted by the primary stream or another multicast stream of such station."

of the interconnected program service in 10 or more States.

We propose to incorporate this definition by reference into Section 201.17 of the Office's rules.

Local Service Area of a Primary Transmitter. Before STELA, Section 111(f) defined "local service area of a primary transmitter," as "comprising the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission (FCC) in effect on April 15, 1976, or such station's television market as defined in Section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to Section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations." For cable statutory licensing purposes, a television broadcast station's local–distant status may be determined by the television station's 35–mile zone (a market definition concept arising under the FCC's old rules), its Area of Dominant Influence ("ADI") (under Arbitron's defunct television market system), or Designated Market Area ("DMA") (under Nielsen's current television market system). Grade B contour coverage has also been used in determining the scope of a noncommercial television station's local service area. However, Grade B contours apply only to analog signals, not digital signals whose service area is now defined by the FCC's "noise–limited service contour." STELA amended Section 111(f) to include a television station's noise limited service contour as one of the local service area parameters in Section 111(f). This amendment directly addresses the local/distant status of full power noncommercial educational television stations under Section 111 of the Act.

II. AMENDMENTS TO THE SECTION 119 AND 122 LICENSES

A. Definitions

Section 102 of STELA amended Section 119 in several respects to account for the digital television transition and for other purposes. However, the new law does not require the Office to implement significant rule changes. Instead, the task here is to implement minor modifications to Section 201.11, the regulatory provisions centered on the satellite SOA forms, to account for new and modified nomenclature. For example, Section 201.11(b)(1) needs to be updated to include new definitions.[12] Moreover, the rules need to be amended to account for the change in nomenclature from "Superstations" to "Non–network stations." It is also important to note that STELA moved certain provisions of Section 119, such as the provisions governing low power television stations and special market exceptions, to Section 122. Moreover, Section 103 of STELA added a new provision governing the retransmission of state public television networks. While the majority of the statutory changes to Sections 119 and 122 are self–executing, it is worth highlighting these and other changes that relate to the retransmission of distant television signals by satellite carriers.

Unserved Household Definition. STELA updates the definition of "unserved household" to include a standard for determining when a household is served by a digital signal for Section 119 purposes. Specifically, the definition now includes a provision pertaining to the digital noise–limited service contour in addition to the existing analog Grade B contour reference.[13] A household falling within the noise–limited contour of the primary stream of a digital network station signal will now be considered "served" under Section 119.

STELA also amends the unserved household definition to take into account the ability of a television broadcast station to transmit multicast streams. Specifically, a subscriber who can receive an in–market, over–the–air signal of a multicast stream affiliated with a particular television broadcast network will be considered "served" starting in October 2010 or January 2011, depending on when the multicast stream first came into existence.[14] For example, a household will be considered served on October 1, 2010, if the multicast stream existed on March 31, 2010. For all other in–market multicast streams, a household will not be considered served until January 1, 2011. STELA specifically states that satellite carriers must pay royalties, on a per–subscriber basis, for both distant primary streams and distant multicast streams.[15]

Unrelated to the digital television transition, but nonetheless important to the unserved household definition, STELA clarifies that a particular household's "unserved" status is determined by the reach of a network station signal in its local television market and is unaffected by the availability of an over–the–air signal from a network station licensed to a community located in an adjacent non–local market.[16]

B. State Public Television Networks

STELA also added a new provision for the retransmission of certain distant noncommercial educational stations to the Section 122 license. Many state public television networks, which by statute or charter have a mandate to serve their states' citizens, have been unable to reach substantial portions of their intended audience by satellite television. In response, STELA explicitly permits the retransmission of "out–of–market" noncommercial educational television station signals that are part of a statewide system of three or more such signals to satellite subscribers located in a county in the state where subscribers would otherwise not be eligible to receive an in–state noncommercial educational station.[17] Even though STELA adds this provision to Section 122 (the local–into–local royalty–free license), satellite carriers must still pay royalties to retransmit such signals.[18] Satellite carriers are expected to list such signals in Spaces C and D of the satellite Statement of Account form.

C. Section 119 Deletions and Section 122 Additions

STELA reorganized Sections 119 and 122 to better reflect the royalty/royalty–free dichotomy of the licenses. For example, the provisions regarding the royalty–free retransmission of significantly viewed signals and low–power television stations have been moved from Section 119 to Section 122 of the Copyright Act.[19] With regard to low–power television stations, STELA changed the local service area of such stations so that a signal can be carried on throughout a designated market area.[20] The special market exceptions, which were added to Section 119 in 2004, were also moved to Section 122, although satellite carriers are still obligated to pay royalties for the stations subject to such exceptions under the statute.[21] Satellite carriers should

[12] STELA amended Section 119(f) to add the terms "Subscribe," "Multicast Stream," and "Primary Stream." It also amended the terms, "Local Market" and "Subscriber" and moved the definition of "Low Power Television Station" to Section 122.

[13] *See* amended Section 119(d)(10)(A)(ii).

[14] *See* amended Section 119(d)(14).

[15] *See* amended Section 119(b)(1)(B).

[16] *See* amended Section 119(d)(10)(A).

[17] *See* amended Section 122(a)(4)(E).

[18] *See* amended Section 122(a)(5).

[19] *See* amended Sections 122(a)(2) and (3), respectively.

[20] *See* amended Section 122(a)(3).

[21] *See* amended Sections 122(a)(4) and (5), respectively.

continue to list the special exception stations in Spaces C and D of their Statement of Account forms.

III. CONCLUSION

We hereby issue interim regulations and will seek comment in the future from the public on the subjects discussed above related to the implementation of Sections 102 through 104 of the Satellite Television Extension and Localism Act of 2010.

List of Subjects in 37 CFR 201

Cable, Copyright, Satellite

Interim Regulation

For the reasons set forth in the preamble, Part 201 of Title 37 of the Code of Federal Regulations is amended as follows:

PART 201 – GENERAL PROVISIONS

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

Authority: 17 U.S.C. 702

■ 2. Amend § 201.11 as follows:

a. By removing "superstation" each place it appears and adding in its place "non–network station";

b. In paragraph (a) by adding "and Section 122(a)" after "section 119(b)(1)";

c. In paragraphs (a) and (b) by removing "Pub. L. 103–369" each place it appears and adding in its place "Pub. L. No. 111–175" and

d. By revising paragraph (b)(1).

The revision reads as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(b) *Definitions.* (1) The terms *distributor, network station, private home viewing, satellite carrier, subscribe, subscriber, non–network station, unserved household, primary stream, and multicast stream*, have the meanings set forth in Section 119(d) of title 17 of the United States Code, as amended by Pub. L. No. 111–175.

* * * * *

■ 3. Amend § 201.17 as follows:

a. By revising paragraph (b)(5);

b. In paragraph (e)(5)(i) by adding ", including multicast streams" after "The number of channels";

c. By adding paragraph (e)(5)(iii);

d. By redesignating paragraphs (e)(9)(vii) and (viii) as paragraphs (e)(9)(ix) and (x)and adding new paragraphs (e)(9)(vii) and (viii);

e. In newly redesignated paragraph (e)(9)(ix) by removing "subclauses (v) and (vi)" and add in its place "paragraphs (v) through (viii)";

f. By redesignating paragraphs (g) through (l) as paragraphs (h) through (m) and adding a new paragraph (g);

g. In newly redesignated paragraph (i), by adding paragraph (10); and

h. By redesignating newly redesignated paragraphs (j) through (m) as paragraphs (k) through (n) and adding a new paragraph (j).

i. In newly redesignated paragraph (m), by removing "(k)" each place it appears and adding "(m)" in its place; and

j. In newly redesignated paragraph (m)(3)(v) by removing "(j)" and adding "(m)" in its place.

The revisions and additions read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(b) * * *

(5) The terms *primary transmission, secondary transmission, local service area of a primary transmitter, distant signal equivalent, network station, independent station, noncommercial educational station, primary stream, multicast stream, simulcast, primary transmitter, subscriber,* and *subscribe* have the meanings set forth in Section 111(f) of title 17 of the United States Code, as amended by Pub. L. No. 94–553, Pub. L. No. 103–369, and Pub. L. No. 111–175.

* * * * *

(e) * * *

(5) * * *

(iii) A multicast stream is considered a channel for purposes of this section

(9) * * *

(vii) A designation as to whether the channel carried is a multicast stream, and if so, the sub–channel number assigned to that stream by the television broadcast licensee.

(viii)Simulcasts must be reported and labeled on the Statement of Accounts form in an easily identifiable manner (e.g., WETA–simulcast).

* * * * *

(g) *Computation of copyright royalty fee: subscriber groups.* (1) If a cable system provides a secondary transmission of a primary transmitter to some, but not all, communities served by that cable system—

(i) The gross receipts and the distant signal equivalent values for such secondary transmission shall be derived solely on the basis of the subscribers in those communities where the cable system provides such secondary transmission; and

(ii) The total royalty fee for the period paid by such system shall not be less than the minimum fee multiplied by the gross receipts from all subscribers to the system.

(2) A cable system that, on a statement submitted before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, computed its royalty fee consistent with the methodology under paragraph (i)(1) of this section or that amends a statement filed before such date of enactment to compute the royalty fee due using such methodology, shall not be subject to an action for infringement, or eligible for any royalty refund or offset, arising out of the use of such methodology on such statement.

(3) Any royalty fee payments received by the Copyright Office from cable systems for the secondary transmission of primary transmissions that are in addition to the payments calculated and deposited in accordance with this subsection shall be deemed to have been deposited for the particular accounting period for which they are received and shall be distributed as specified under subsection 111(d) of title 17, United States Code. Such payments shall be considered as part of the base rate royalty fund.

(4) The royalty fee rates established by the Satellite Television Extension and Localism Act shall take effect commencing with the first accounting period occurring in 2010.

* * * * *

(i) * * *

(10) The 3.75% rate does not apply to distant multicast streams retransmitted by cable systems.

(j) *Multicasting.* (1) A royalty payment shall be made for the retransmission of non–network television programming carried on each multicast stream of a distant digital television signal under the following circumstances:

(i) If the distant multicast stream was first retransmitted by a cable system on or after February 27, 2010, or

(ii) If the distant multicast stream is retransmitted by a cable operator on or after July 1, 2010.

(2) In any case in which a distant multicast stream is the subject of a written agreement entered into on or before June 30, 2009, between a cable system or an association representing the cable system and a primary transmitter or an association representing the primary transmitter, a distant signal equivalent value shall not be assigned to a distant multicast stream that is made on or before the date on which such written agreement expires.

(3) No royalties are due for carrying a distant multicast stream that

"simulcasts" (i.e., duplicates) a primary stream or another multicast stream of the same station that the cable system is carrying. However, simulcast streams must be reported on the Statement of Accounts.

(4) Multicast streams of digital broadcast programming shall not be subject to the 3.75% fee or the syndicated exclusivity surcharge.

* * * * *

Dated: August 10,2010

Marybeth Peters,

Register of Copyrights.

Dated: August 10, 2010

James H. Billington,

The Librarian of Congress.

[FR Doc. 2010–22814 Filed 9–16–10; 8:45 am]

BILLING CODE 1410–30–S

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2005–1 CRB DTRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Remand order.

SUMMARY: The Copyright Royalty Judges are announcing their determination regarding the minimum fee to be paid by Noncommercial Webcasters under two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, in response to an order of remand by the United States Court of Appeals for the District of Columbia Circuit.

DATES: Effective September 17, 2010.

ADDRESSES: The remand order also is published on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/orders/2010/amendment-remand-order-6–30–10.pdf.*

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On May 1, 2007, the Copyright Royalty Judges ("Judges") published in the **Federal Register** their determination of royalty rates and terms under the statutory licenses under Sections 112(e) and 114 of the Copyright Act, title 17 of the United States Code, for the period 2006 through 2010 for the digital public performance of sound recordings by means of eligible nonsubscription transmission or a transmission by a new subscription service. 72 FR 24084. In *Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Board,* 574 F.3d 748 (DC Cir. 2009), the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") affirmed the Judges' determination in the main but remanded to the Judges the matter of setting the minimum fee to be paid by both Commercial Webcasters and Noncommercial Webcasters under Sections 112(e) and 114 of the Copyright Act. *Id.* at 762, 767. No rules or procedures applied to a proceeding that is remanded, and the Judges adopted an Interim Final Rule to govern. 37 CFR 351.15. Pursuant to this Rule, Intercollegiate Broadcasting System, Inc. ("IBS") and SoundExchange, Inc. ("SoundExchange") presented proposals for the conduct and schedule of the remand proceeding, including settlement negotiations, written direct statements with proposed rates, discovery and an evidentiary hearing. By order dated October 23, 2009, the Judges established a period commencing November 2, 2009, and concluding on December 2, 2009, for the parties to negotiate and submit a settlement of the minimum fee issue that is the subject of the remand. Absent settlement, the parties were directed to file written direct statements by January 11, 2010.

On December 2, 2009, SoundExchange, Inc. and the Digital Media Association ("DiMA") submitted a settlement regarding the statutory minimum fee to be paid by Commercial Webcasters. Subsequently, the Judges published for comment the proposed change in the rule necessary to implement that settlement pursuant to the order of remand from the DC Circuit. 74 FR 68214 (December 23, 2009). The Judges received one comment from IBS. The Final Rule for the minimum fee to be paid by Commercial Webcasters was published. 75 FR 6097 (February 8, 2010).

Following the filing of Written Direct Statements by IBS and SoundExchange, on January 20, 2010, the Judges established the discovery schedule on the remaining issue of the minimum fee for Noncommercial Webcasters. Following discovery, the hearing was held May 18, 2010. SoundExchange presented the testimony of W. Tucker McCrady, associate counsel, digital legal affairs, Warner Music Group ("WMG"), and Barrie Kessler, chief operating officer, SoundExchange. It also offered Webcaster Settlement Acts of 2008 and 2009 agreements between SoundExchange and College Broadcasters, Inc. ("CBI") for noncommercial educational webcasters, National Association of Broadcasters ("NAB") for broadcasters, Sirius XM Radio, Inc. ("Sirius XM") for satellite services and DiMA for commercial webcasters. 5/18/10 Tr. at 13 (McCrady). IBS presented the testimony of Frederick J. Kass, Jr., John E. Murphy and Benjamin Shaiken. 5/18/10 Tr. at 62 and 67 (Kass). The testimony of Mr. Kass was that IBS supported a different rate proposal than the one filed. When this different rate proposal was not timely filed, the Judges ordered that it be filed by June 1, 2010. 5/18/10 Tr. at 98 (Kass). The IBS' Restated Rate Proposal was filed June 1, 2010.

Mr. McCrady testified that WMG enters voluntary licenses for commercial webcasters. A negotiated license for the full catalogue must generate at least payments of $25,000. 5/18/10 Tr. at 25 (McCrady). The lowest commercial minimum fee is 20% of revenue. A smaller revenue stream would not justify the time and resources WMG would need to devote to evaluating, negotiating, implementing and monitoring an agreement. 5/18/10 Tr. at 20 (McCrady). Noncommercial Webcasters use the statutory license, because they do not generate enough revenue to WMG to support negotiating a license. SX Remand Trial Ex. 1 at 6 (McCrady).

The CBI agreement has the rates and terms for noncommercial educational webcasters, the same group that IBS represents in this proceeding. 5/18/10 Tr. at 71 (Kass). It has a minimum fee of $500 per year per station or channel and a usage rate of $500 per channel for streaming a noncommercial educational service up to 159,400 aggregate tuning hours ("ATH"). 5/18/10 Tr. at 14 (McCrady). The SoundExchange proposed minimum fee is $500 per station or channel. 5/18/10 Tr. at 14 (McCrady). The proposed minimum fee is fully recoupable against royalty fees owed and this feature reduces transaction costs for both parties. 5/18/10 Tr. at 21, 22 (McCrady). IBS says the average annual revenue of its member stations is $9,000. 5/18/10 Tr. at 20 (McCrady) and 5/18/10 Tr. at 71 (Kass). So, the proposed fee is 6% of revenue, a large discount for Noncommercial Webcasters off the negotiated license agreements for commercial webcasters. 5/18/10 Tr. at 20 (McCrady). All users of sound recordings should be licensed and pay something. It is an important educational message for students to learn the value of recorded music and to pay for it. 5/18/10 Tr. at 23 (McCrady). From the first webcasting proceeding, the standard minimum fee

for statutory licenses has been $500, on the theory that the minimum fee should be sufficient to cover at least the costs of administering the license. SX Remand Trial Ex. 1 at 7 (McCrady).

Ms. Kessler testified about administering the royalties paid under the statutory license. Of the approximately 730 webcasting services paying royalties in 2009, 363 are noncommercial. The noncommercial royalties are less than 1% of the total webcasting royalties paid for 2009. 5/18/10 Tr. at 34 (Kessler). Of the noncommercial services, 305 paid only the minimum fee of $500, and the remaining 58 paid more for exceeding the ATH cap or streaming multiple channels or stations. These payments are pursuant to the royalty minimum fee that is the subject of this remand proceeding, 5/18/10 Tr. at 42 (Kessler), and they demonstrate that noncommercial services are able and willing to pay the minimum fee. 5/18/10 Tr. at 33 (Kessler). SoundExchange does not regularly track the administrative costs on a licensee, station or channel basis. Such costs vary widely based on the quality of the data provided by the service. For this proceeding, SoundExchange estimated its administrative costs. The average per channel or station cost for webcasters for 2008 is $803. 5/18/10 Tr. at 36 (Kessler). The cost of administering the statutory license is greater than the revenue from noncommercial webcasters. 5/18/10 Tr. at 34 (Kessler). The CBI agreement for noncommercial educational webcasters, together with the NAB agreement, the Sirius XM agreement and the DiMA agreement all provide a similar minimum fee of $500, as SoundExchange proposes in this proceeding. All of these agreements were filed under the Webcaster Settlement Acts of 2008 and 2009, which permit agreements on the royalty rates under the statutory licenses. 5/18/10 Tr. at 13 (McCrady).

On June 1, 2010, IBS filed the restated rate proposal that Mr. Kass had supported in his testimony. The general principle of the proposal is that small noncommercial webcasters should pay only for the performances of music subject to the statutory license that they actually webcast. This principle is the same as the Judges used in the Final Determination to support the per performance metric for royalty rates, being more directly tied to the nature of the right being licensed. *See Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Board,* 574 F.3d 748, 760–61 (DC Cir. 2009). But contrary to this principle, the proposal then provides for a flat royalty rate and an exemption from recordkeeping and reporting requirements. Both the flat rate and the exemptions are inconsistent with a per performance royalty, which is based on the number of performances times the rate for each performance. The proposal was for the royalty rates to be paid by Noncommercial Webcasters (set by 37 CFR 380.3(a)(2)(i)) and not for the minimum fee, which is the subject of this remand proceeding. The proposed rate is $20 to $50 per annum, based on the number of aggregate tuning hours. The proposal did not include a minimum fee. 5/18/10 Tr. at 76, 83–85 (Kass). Mr. Kass said no minimum fee should be paid. He said this discount is justified, because the small noncommercial educational webcasters are teaching students. IBS Remand Trial Ex. 1 at 2. The CBI agreement is available for use by IBS members and some of those members have joined the CBI agreement. 5/18/10 Tr. at 104, 105 (Kass). It proposes the $500 minimum fee per channel or station. 5/18/10 Tr. at 14 (McCrady).

Noncommercial Minimum Fee

The Final Determination discussed in Section IV.C.2 that most Noncommercial Webcasters qualified for a distinct segment of the marketplace that justified royalties lower than those paid by Commercial Webcasters. However, the Judges found that:

> the bare minimum that such services should have to pay is the administrative cost of administering the license. There is no evidence in the record to suggest that the submarket in which a Noncommercial Webcaster may reside would yield a different administrative cost for SoundExchange as compared to the administrative costs associated with Commercial Webcasters and SoundExchange, notably, makes no distinction between webcasters with respect to the $500 minimum fee. *Webcaster I* affirmed the notion that all webcasters–all Noncommercial Webcasters as well as all Commercial Webcasters–should pay the same minimum fee for the same license. 67 FR 45259 (July 8, 2002). We also find no basis in the record for distinguishing between Commercial Webcasters and Noncommercial Webcasters with respect to the administrative cost of administering the license. Therefore, we determine that a minimum fee of an annual non-refundable, but recoupable $500 minimum per channel or station payable in advance is reasonable over the term of this license.

72 FR 24084, 24099 (May 1, 2007) (footnotes omitted).

Ms. Kessler testified that the rough estimate of the average administrative cost for 2008 to SoundExchange per station or channel for webcasters is $803. All of the agreements filed pursuant to the Webcaster Settlement Acts of 2008 and 2009 have similar minimum fees as the proposed rate of $500 per station or channel. One includes the agreement for noncommercial educational webcasters (the CBI agreement), the same type of services as IBS, which seeks to pay no minimum fee. As found in the above quote from the Final Determination, a zero minimum fee is not supported by the evidence. IBS also asserts that administrative costs should be proportionately tied to the number of performances on a channel in a given year, but fails to establish any credible nexus. On the contrary, there are certain basic processes that must be utilized in administering the use of sound recordings by any Commercial or Noncommercial Webcaster of any size. Not surprisingly, at lesser levels of sound recording usage, the establishment and conduct of such administrative processes cannot simply be dispensed with. Indeed, smaller users may even result in larger proportionate administrative processing time than larger users. SoundExchange Remand Trial Ex. 1 at 3–4 (Kessler). See also *Order,* 72 FR 24084, 24096 n.37 (May 1, 2007).

The evidence presented in the remand proceeding supports a minimum fee of at least the same fee as adopted in the Final Determination. SoundExchange has now presented evidence on administrative costs that exceed this minimum. The agreements entered pursuant to the Webcaster Settlement Acts of 2008 and 2009 support that the industry accepts this minimum fee, which has substantially been in place since the first webcasting proceeding. IBS' position seeks to pay no minimum fee and indeed seeks to pay no or an extremely small royalty for use of copyrighted content. The Judges adopt the same minimum fee for Noncommercial Webcasters as stated in the Final Determination of an annual non-refundable, but recoupable $500 minimum per annum per channel or station payable in advance. 37 CFR 380.3(b)(2).

June 30, 2010.

So ordered.

James Scott Sledge,

Chief United States Copyright Royalty Judge.

William J. Roberts, Jr.,

United States Copyright Royalty Judge.

Stanley C. Wisniewski,

United States Copyright Royalty Judge.

Dated: July 21, 2010.
James Scott Sledge,
Chief, U.S. Copyright Royalty Judge.
James H. Billington,
Librarian of Congress.
[FR Doc. 2010–23264 Filed 9–16–10; 8:45 am]
BILLING CODE 1410–72–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR part 36

RIN 2900–AM87

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA's) Loan Guaranty regulations concerning assistance to eligible individuals in acquiring specially adapted housing. These changes improve the readability of the regulations; provide further detail about longstanding program policies; and address legislation, policy changes, and a VA Office of the General Counsel legal opinion.

DATES: *Effective Date:* October 18, 2010.

FOR FURTHER INFORMATION CONTACT: William White, Acting Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW. Washington, DC 20420, (202) 461–9543. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Veterans and servicemembers with severe disabilities may be eligible under 38 U.S.C. chapter 21 for specially adapted housing (SAH) grants. In administering the SAH program, VA helps these eligible individuals to purchase, construct, or adapt a home that suits the individual's living needs. In a document published in the **Federal Register** on October 5, 2009 (74 FR 51103), VA proposed to amend regulations in 38 CFR part 36, subpart C, regarding assistance to certain disabled veterans in acquiring SAH, specifically §§ 36.4400 through 36.4410, which implement the SAH grant program.

As explained in the proposed rule, VA is amending these regulations for three reasons. First, VA believes the regulations should be written in a reader-focused style. Second, detailed guidance about program policies and a regulation written with an easy-to-follow organizational structure will help applicants and eligible individuals (and those acting on their behalf) understand program requirements. Third, substantive changes are necessary to implement recent legislation, policy decisions, and a VA General Counsel legal opinion. Pursuant to 38 U.S.C. 2101(d), the Secretary may prescribe regulations applicable to the SAH program. In revising these regulations, VA intends that applicants, eligible individuals, program participants, and other interested parties will be better informed about the legal requirements and Department policies that guide the administration of SAH grants.

The comment period for the proposed rule ended on December 4, 2009, and VA received two comments. The commenters expressed concern regarding VA's proposed use of the terminology "paraplegic housing grant or PH grant" for the grant authorized under 38 U.S.C. 2101(a). The commenters pointed out that the term is reflective of only one of the types of disabilities that make an individual eligible for this grant. Additionally, the commenters suggested that the use of the term "paraplegic" might result in an improper restriction on eligibility for SAH grants. The concern was that the term "paraplegia" or "paraplegic" might not be interpreted to include the functional loss of use of the lower limbs due to psychological disorders or other non-organic impairments. One commenter, citing General Counsel Precedent Opinion 60–90, asserted that such a restriction on eligibility for SAH grants is improper, and both commenters wanted to ensure that the definition for "paraplegic grant" would not exclude individuals who otherwise would have been eligible for assistance under 38 U.S.C. 2101(a).

The General Counsel opinion held that the determination of "loss of use" is made "irrespective of whether such loss is functional or organic in origin." VA did not propose to diverge from this holding. VA agrees with the commenters' concerns and, therefore, has decided to use the applicable statutory citations when referring to the grants authorized under 38 U.S.C. 2101(a) as well as 2101(b), rather than the terms "paraplegic housing grant" or "adaptive housing grant" as proposed.

No other substantive changes are made to the proposed rule. However, VA has made a few technical revisions. First, VA has revised the heading of subpart C to refer to "Eligible Individuals" rather than "Certain Disabled Veterans." Second, VA is amending the language in § 36.4404(a)(1), (2), and (3) to clarify that assistance is based on an individual's rating for entitlement to compensation under 38 U.S.C. chapter 11. These changes are intended to clarify that assistance under 38 U.S.C. chapter 21 is available to veterans and active duty servicemembers. Third, on September 24, 2009, VA published a final rule establishing 38 CFR 36.4412, which implemented provisions of the Housing and Economic Recovery Act of 2008, Public Law 110–289. Those provisions authorize VA to provide automatic annual increases to certain SAH grant recipients. VA sought comments on proposed § 36.4412 in a document published in the **Federal Register** on May 12, 2009 (74 FR 22145). VA inadvertently omitted § 36.4412 in the proposed rule that preceded this final rule. *See* 74 FR 51103. VA is re-inserting this provision, without further change, as § 36.4411. No substantive changes were made to the regulation. Finally, VA has revised §§ 36.4405(a)(iii), 36.4405(b), and 36.4406(b) for grammatical reasons.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

Although this document contains provisions constituting collections of information, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection provisions for subpart C of 38 CFR part 36 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0031, 2900–0047, 2900–0132, and 2900–0300.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory

action," requiring review by OMB, unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing for Disabled Veterans; and 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on September 13, 2010, for publication.

Lists of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Dated: September 13, 2010.

Robert C. McFeteridge,

Director, Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs is amending 38 CFR part 36 (subpart C) as set forth below.

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

■ 2. Revise Subpart C to read as follows:

Subpart C—Assistance to Certain Individuals in Acquiring Specially Adapted Housing

Sec.

Subpart C—Assistance to Eligible Individuals in Acquiring Specially Adapted Housing

§ 36.4400 Authority.

The Secretary's authority to provide assistance in acquiring specially adapted housing is set forth in 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101(d))

§ 36.4401 Definitions.

The following definitions of terms apply to this subpart:

2101(a) grant: A grant authorized under 38 U.S.C. 2101(a).

(Authority: 38 U.S.C. 501, 2101)

2101(b) grant: A grant authorized under 38 U.S.C. 2101(b).

(Authority: 38 U.S.C. 501, 2101)

Adapt: To make a housing unit suitable to, or fit for, the residential living needs of an eligible individual.

(Authority: 38 U.S.C. 501, 2101)

Aggregate amount of assistance available: The amounts specified at 38 U.S.C. 2102(d) as adjusted in accordance with 38 U.S.C. 2102(e).

(Authority: 38 U.S.C. 501, 2101, 2102)

Beneficial property interest: An interest deemed by the Secretary as one that provides (or will provide) an eligible individual a meaningful right to occupy a housing unit as a residence.

(Authority: 38 U.S.C. 501, 2101)

Braces: Orthopedic appliances, including prosthetic devices, used for support.

(Authority: 38 U.S.C. 501, 2101)

Construction-related cost: An expense incurred for the purpose of or directly related to building, modifying, or adapting a housing unit by using specially adapted housing grant proceeds.

(Authority: 38 U.S.C. 501, 2101)

Disability: A compensable physical impairment, as determined by a Department of Veterans Affairs rating decision, that meets the criteria of 38 U.S.C. 2101(a)(2) or (b)(2).

(Authority: 38 U.S.C. 501, 2101)

Eligible individual: For specially adapted housing purposes, a person who has served or is currently serving in the active military, naval, or air service, and who has been determined by the Secretary to be eligible for benefits pursuant to 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101, 2101A)

Eligible individual's family: Persons related to an eligible individual by blood, marriage, or adoption.

(Authority: 38 U.S.C. 501, 2101, 2102A)

Housing unit: Any residential unit, including all necessary land, improvements, and appurtenances, together with such movable or special fixtures and necessary adaptations as are authorized by 38 U.S.C. 1717 and 2101. For the purposes of this definition, *movable facilities* is defined as such exercising equipment and other aids as may be allowed or required by the Chief Medical Director or designee; *necessary land* is defined as any plot of land the cost and area of which are not disproportionate to the type of improvements thereon and which is in keeping with the locality; and *special fixtures and necessary adaptations* is defined as construction features which

are specially designed to overcome the physical limitations of the individual beneficiary and which are allowed or required by the Chief Medical Director or designee as necessary by nature of the qualifying disability.

(Authority: 38 U.S.C. 501, 1717, 2101)

Ownership interest: An undivided property interest that the Secretary determines is a satisfactory:

(1) Fee simple estate;

(2) Life estate;

(3) Functional equivalent of a life estate, such as that created by a valid trust, a long-term lease, or a land installment contract that will convert to a fee simple estate upon satisfaction of the contract's terms and conditions;

(4) Ownership of stock or membership in a cooperative housing corporation entitling the eligible individual to occupy for dwelling purposes a single family residential unit in a development, project, or structure owned or leased by such corporation;

(5) Lease, under the terms of a valid and enforceable Memorandum of Understanding between a tribal organization and the Secretary; or

(6) Beneficial property interest in a housing unit located outside the United States.

(Authority: 38 U.S.C. 501, 2101, 3762)

Preconstruction cost: An authorized expense incurred by an eligible individual in anticipation of receiving final approval for a specially adapted housing grant.

(Authority: 38 U.S.C. 501, 2101)

Reimburse: To pay specially adapted housing grant funds directly to an eligible individual (or an eligible individual's estate) for preconstruction costs or for construction-related costs.

(Authority: 38 U.S.C. 501, 2101)

Reside: To occupy (including seasonal occupancy) as one's residence.

(Authority: 38 U.S.C. 501, 2101)

Secretary: The Secretary of the United States Department of Veterans Affairs or any employee or agent authorized in § 36.4409 of this part to act on behalf of the Secretary.

(Authority: 38 U.S.C. 501, 2101)

Specially adapted housing grant: A 2101(a) grant, 2101(b) grant, or TRA grant made to an eligible individual in accordance with the requirements of 38 U.S.C. chapter 21 and this subpart.

(Authority: 38 U.S.C. 501, 2101)

Temporary residence adaptations grant or TRA grant: A grant, the specific requirements and amount of which are outlined in 38 U.S.C. 2102A and 2102(d).

(Authority: 38 U.S.C. 501, 2101, 2102A)

§ 36.4402 Grant types.

(a) *2101(a) grant.* The 2101(a) grant provides monetary assistance for the purpose of acquiring specially adapted housing pursuant to one of the following plans:

(1) Where an eligible individual elects to construct a dwelling on land to be acquired by the eligible individual, the Secretary will pay, up to the aggregate amount of assistance available for 2101(a) grants, not more than 50 percent of the eligible individual's total costs for acquiring the land and constructing the dwelling.

(2) Where an eligible individual elects to construct a dwelling on land already owned by the eligible individual, the Secretary will pay, up to the aggregate amount of assistance available for 2101(a) grants, not more than the lesser of:

(i) 50 percent of the eligible individual's costs for the land and the construction of the dwelling, or

(ii) 50 percent of the eligible individual's costs for the dwelling, plus the full amount of the unpaid balance, if any, of the cost to the individual of the necessary land.

(3) Where an eligible individual elects to adapt a housing unit already owned by the eligible individual, to conform to the requirements of the eligible individual's disability, the Secretary will pay, up to the aggregate amount of assistance available for 2101(a) grants, the greater of:

(i) The eligible individual's costs for making such adaptation(s), or

(ii) 50 percent of the eligible individual's costs for making such adaptation(s), plus the lesser of:

(A) 50 percent of the eligible individual's costs for acquiring the housing unit, or

(B) The full amount of the unpaid balance, if any, of the cost to the individual of the housing unit.

(4) Where an eligible individual has already acquired a suitably adapted housing unit, the Secretary will pay, up to the aggregate amount of assistance available for 2101(a) grants, the lesser of:

(i) 50 percent of the eligible individual's cost of acquiring such housing unit, or

(ii) The full amount of the unpaid balance, if any, of the cost to the individual of the housing unit.

(b) *2101(b) grant.* (1) The 2101(b) grant provides monetary assistance for the purpose of acquiring specially adapted housing pursuant to one of the following plans:

(i) Where an eligible individual elects to construct a dwelling on land to be acquired by the eligible individual or a member of the eligible individual's family;

(ii) Where an eligible individual elects to construct a dwelling on land already owned by the eligible individual or a member of the eligible individual's family;

(iii) Where an eligible individual elects to adapt a housing unit already owned by the eligible individual or a member of the eligible individual's family; or

(iv) Where an eligible individual elects to purchase a housing unit that is already adapted to the requirements of the eligible individual's disability.

(2) Regardless of the plan chosen pursuant to paragraph (b)(1) of this section, the Secretary will pay the lesser of:

(i) The actual cost, or, in the case of an eligible individual acquiring a housing unit already adapted with special features, the fair market value, of the adaptations determined by the Secretary to be reasonably necessary, or

(ii) The aggregate amount of assistance available for 2101(b) grants.

(c) *TRA grant.* The TRA grant provides monetary assistance for the purpose of adapting a housing unit owned by a member of the eligible individual's family, in which the eligible individual intends to reside temporarily. The Secretary will pay, up to the amounts specified at 38 U.S.C. 2102A(b) for TRA grants, the actual cost of the adaptations.

(d) *Duplication of benefits.* (1) If an individual is determined eligible for a 2101(a) grant, he or she may not subsequently receive a 2101(b) grant.

(2) If an individual is determined eligible for a 2101(b) grant, and becomes eligible for a 2101(a) grant, he or she may receive 2101(a) grants and TRA grants up to the aggregate amount of assistance available for 2101(a) grants. However, any 2101(b) or TRA grants received by the individual before he or she was determined eligible for the 2101(a) grant will count towards the three grant limit in § 36.4403.

(3) If the Secretary has provided assistance to an eligible individual under 38 U.S.C. 1717, the Secretary will not provide assistance under this subpart that would result in duplicate payments for the same adaptations. However, nothing in this subpart prohibits an eligible individual from utilizing the assistance authorized under 38 U.S.C. 1717 and 38 U.S.C.

chapter 21 simultaneously, provided that no duplicate payments result.

(Authority: 38 U.S.C. 2102, 2102A, 2104)

§ 36.4403 Subsequent use.

An eligible individual may receive up to three grants of assistance under 38 U.S.C. chapter 21, subject to the following limitations:

(a) The aggregate amount of assistance available to an eligible individual for 2101(a) grant and TRA grant usage will be limited to the aggregate amount of assistance available for 2101(a) grants;

(b) The aggregate amount of assistance available to an eligible individual for 2101(b) grant and TRA grant usage will be limited to the aggregate amount of assistance available for 2101(b) grants;

(c) The TRA grant may only be obtained once and will be counted as one of the three grant usages; and

(d) Funds from subsequent 2101(a) grant or 2101(b) grant usages may only pay for reimbursing specially adapted housing-related costs incurred on or after June 15, 2006 or the date on which the eligible individual is conditionally approved for subsequent assistance, whichever is later.

(Authority: 38 U.S.C. 2102, 2102A)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0132.)

§ 36.4404 Eligibility for assistance.

(a) *Disability requirements.* (1) The 2101(a) grant is available to individuals with permanent and total service-connected disability who have been rated as being entitled to compensation under 38 U.S.C. chapter 11 for any of the following conditions:

(i) Loss, or loss of use, of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair;

(ii) Blindness in both eyes having only light perception, plus loss or loss of use of one lower extremity;

(iii) Loss, or loss of use, of one lower extremity, together with—

(A) Residuals of organic disease or injury; or

(B) The loss or loss of use of one upper extremity, which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair;

(iv) Loss, or loss of use, of both upper extremities so as to preclude use of the arms at or above the elbows; or

(v) Any other injury identified as eligible for assistance under 38 U.S.C. § 2101(a).

(2) The 2101(b) grant is available to individuals with permanent and total service-connected disability who have been rated as being entitled to compensation under 38 U.S.C. chapter 11 for any of the following conditions:

(i) Blindness in both eyes with 5/200 visual acuity or less;

(ii) Anatomical loss, or loss of use, of both hands; or

(iii) Any other injury identified as eligible for assistance under 38 U.S.C. § 2101(b).

(3) The TRA grant is available to individuals with permanent and total service-connected disability who have been rated as being entitled to compensation under 38 U.S.C. chapter 11 for any of the conditions described under paragraph (a)(1) of this section for the 2101(a) grant or paragraph (a)(2) of this section for the 2101(b) grant.

(b) *Feasibility and suitability requirements.* (1) In order for an individual to be eligible for 2101(a) grant assistance, the Secretary must determine that:

(i) It is medically feasible for the individual to reside outside of an institutional setting;

(ii) It is medically feasible for the individual to reside in the proposed housing unit and in the proposed locality;

(iii) The nature and condition of the proposed housing unit are suitable for the individual's residential living needs; and

(iv) The cost of the proposed housing unit bears a proper relation to the individual's present and anticipated income and expenses.

(2) In order for an individual to be eligible for 2101(b) grant assistance, the Secretary must determine that:

(i) The individual is residing in and reasonably intends to continue residing in a housing unit owned by the individual or a member of the individual's family; or

(ii) If the individual's housing unit is to be constructed or purchased, the individual will be residing in and reasonably intends to continue residing in a housing unit owned by the individual or a member of the individual's family.

(Authority: 38 U.S.C. 501, 2101, 2102, 2102A)

§ 36.4405 Grant approval.

(a) *Conditional approval.* (1) The Secretary may provide written notification to an eligible individual of conditional approval of a specially adapted housing grant if the Secretary has determined that:

(i) Disability requirements have been satisfied pursuant to § 36.4404(a);

(ii) Feasibility and suitability requirements have been satisfied pursuant to § 36.4404(b); and

(iii) The eligible individual has not exceeded the usage or dollar limitations prescribed by §§ 36.4402(d) and 36.4403.

(2) Once conditional approval has been granted, the Secretary may authorize, in writing, an eligible individual to incur certain preconstruction costs pursuant to § 36.4406.

(b) *Final approval.* In order for an individual to obtain final approval for a specially adapted housing grant, the Secretary must determine that the following property requirements are met:

(1) *Proposed adaptations.* The plans and specifications of the proposed adaptations demonstrate compliance with minimum property and design requirements of the specially adapted housing program.

(2) *Ownership.*

(i) In the case of 2101(a) grants, the eligible individual must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit.

(ii) In the case of 2101(b) grants, the eligible individual or a member of the eligible individual's family must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit.

(iii) In the case of TRA grants:

(A) A member of the eligible individual's family must have, or provide satisfactory evidence that he or she will acquire, an ownership interest in the housing unit, and

(B) The eligible individual and the member of the eligible individual's family who has or acquires an ownership interest in the housing unit must sign a certification as to the likelihood of the eligible individual's temporary occupancy of such residence.

(iv) If the ownership interest in the housing unit is or will be vested in the eligible individual and another person, the Secretary will not for that reason reduce by percentage of ownership the amount of a specially adapted housing grant. However, to meet the ownership requirement for final approval of a specially adapted housing grant, the eligible individual's ownership interest must be of sufficient quantum and quality, as determined by the Secretary, to ensure the eligible individual's quiet enjoyment of the property.

(3) *Certifications.* The eligible individual must certify, in such form as the Secretary will prescribe, that:

(i) Neither the eligible individual, nor anyone authorized to act for the eligible

individual, will refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the housing unit acquired by this benefit, to any person because of race, color, religion, sex, familial status, disability, or national origin;

(ii) The eligible individual, and anyone authorized to act for the eligible individual, recognizes that any restrictive covenant on the housing unit relating to race, color, religion, sex, familial status, disability, or national origin is illegal and void, and any such covenant is specifically disclaimed; and

(iii) The eligible individual, and anyone authorized to act for the eligible individual, understands that civil action for preventative relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

(4) *Flood insurance.* The eligible individual's housing unit, if it is or becomes located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, must be covered by flood insurance. The amount of flood insurance must be at least equal to the lesser of the full insurable value of the housing unit or the maximum limit of coverage available for the particular type of housing unit under the National Flood Insurance Act, as amended. The Secretary will not approve any financial assistance for the acquisition or construction of a housing unit located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program

(Authority: 38 U.S.C. 501, chapter 21, 42 U.S.C. 4012a, 4106(a))

(5) *Geographical limits.* Any real property purchased, constructed, or adapted with the proceeds of a specially adapted housing grant must be located:

(i) Within the United States, which, for purposes of 38 U.S.C. chapter 21, includes the several States, Territories, and possessions, including the District of Columbia, and the Commonwealths of Puerto Rico and the Northern Mariana Islands; or,

(ii) If outside the United States, in a country or political subdivision which allows individuals to have or acquire a beneficial property interest, and in which the Secretary, in his or her discretion, has determined that it is reasonably practicable for the Secretary to provide assistance in acquiring specially adapted housing.

(Authority: 38 U.S.C. 2101, 2101A, 2102A)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0031, 2900–0132, and 2900–0300.)

§ 36.4406 Reimbursement of costs and disbursement of grant funds.

(a) After providing conditional approval of a specially adapted housing grant for an eligible individual pursuant to § 36.4405, the Secretary may authorize the incurrence, prior to obtaining final specially adapted housing grant approval, of preconstruction costs of the types and subject to the limits specified in this paragraph.

(1) Preconstruction costs to be incurred may not exceed 20 percent of the eligible individual's aggregate amount of assistance available, unless the individual is authorized by the Secretary in writing to incur specific preconstruction costs in excess of this 20 percent limitation. Preconstruction costs may include the following items:

(i) Architectural services employed for preparation of building plans and specifications.

(ii) Land surveys.

(iii) Attorneys' and other legal fees.

(iv) Other costs or fees necessary to plan for specially adapted housing grant use, as determined by the Secretary.

(2) If the Secretary authorizes final approval, the Secretary will pay out of the specially adapted housing grant the preconstruction costs that the Secretary authorized in advance. If the specially adapted housing grant process is terminated prior to final approval, preconstruction costs incurred that the Secretary authorized in advance will be reimbursed to the eligible individual, or the eligible individual's estate pursuant to paragraph(c) of this section, but will be deducted from the aggregate amount of assistance available and the reimbursement will constitute one of the three permitted grant usages (see § 36.4403).

(b) The Secretary will determine a method of disbursement that is appropriate and advisable in the interest of the eligible individual and the Government, and will pay the specially adapted housing grant accordingly. Disbursement of specially adapted housing grant proceeds generally will be made to third parties who have contracted with the veteran, to an escrow agent, or to the eligible individual's lender, as the Secretary deems appropriate. If the Secretary determines that it is appropriate and advisable, the Secretary may disburse specially adapted housing grant funds directly to an eligible individual where the eligible individual has incurred authorized preconstruction or construction-related costs and paid for such authorized costs using personal funds.

(c) Should an eligible individual die before the Secretary disburses the full specially adapted housing grant, the eligible individual's estate must submit to the Secretary all requests for reimbursement within one year of the date the Loan Guaranty Service learns of the eligible individual's death. Except where the Secretary determines that equity and good conscience require otherwise, the Secretary will not reimburse an eligible individual's estate for a request that has not been received by the Department of Veterans Affairs within this timeframe.

(Authority: 38 U.S.C. 2101(d))

§ 36.4407 Guaranteed and direct loans.

(a) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use his or her entitlement to the loan guaranty benefits of 38 U.S.C. chapter 37, the complete transaction must be in accord with applicable regulations found in this part.

(b) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use a direct loan under 38 U.S.C. 3711(i), the complete transaction must be in accord with the requirements of § 36.4503 and the loan must be secured by the same housing unit to be purchased, constructed, or adapted with the proceeds of the specially adapted housing grant.

(c) In any case where, in addition to using the benefits of 38 U.S.C. chapter 21, the eligible individual will use the Native American Direct Loan benefit under 38 U.S.C. chapter 37, subchapter V, the eligible individual's ownership interest in the housing unit must comport with the requirements found in §§ 36.4501, 36.4512, and 36.4527 and in the tribal documents approved by the Secretary, which include, but may not be limited to, the Memorandum of Understanding, the residential lease of tribal-owned land, the tribal lending ordinances, and any relevant tribal resolutions.

(Authority: 38 U.S.C. 2101(d), 3711(i), 3762)

§ 36.4408 Submission of proof to the Secretary.

The Secretary may, at any time, require submission of such proof of costs and other matters as the Secretary deems necessary.

(Authority: 38 U.S.C. 501, 2101(d))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0031 and 2900–0300.)

§ 36.4409 Delegations of authority.

(a) Each employee of the Department of Veterans Affairs appointed to or lawfully filling any of the following positions is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to assisting eligible individuals in acquiring specially adapted housing:

(1) Under Secretary for Benefits.
(2) Director, Loan Guaranty Service.
(3) Deputy Director, Loan Guaranty Service.
(4) Assistant Director, Loan Policy and Valuation.
(5) Chief, Specially Adapted Housing, Loan Guaranty Service.
(6) Director, VA Medical Center.
(7) Director, VA Regional Office.
(8) Loan Guaranty Officer.
(9) Assistant Loan Guaranty Officer.

(b) Nothing in this section will be construed to authorize the determination of basic eligibility or medical feasibility under § 36.4404(a), (b)(1)(i), or (b)(1)(ii) by any employee designated in this section, except as otherwise authorized.

(Authority: 38 U.S.C. 501, 512, ch. 21)

§ 36.4410 Supplementary administrative action.

Subject to statutory limitations and conditions prescribed in title 38, U.S.C., the Secretary may take such action as may be necessary or appropriate to relieve undue prejudice to an eligible individual or a third party contracting or dealing with such eligible individual which might otherwise result.

(Authority: 38 U.S.C. 501, 2101(d))

§ 36.4411 Annual adjustments to the aggregate amount of assistance available.

(a) On October 1 of each year, the Secretary will increase the aggregate amounts of assistance available for grants authorized under 38 U.S.C. 2101(a) and 2101(b). Such increase will be equal to the percentage by which the Turner Building Cost Index for the most recent calendar year exceeds that of the next preceding calendar year.

(b) Notwithstanding paragraph (a) of this section, if the Turner Building Cost Index for the most recent full calendar year is equal to or less than the next preceding calendar year, the percentage increase will be zero.

(c) No later than September 30 of each year, the Secretary will publish in the **Federal Register** the aggregate amounts of assistance available for the upcoming fiscal year.

(Authority: 38 U.S.C. 2102(e))

[FR Doc. 2010–23277 Filed 9–16–10; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2008–0252; FRL–8835–5]

RIN 2070–AB27

Multi-Walled Carbon Nanotubes and Single-Walled Carbon Nanotubes; Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for two chemical substances which were the subject of Premanufacture Notices (PMNs). The two chemical substances are identified generically as multi-walled carbon nanotubes (MWCNT) (PMN P–08–177) and single-walled carbon nanotubes (SWCNT) (PMN P–08–328). This action requires persons who intend to manufacture, import, or process either of these two chemical substances for a use that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity. EPA believes that this action is necessary because these chemical substances may be hazardous to human health and the environment. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective October 18, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2008–0252. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; e-mail address: *alwood.jim@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use either of the chemical substances contained in this final rule: Multi-walled carbon nanotubes (MWCNT) (PMN P–08–177) and single-walled carbon nanotubes (SWCNT) (PMN P–08–328). Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127: see also 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance that is the subject of this final rule on or after October 18, 2010 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

II. Background

A. What Action is the Agency Taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for two chemical substances which were the subject of PMNs. The two chemical substances are identified generically (due to confidentiality claims) as multi-walled carbon nanotubes (MWCNT) (PMN P–08–177) and single-walled carbon nanotubes (SWCNT) (PMN P–08–328). This action requires persons who intend to manufacture, import, or process either of these two chemical substances for an activity that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** issue of June 24, 2009 (74 FR 29982) (FRL–8417–6), EPA issued direct final SNURs on these two chemical substances (see §§ 721.10155 and 721.10156). However, EPA received notices of intent to submit adverse comments on these SNURs. Therefore, as required by § 721.160(c)(3)(ii), in the **Federal Register** issue of August 21, 2009 (74 FR 42177) (FRL–8433–9), EPA withdrew the direct final SNURs on these two chemical substances and subsequently proposed SNURs using notice and comment procedures in the **Federal Register** issue of November 6, 2009 (74 FR 57430) (FRL–8436–8). More information on the specific chemical substances subject to this final rule can be found in the direct final or proposed SNURs. The record for the direct final and proposed SNURs on these two chemical substances was established in the docket under docket ID number EPA–HQ–OPPT–2008–0252. That docket includes information considered by the Agency in developing the direct final rule and this final rule including comments on those rules.

EPA received several comments on the proposed rule. A full discussion of EPA's response to these comments is included in Unit V. of this document. Based on these comments, EPA is issuing a modified final rule on these chemical substances that:

1. Retains the proposed workplace protection, specific use, aggregate manufacturing and importation volume limitations, and release to water provisions.

2. Provides clarification on the exemptions from applicability of the SNUR.

3. Provides additional human health and environmental summary information to support EPA's findings under § 721.170(b)(4)(ii) and EPA's findings in the proposed rule. See the proposed rule for a discussion of EPA's findings and recommended testing.

In response to comments on the applicability of the SNURs, EPA included in the regulatory text clarifying language for those forms of the subject PMN substances which are exempt from the provisions of the SNURs. These exemptions apply to quantities of the PMN substances:

- After they have been completely reacted (cured);
- Incorporated or embedded into a polymer matrix that itself has been reacted (cured); or
- Embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing.

In response to comments on the basis for the SNURs, EPA developed revised Human Health Effects and Environmental Effects Summaries for carbon nanotubes (CNTs). See Unit V. of this document. These summaries specify EPA's current hazard concerns as supported by available information and data. See Unit X. of this document for a list of those sources.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated in Customs and Border Patrol regulations at 19 CFR 12.118 through 12.127: see also 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. For importers of chemical substances subject to a final SNUR those requirements include the SNUR. In addition, any persons who export or intend to export a chemical substance identified in a final SNUR are subject to the export notification provisions of

TSCA section 12(b) (15 U.S.C. 2611 (b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

III. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for these two chemical substances, EPA concluded that regulation was warranted under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I), pending the development of information sufficient to make reasoned evaluations of the human health effects of the chemical substances. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders including the recent modifications to the consent orders. These final SNURs are issued pursuant to § 721.160. EPA also finds that, based on the environmental effects data, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii). See the docket under docket ID number EPA–HQ–OPPT–2008–0252 for the corresponding consent orders. For additional discussion of the rationale for the SNURs on multi-walled carbon nanotubes (MWCNT) (PMN P–08–177) and single-walled carbon nanotubes (SWCNT) (PMN P–08–328) see Units II. and V. of this document.

B. Objectives

EPA is issuing these final SNURs for specific chemical substances that have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this final rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/newchems/pubs/invntory.htm.*

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the two chemical substances that are the subject of these final SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

V. Response to Comments on Proposed SNURs on Multi-Walled Carbon Nanotubes and Single-Walled Carbon Nanotubes

EPA received comments from numerous submitters on the proposed rules for MWCNTs that are the subject of PMN P–08–177 and SWCNTs that are the subject of PMN P–08–328. A discussion of the comments received and the Agency's responses follows.

Comment 1: The SNURs did not properly identify the chemical identity of the substances and the submitter of the PMNs did not claim the chemical name of the substances as CBI; therefore there is no basis for the use of bona fide procedures under 40 CFR part 721. Further, EPA did not give any objective identifying information to identify specific substances subject to the SNURs. It was requested that EPA clarify the particular chemical identity of the substances covered by these SNURs and how users can tell the difference.

Response: The SNURs for MWCNTs and SWCNTs did properly present the chemical identity of the PMN substances. The SNURs contain the same objective identifying information as hundreds of previously published SNURs where the chemical identity was claimed as CBI. EPA published the generic name along with the PMN number to identify that a distinct chemical substance was the subject of the PMN without revealing the confidential chemical identity of the PMN substance. Because of a lack of established nomenclature for CNTs, EPA has allowed PMN submitters to represent their CNTs using a name such as CNT, MWCNT, or SWCNT while submitting a detailed description of the CNTs using specific structural characteristics. In these instances, the PMN submitters claimed those specific structural characteristics as CBI. If an intended manufacturer, importer, or processor of CNTs is unsure of whether its CNTs are subject to this or any other SNUR, the company can either contact EPA or obtain a written determination from EPA pursuant to the bona fide procedures at § 721.11.

EPA is using the specific structural characteristics, for all CNTs submitted as new chemicals substances under TSCA, to develop standard nomenclature for placing these chemical substances on the TSCA Inventory. EPA has compiled a generic list of those structural characteristics entitled "Material Characterization of Carbon Nanotubes for Molecular Identity (MI) Determination & Nomenclature." A copy of this list is available in the docket for this SNUR. If EPA develops a more specific generic name for these materials, that name will be made publicly available.

Comment 2: Reviewing the proposed SNUR gives the impression that EPA considered that MWCNTs and SWCNTs were categories of new substances that may present unreasonable risks to human health. EPA informally noted that the SNURs apply only to the specific CNTs in the PMNs. It appears that EPA has taken the position that some CNTs made by different manufacturers are different chemical substances for purposes of reporting new chemicals under TSCA. EPA should clarify "whether the SNURs are intended to apply to the PMN substances made by other manufacturers."

Response: The SNURs and the findings in the SNURs apply only to the specific CNTs that were the subject of PMNs P–08–177 and P–08–328. As noted in the public comments to this SNUR, EPA has also received and reviewed numerous other new chemical notices for CNTs. EPA acknowledges that CNTs made by different manufacturers and processes may be considered different chemical substances for purposes of reporting new chemical substances under TSCA. EPA will make this determination on a case-by-case basis. The Agency will assess and manage the risks of CNTs in a similar manner when that assessment is based on similar data. EPA may assess and manage CNTs differently as new data becomes available, especially in cases where there are new environmental health and safety data for specific CNTs.

Comment 3: Specify how EPA defines CNT chemical identities so that downstream users can determine when processing of CNTs sufficiently change them so that a new substance is formed that requires new chemical notification under TSCA?

Response: Processing activities that causes a chemical reaction, where new chemical bonds are formed, could result in new chemical substances reportable under TSCA. However, processing activities that change the physical state or physical properties would not result in a new chemical substance reportable under TSCA. Companies with specific questions for specific materials should contact the Agency for a Prenotice Consultation. See *http://www.epa.gov/oppt/newchems/pubs/roster.htm* for Agency contact information.

Comment 4: In some instances companies may not be able to make the certifications required to make a bona fide submission and obtain an identity determination under § 721.11 for carbon nanotubes.

Response: Companies that manufacture, import, or process CNTs can identify the specific structural characteristics referenced in the response to "Comment 1" in order to file a bona fide submission. EPA recommends that companies that have any questions regarding the information required or the need for a bona fide submission for CNTs contact the Agency. See *http://www.epa.gov/oppt/newchems/pubs/roster.htm* for Agency contact information.

Comment 5: The SNURs did not include one of the terms included in the consent order which exempts from the Order's requirements quantities of the PMN substances that have been completely reacted (cured). EPA should clarify (1) whether quantities of the PMN substances that have been completely reacted (cured) are subject to the disposal restrictions in the SNURs; (2) what other terms of the SNURs are applicable once the PMN substances have been fixed to a substrate or encapsulated within plastic; and (3) applicability of the entire SNURs once the PMN substances have been incorporated into an article.

Response: EPA agrees that all terms of the consent orders should be included in the SNURs and has now amended the regulatory text to include an exemption from SNUR requirements once the PMN substance has been completely reacted or cured. EPA has also developed new, more specific language that addresses applicability of the consent orders once the PMN substances have been fixed to a substrate or encapsulated within a plastic or other matrix. The Agency has included this new language in the regulatory text of the SNURs to exempt from SNUR requirements PMN substances that have been incorporated or embedded into a polymer matrix that itself has been reacted (cured) or embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing. As stated in § 721.45(f), once a chemical substance has been incorporated into an article the notification requirements of the SNUR do not apply. The term "article" is defined in 40 CFR 720.3(c).

Comment 6: The proposed rules do not reference highly controlled circumstances of use where exposure criteria are met.

Response: The rules do not reference exposure criteria or exposure-based criteria. The rules establish significant new uses that may result in changes of the types, forms, magnitude, and duration of exposures. A SNUR requires notification before any persons manufacture or process for a significant new use so that EPA can evaluate any potential exposures and assess potential risks.

Comment 7: The rules require manufacturers and importers to provide testing at a specified production volume.

Response: The SNURs require notification when a manufacturer or importer exceeds a maximum aggregate manufacturing and importation volume limit. The 90–day inhalation toxicity study (Harmonized Test Guideline 870.3465) is EPA's recommended testing in the proposed SNURs preamble. This is the same study required in the TSCA section 5(e) consent orders for the PMN substances before the PMN submitter exceeds the specified aggregate maximum manufacturing and importation volume. Other manufacturers or importers who intend to conduct testing or send a SNUN if they believe that they will exceed that limit, are encouraged to contact EPA to avoid duplicative testing, to identify alternative testing, and to discuss protocols for any testing to be conducted.

Comment 8: Differences in legislation could result in different market situations for companies in the United States and the European Union. Emphasis was placed on the utility of taking into account the volumes of manufacture or importation of a substance, the potential hazard and/or exposures when proposing requirements for generation of information on substances. EPA was encouraged to ensure convergence of requirements, minimize the economic burden on industry, and the number of tests on vertebrate animals through development of tools, especially testing approaches and subsequent guidance, under the OECD Working Party on Manufactured Nanomaterials.

Response: EPA agrees with these comments. When considering testing requirements, EPA takes into account all of the factors suggested by the commenter. However, differences in legislation do result in different regulatory situations in each jurisdiction. EPA is committed to addressing all of the issues identified by the commenter under the Organization for Economic Cooperation and Development (OECD) Working Party on Manufactured Nanomaterials. EPA participates in or chairs each project in the OECD Working Party.

Comment 9: EPA should further clarify the meaning of predictable or purposeful releases to water. For example, a regulated entity may seek to comply with this standard by using a well-designed filtration system. Manufacturers and engineers cannot warrant 100% removal. Because there is no evidence to believe that trace losses in water may cause significant environmental harm, the proposed standard should allow for small but arguably predictable losses associated with well designed filtration systems without triggering notice obligations. Carbon nanotubes occur naturally and are produced from many anthropogenic sources, making the proposed rule impractical and unenforceable (i.e., one cannot necessarily distinguish between incidental carbon nanotubes found in nature and these PMN Substances). Adopting a 100% restriction on any arguably predictable loss of the PMN Substances under such circumstances

would impose significant and unnecessary costs on the nation's burgeoning nanotechnology industry.

Response: Purposeful or predictable releases to water include any intentional or reasonably foreseeable releases to water from a waste stream you identify as part of a manufacturing process or other industrial process. For example, when filling out a PMN (EPA Form 7710–25), submitters are asked to identify environmental releases of the PMN substance from their manufacturing process and other known industrial processes. Section 5(d) of TSCA, which specifies the required content of the PMNs, refers to TSCA section 8(a)(2) which specifies a standard of requiring information that is "known to or reasonably ascertainable by" the PMN submitter. Any water releases of the PMN substance identified in the PMN would qualify as purposeful or predictable releases. The commenter example, a waste stream subject to water filtration before release to water, qualifies as a purposeful or predictable release to water.

Purposeful or predictable releases to water would not include accidents or spills. This significant new use designation was not intended to prevent every single molecule of a subject chemical substance from being released to surface waters. For the uses identified in PMNs P–08–177 and P–08–328, EPA did not identify any purposeful or predictable releases to water. To prevent any potential unreasonable risks, EPA prohibited predictable or purposeful releases to water as a restriction in the consent orders and also designated such water releases as significant new uses in the SNURs. EPA is willing to consider alternatives that establish an acceptable level of release to water in these SNURs and future CNT submissions when information on the toxicity, exposure, and fate for that specific CNT is available. EPA has included a significant new use designation of no purposeful or predictable releases to water in SNURs for hundreds of PMN substances. EPA will continue this approach on a case-by-case basis depending on the findings in the SNUR and the environmental exposures identified in the PMN.

Comment 10: EPA should clarify that the term predictable or purposeful releases to waters of the United States does not prevent disposal of the PMN substance as a solid waste.

Response: General SNUR provisions at § 721.3 define the term "Waters of the United States" as having the meaning set forth in 40 CFR 122.2 which describes surface waters of the United States. This does not prevent disposal of the PMN substances as a solid waste in landfills or by incineration. In addition, as stated in the response to "Comment 5," the terms of the SNUR do not apply once the PMN substance is completely reacted or cured, incorporated or embedded into a polymer matrix that itself has been reacted (cured) or embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing.

Comment 11: EPA should clarify what constitutes a dust including if the term dust applies only to dry forms and what types of exposure to dusts are included.

Response: The term dust applies to any dry solid particle with a size ranging from submicroscopic to macroscopic. It does not apply to wet forms. As stated in the terms of the consent orders and SNURs, the standard for using the required personal protective equipment is to protect anyone who is reasonably likely to be exposed dermally or by inhalation to the PMN substance in the form of a dust. It does not matter how the dust is generated.

Comment 12: The Agency did not give an adequate basis for the no–release-to-water provision. Request the Agency to consider establishing a safe level of exposure in water utilizing SNUR provisions in § 721.90 (b)(2), (b)(3), and (b)(4). Another commenter stated that EPA should not issue a SNUR before there is evidence that the PMN substance may present an "unreasonable risk."

Response: EPA is not required to make a "may present unreasonable risk" finding in order to issue a SNUR. As discussed in Unit IV. of this document, TSCA section 5(a)(2) describes the factors EPA must consider when issuing a SNUR. EPA may issue a SNUR for a new chemical substance subject to a TSCA section 5(e) consent order as described at § 721.160, or for a new chemical substance that has completed PMN review as described at § 721.170, when, respectively, activities other than those described in the TSCA section 5(e) consent order or the PMN may result in significant changes in human exposure or environmental release levels and/or that concern exists about the chemical substance's health or environmental effects. See § 721.170(a).

The TSCA section 5(e) consent orders for these PMN substances, which are the bases for these SNURs, do include a finding that the PMN substances may present an unreasonable risk to human health. In addition to referencing potential risks to workers exposed by inhalation and dermal routes, the consent orders also reference potential risks to the general population from exposures via releases to water, landfill, or incineration. While the TSCA New Chemicals Program's Poorly Soluble Respirable Particles chemical category (see "Human Health Effects Summary for CNTs," in the response to "Comment 13") does not specifically reference these routes of exposure, EPA identified a potential unreasonable risk from these exposures based on a lack of environmental fate and exposure data for CNTs to make a reasoned evaluation.

EPA's review of the PMNs did not identify any predictable or purposeful releases to water. To prevent any potential unreasonable risks, EPA prohibited predictable or purposeful releases to water as a restriction in the consent orders and also designated such water releases as significant new uses in the SNURs. EPA is willing to consider alternatives that establish an acceptable level of release to water in a modification to these SNURs and future CNT submissions when information on the toxicity, exposure, and fate for that specific CNT is available. The response to "Comment 13" also contains information supporting EPA's environmental effects findings and terms in the consent orders and SNURs.

Comment 13: It was noted that more recent signed and draft consent orders contain additional updated hazard assessment information for both health and environmental concerns. It was suggested this language should be referenced in the final SNURs so that all of EPA's concerns are described in a similar manner for all SNURs pertaining to CNTs.

Response: EPA is continually refining and adding to its risk assessment and risk management approaches especially for new chemical substances such as CNTs that have limited available hazard, exposure, and fate data. Recent consent orders for CNTs do cite additional data which was not part of the basis for the consent orders or SNURs for these PMN substances, P–08–177 and P–08–328. EPA is incorporating this most current language in the next two paragraphs as part of this preamble to the final rules. This language does repeat some of the information found in the consent order for the PMN substances. EPA has also placed, in the reference section of this document (Unit X. of this document), and in the docket references to publicly available data on the health and environmental effects of CNTs. These data support the findings and significant new use designations already made in the rule. The environmental effects summary is also being used in CNT consent orders to support a finding of

potential unreasonable risk. EPA also finds that, based on the environmental effects data, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

"Human Health Effects Summary for CNTs": Absorption is expected to be poor via all routes for CNTs based on test data for chemicals with similar molecular structures and chemicals with similar physical/chemical properties. Data on other analogous substances indicate the potential for generation of increased amounts of respirable or absorbable particles during processing and use of nanoscale materials. Further evaluation is needed to determine the toxicity of nanoscale materials for all routes of exposure. In addition, there are concerns for lung effects, based on EPA's Poorly Soluble Respirable Particulates chemical category. See *www.epa.gov/oppt/newchems/pubs/cat02.htm#Respirable.* Based on test data for analogous chemicals, including other CNTs, there are concerns for pulmonary toxicity, fibrosis, carcinogenicity, mutagenicity, and immunotoxicity. There are also data suggesting that pulmonary deposition of some nanoscale materials, including CNTs in the agglomerated form, may induce cardiovascular toxicity when these nanoscale materials are inhaled. The major health concerns are for potential pulmonary toxicity, fibrosis, and cancer to workers exposed via inhalation. Based on the uncertainty of the characterization and exposure of nanoscale materials in general, there may be additional potential for translocation across the dermis and effects on target organs.

"Environmental Effects Summary for CNTs": Toxicity from exposure to CNTs has been reported in many aquatic species at concentrations that exceed estimated solubility limits. Although CNTs are not appreciably water soluble as manufactured, aqueous suspensions can be easily formed by reaction with strong acids, ozone, or dispersing agents. Recent laboratory research shows that CNTs may be combined with dissolved organic matter to form stable aqueous suspensions. To date, there is a lack of available studies on CNTs which investigate a broad range of production methods, sources, purification, functionalization, etc. EPA expects that some fraction of the CNTs, if released into the environment, will eventually become suspended in water. Sublethal effects, including respiratory stress, ventilation rate, gill mucus secretion, gill damage, and aggressive behaviors, have been noted for SWCNTs in fish at levels as low as 100 parts per billion (ppb). Liver cell injuries were readily apparent at these exposure levels, suggesting the possibility of liver tumor formation over longer exposure periods. These injuries are notable as the effects were seen in cells closest to blood vessels, suggesting transport of respired or ingested SWCNTs via the blood stream. Some effects in the gut lumen were also observed at these exposure levels. Further studies need to be conducted before EPA can establish a concentration of concern. Such studies must measure actual concentrations of CNTs and control for the effects of contaminants, solvents, and physical factors such as blockage of gills or intestines. Before such testing is conducted, advanced fate testing may be needed to determine the environmental behavior. EPA also finds that, based on the environmental effects data, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

VI. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** issue of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed SNUR rather than as of the effective date of the final rule. If uses begun after publication were considered ongoing, rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the proposed significant new use before the rule became effective, and then argue that the use was ongoing as of the effective date of the final rule.

Any person who began commercial manufacture, import, or processing of multi-walled carbon nanotubes (PMN P–08–177) or single-walled carbon nanotubes (PMN P–08–328) for any of the significant new uses designated in the proposed SNUR after the date of publication of the proposed SNUR must stop that activity before the effective date of this final rule. Persons who ceased those activities will have to meet all SNUR notice requirements and wait until the end of the notification review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who began manufacture, import, or processing of either of these chemical substances between the date of publication of the proposed SNUR and the effective date of this final SNUR meet the conditions of advance compliance as codified at § 721.45(h), those persons would be considered to have met the final SNUR requirements for those activities.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require the development of any particular test data before submission of a SNUN. There are two exceptions:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, see Unit II. of the proposed rule which lists those tests, descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the Harmonized Test Guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

In the TSCA section 5(e) consent orders for the two chemical substances regulated under this final rule, EPA has established an aggregate maximum manufacturing and importation volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier TSCA section 5(e) consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of

the tests specified in the TSCA section 5(e) consent orders are included in the proposed rule for these chemical substances. The SNURs contain the same volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed this limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture, import, or processing.

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted without any test data may increase the likelihood that EPA will respond by taking action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

As stated in Unit II.C. of this document, according to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted to EPA on EPA Form No. 7710–25 in accordance with the procedures set forth in § 721.25 and 40 CFR 720.40. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Forms and information are also available on-line at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

EPA evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances during the development of the direct final rule. The Agency's complete Economic Analysis is available in the docket under docket ID number EPA–HQ–OPPT–2008–0252.

X. References

The following is a listing of those documents used to prepare the preamble to this final rule. A copy of this list is available in the docket for this final rule under docket ID number EPA–HQ–OPPT–2008–0252, which is available for inspection as specified under **ADDRESSES**.

1. Baun A, Hartmann NB, Grieger K. and Kusk KO. (2008) Ecotoxicity of Engineered Nanoparticles to Aquatic Invertebrates: A Brief Review and Recommendations for Future Toxicity Testing. *Ecotoxicology*. 17:387–395.

2. Blaise C, Gagne F, Ferard JF. and Eullaffroy P. (2008) Ecotoxicity of Selected Nano-Materials to Aquatic Organisms. *Environmental Toxicology*. 23:591–598.

3. Bonner JC, et al. (2009) Inhaled multi-walled carbon nanotubes stimulate a pleural inflammatory response in the lung of mice. *Society of Toxicology*. Abstract No. 2205.

4. Cheng J, Flahaut E, and Cheng SH. (2007) Effect of Carbon Nanotubes on Developing Zebrafish (*Danio rerio*) Embryos. *Environmental Toxicology and Chemistry*. 26:708–716.

5. EPA. (2010) Material Characterization of Carbon Nanotubes for Molecular Identity (MI) Determination & Nomenclature. Available in the docket under docket ID number EPA–HQ–OPPT–2008–0252.

6. Farre M, Gajda-Schrantz K, Kantiani L, and Barcelo D. (2009) Ecotoxicity and Analysis of Nanomaterials in the Aquatic Environment. *Analytical and Bioanalytical Chemistry*. 393:81–95.

7. Hubbs A, Mercer RR, Coad JE, and Batelli LA. (2009) Persistent pulmonary inflammation, airway mucous metaplasia and migration of multi-walled carbon nanotubes from the lung after subchronic exposure. *The Toxicologist*. 108:A2193.

8. Hyung H, Fortner JD, Hughes JB, and Kim JH. (2007) Natural Organic Matter Stabilizes Carbon Nanotubes in the Aqueous Phase. *Environmental Science & Technology*. 41:179–184.

9. Klaine SJ, Alvarez PJJ, Batley GE, Fernandes TF, Handy RD, Lyon DY, Mahendra S, McLaughlin MJ, and Lead JR. (2008) Nanomaterials in the Environment: Behavior, Fate, Bioavailability, and Effects. *Environmental Toxicology and Chemistry*. 27:1825–1851.

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XI. Statutory and Executive Order Reviews

A. Executive Order 12866

This final rule establishes SNURs for two new chemical substances that were the subject of PMNs and TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is discussed in this unit. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a "significant new use." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,400 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2006–2008, only one appears to be from a small entity. In addition, the estimated reporting cost for submission of a SNUN (see Unit XI. of this document) is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impacts of complying with these SNURs are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** issue of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this final rule. As such, EPA has determined that this final rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This final rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 10, 2010.

Wendy Cleland-Hamnett,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by adding the following sections in numerical order under the undesignated center heading "Significant New Uses of Chemical Substances" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation		OMB control No.		
*	*	*	*	*
Significant New Uses of Chemical Substances				
*	*	*	*	*
721.10155			2070–0012	
721.10156			2070–0012	

40 CFR citation		OMB control No.		
*	*	*	*	*
*	*	*	*	*

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10155 to subpart E to read as follows:

§ 721.10155 Multi-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting*—(1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P–08–177) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the chemical substance after it has been completely reacted (cured); incorporated or embedded into a polymer matrix that itself has been reacted (cured); or embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (a)(5) (National Institute for Occupational Safety and Health (NIOSH)-approved air-purifying, tightfitting full-face respirator equipped with N100 filters), (a)(6)(i), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 5. Add § 721.10156 to subpart E to read as follows:

§ 721.10156 Single-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting*—(1) The chemical substance identified generically as single-walled carbon nanotubes (PMN P–08–328) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the chemical substance after it has been completely reacted (cured); incorporated or embedded into a polymer matrix that itself has been reacted (cured); or embedded in a permanent solid polymer form that is not intended to undergo further processing except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (a)(5) (National Institute for Occupational Safety and Health (NIOSH)-approved air-purifying, tightfitting full-face respirator equipped with N100 filters), (a)(6)(i), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

[FR Doc. 2010–23321 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0569; FRL–9200–6]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the definition of volatile organic compound (VOC). We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 16, 2010 without further notice, unless EPA receives adverse comments by October 18, 2010. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2010–0569], by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.vregulations.gov* or e-mail. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action 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: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SDCAPCD	2	Definitions	06/30/99	05/17/10

On June 8, 2010, EPA determined that the submittal for SDCAPCD Rule 2, met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 2 into the SIP on February 3, 2000 (65 FR 5262).

C. What is the purpose of the submitted rule revision?

Section 110(a) of the CAA requires States to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment.

SDCAPCD Rule 2, Definitions, is amended to revise Table 1, Exempt Compounds by including several low photochemically—reactive organic compounds that were added by EPA since 2004 to the list of compounds that were excluded from the VOC definition. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating this rule?

This rule describes administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, this rule must be enforceable (see action 110(a) of the Act) and must not relax existing requirements (see sections 110(1) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook ("Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988) and the Little Bluebook ("Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001).

B. Does this rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving this submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by October 18, 2010, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 16, 2010. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this 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.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

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

EPA lacks the discretionary authority to address environmental justice in this proposed rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely approves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. 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). This rule will be effective November 16, 2010.

L. Petitions for Judicial Review

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 November 16, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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: August 29, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(379)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(379) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(*1*) Rule 2, "Definitions," Rev. Adopted and Effective on June 30, 1999, Table 1—Exempt Compounds: Rev. and Effective on November 4, 2009.

* * * * *

[FR Doc. 2010–23128 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009—0623; FRL–8844–6]

Fenarimol; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fenarimol including its metabolites and degradates in or on vegetable, cucurbit, group 9. Gowan Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 17, 2010. Objections and requests for hearings must be received on or before November 16, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0623. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Get Electronic Access to Other Related Information?

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

C. How Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0623 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 16, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0623, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** issue of September 4, 2009 (74 FR 45848) (FRL–8434–4), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7566) by Gowan Company, 370 South Main St., Yuma, AZ 85364. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide fenarimol and its metabolites in or on cucurbits at 0.2 parts per million (ppm). That notice referenced a summary of the petition prepared by Gowan Company, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

EPA has revised the commodity expression for cucurbits and has revised the tolerance expression for all

established commodities to be consistent with current Agency policy. The reason for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fenarimol including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fenarimol follows.

A. Toxicological Profile

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

Fenarimol has a relatively low order of acute toxicity via the oral, dermal, and inhalation routes of exposure. It is not a dermal sensitizer. It is a moderate eye irritant and causes corneal opacity in rabbits. Chronic studies indicate that the liver is a target organ for toxicity. Liver toxicity was manifested by liver weight increases and the presence of "fatty liver" in rats. In dogs, increased liver weights and increases in serum enzymes, indicative of liver toxicity, were noted. However, the effects of fenarimol on aromatase, an enzyme involved in the conversion of androgens to estrogens, is the basis for toxicity endpoints. The inhibition of aromatase by fenarimol results in adverse effects in both males and females as indicated in the reproduction and developmental studies. There were no indications of a direct effect of fenarimol on the immune system. Fenarimol has been classified as not likely to be a human carcinogen, and demonstrates no mutagenic effects.

Developmental and/or reproductive toxicity studies showed no evidence of increased sensitivity or susceptibility of young rats or rabbits. However, fenarimol affects the male's reproductive performance and in females results in dystocia. Fenarimol was evaluated in two special studies in females rats, a pubertal assay which screened for estrogenic and thyroid activity during sexual maturation and for abnormalities associated with sex organs, puberty markers, and thyroid tissue and an uterotrophic assay which screened for estrogenic effects including uterine weight changes measured in ovariectomised and immature animals. In the pubertal assay at 50 and 250 milligram/kilogram/day (mg/kg/day) for 21 days, no adverse effects were found except for a decrease in the thyroid hormone T4 and an increase in circulating thyroid-stimulating hormone (TSH) levels. In the uterotrophic assay, a dose of 200 mg/kg/day resulted in a significant increase of uterine weights which were accompanied by an increase in serum follicle-stimulating hormone (FSH) levels and a decrease in serum T3 levels but at much higher doses than the regulatory endpoints selected.

Specific information on the studies received and the nature of the adverse effects caused by fenarimol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Fenarimol. Human Health Risk Assessment for the Proposed New Food Use of Fenarimol in/on Imported Cucurbit Vegetables, Crop Group 9" at pp. 46–49 in docket ID number EPA–HQ–OPP–2009–0623.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for fenarimol used for human risk assessment is shown in Table 1 of this unit.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENARIMOL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (All populations)	Not applicable	Not applicable	No appropriate hazard was identified for single-dose risk assessment.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENARIMOL FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Chronic dietary (All populations)	NOAEL= 0.6 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.006 mg/kg/day cPAD = 0.006 mg/kg/day	Rat reproduction LOAEL = 1.2 mg/kg/day based on decreased live born litter size
Dermal short-term (1 to 30 days)	LOAEL = 35 mg/kg/day (dermal absorption rate = 5% UF_A = 10x UF_H = 10x FQPA SF = 10x (as an UF_L)	LOC for MOE = 1,000	Special Reproduction Study (Rat) LOAEL = 35 mg/kg/day based on decreased fertility and dystocia, an indication of hormonal effects

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fenarimol, EPA considered exposure under the petitioned-for tolerances as well as all existing fenarimol tolerances in 40 CFR 180.421. EPA assessed dietary exposures from fenarimol in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for fenarimol; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). The chronic dietary exposure assessment for fenarimol is highly refined using anticipated residues based on USDA Pesticide Data Program (PDP) monitoring data for apples, bananas, cherries, grapes, and pears. Field trial residue data were used for cantaloupe, cucumber, filberts, hops, pecans, and summer squash. Tolerance level residues were assumed for all other commodities. Percent crop treated (PCT) information was used for apples, cherries, grapes, and pears, and 100 PCT was assumed for all other crops.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fenarimol does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

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

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

- Apples – 15%
- Cherries – 5%.
- Grapes – 20%.
- Pears – 5%.

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

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fenarimol and its degradates (U-1, U-2, U-6, and U-7) in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fenarimol. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) for

chronic exposures for non-cancer assessments are estimated to be 66 parts per billion (ppb) for surface water and 19 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 66 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenarimol is currently registered for use on professionally managed turf areas, such as stadia and golf course tees, greens, and fairways. Short-term post-application dermal exposure to golfers is possible. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found fenarimol to share a common mechanism of toxicity with any other substances, and fenarimol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fenarimol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The database for prenatal developmental (in rats and rabbits) and reproductive (in rats) toxicity is complete and includes special studies in addition to conventional guideline studies. The rat developmental study showed evidence of hydronephrosis in fetuses at dose levels equal to or possibly lower than doses causing maternal toxicity; however, a special study showed this effect to be reversible and therefore not considered an adverse effect.

Additionally, the decreased live born litter size and survival indices in the rat multi-generation reproduction study are considered to be a secondary consequence of parental effects (e.g., dystocia and fertility), and is not an indicator of increased susceptibility. Therefore, there is no evidence of increased susceptibility of fetuses following *in utero* exposure in the rat or rabbit developmental toxicity study or of offspring following prenatal and postnatal exposure in the rat reproduction study, and there are no concerns or residual uncertainties for prenatal and/or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for assessing chronic risk. That decision is based on the following findings:

i. The toxicity database for fenarimol is complete except for immunotoxicity testing. Changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Harmonized Test Guideline 870.7800) required for pesticide registration; however, the available data for fenarimol do not show the potential for immunotoxicity. Consequently, the EPA believes the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under the FQPA, and an additional database UF does not need to be applied.

ii. There is no indication that fenarimol is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fenarimol results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment utilized tolerance-level residues, anticipated residue data that are based on reliable field trial data, or food monitoring data collected by USDA under the PDP. For several currently registered commodities, the chronic assessment also utilized PCT data that have a valid basis and are considered to be reliable. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fenarimol in drinking water. EPA used similarly conservative assumptions to assess post-application residential exposure. These assessments will not underestimate the exposure and risks posed by fenarimol.

EPA has retained a 10X FQPA SF for assessing short-term risk because the study used in assessing short-term risk did not identify a NOAEL for the effects observed. The Agency is confident that the 10X FQPA SF is adequate (as opposed to a larger SF) for assessing risks from short-term exposure to fenarimol based on the following weight of evidence considerations.

- The most sensitive endpoint for target organ toxicity (potential interaction with the androgen and/or estrogen pathway) is being used for these (short-term) exposure scenarios and this selection is supported by and comparable to the endpoint (reproductive effects) used in assessing dietary and non-dietary risks for intermediate and chronic exposures.
- Fenarimol has been evaluated in two of the Tier 1 assays developed by the Agency's Endocrine Disruption Screening Program, the "Female Pubertal Assay" and the "Uterotrophic Assay."
- In the female pubertal assay, following oral exposure for 21 days-(which is comparable to the short-term exposure scenario of concern)- no adverse effects on sexual maturation, abnormalities associated with sex organ, or pubertal markers were seen at doses up to and including 250 mg/kg/day.
- In the uterotrophic assay, following oral exposure for 3 days, a dose of 200 mg/kg/day resulted in increased uterine weight.
- As noted in Unit III.A., the uterotrophic response was seen at a much higher dose (200 mg/kg/day) than the regulatory doses used for overall risk assessments: Extrapolated NOAEL of 3.5 mg/kg/day for short-term and a NOAEL of 0.6 mg/kg/day for assessing intermediate and long-term dietary and non-dietary risks.

• Specifically, the extrapolated NOAEL of 3.5 mg/kg/day used for short-term assessments is approximately 60–fold lower than the uterotrophic response found in rats at 200 mg/kg/day.

This weight of evidence provides sufficient confidence that the default 10X FQPA SF is adequate (i.e, the LOC is a MOE of 1,000) and it would not underestimate short-term risk from exposure to fenarimol.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, fenarimol is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenarimol from food and water will utilize 77% of the cPAD for all infants < 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fenarimol is not expected.

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

Fenarimol is currently registered for use on professionally managed turf, including stadia and golf course tees, greens, and fairways which could result in short-term post-application dermal exposure to golfers. The Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fenarimol.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,800 for adults 20–49 years old. While the residential scenario is based on an adult population, careful analyses of body weight-to-surface area ratios and durations of exposure resulted in the conclusion that mitigation for this population subgroup will also be protective for all population subgroups including young adults and children. Because EPA's LOC for fenarimol is a MOE of 1,000 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fenarimol is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to fenarimol residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography (GC) with an electrolytic conductivity detector (ECD)) is available to enforce the tolerance expression. PAM Volume II lists three GC/ECD methods, designated as Methods I (AM-AA-CA-R039-AB-755), II (AM-AA-CA-R072-AA-755), and III (AM-AA-CA-R124-AA-755) for tolerance enforcement.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by section 408(b)(4) of FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, section 408(b)(4) of FFDCA requires that EPA explain the reasons for departing from the Codex level.

The Codex has established an MRL for fenarimol in or on melons, except watermelon at 0.05 ppm. This MRL is different than the tolerance of 0.20 ppm for vegetable, cucurbit, group 9 established for fenarimol in the United States. The tolerances cannot be harmonized because the field trial data demonstrated higher residues than the Codex MRL.

C. Revisions to Petitioned-For Tolerances

EPA has revised the petitioned-for tolerance "cucurbits" to "vegetable, cucurbit, group 9" to agree with the Agency's Food and Feed Commodity Vocabulary. Additionally, the Agency has revised the tolerance expression to clarify that, as provided in section 408(a)(3), of FFDCA the tolerance covers metabolites and degradates of fenarimol not specifically mentioned, and that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, a tolerance is established for residues of fenarimol, alpha-(2 chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol, in or on vegetable, cucurbit, group 9 at 0.20 ppm.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory

Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

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

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

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 9, 2010.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.421, revise the introductory text of paragraph (a) and add alphabetically the entry "vegetable, cucurbit, group 9" to the table in paragraph (a) to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) *General.* Tolerances are established for residues of fenarimol, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only fenarimol alpha-(2 chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol.

Commodity	Parts per million
* *	* * *
Vegetable, cucurbit, group 9*	0.20 ppm

*There are no U.S. registrations as of August 27, 2010.

* * * * *

FR Doc. 2010–23120 Filed 9–16–10; 8:45 am

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0814; FRL–8842–3]

S-metolachlor; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the residues of S-metolachlor in or on multiple commodities which are identified and discussed later in this document. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 17, 2010. Objections and requests for hearings must be received on or before November 16, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0814. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0814 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 16, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0814, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of January 6, 2010 (75 FR 864) (FRL–8801–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7607) by IR-4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08549. The petition requested that 40 CFR 180.368 be amended by establishing tolerances for the residues (free and bound) of the herbicide S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on carrot at 0.3 part per million (ppm); cucumber, okra, sesame seed, and sorghum sweet, at 0.1 ppm; Brassica, leafy greens, subgroup 5B, and turnip, greens at 1.2 ppm; melon, subgroup 9A, and caneberry, subgroup 13-07A at 0.08 ppm; blueberry, lowbush at 1.4 ppm; bushberry, subgroup 13-07B at 0.15 ppm; onion, bulb, subgroup 3-07A at 0.1 ppm; and onion, green, subgroup 3-07B at 2.0 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has made certain revisions/modifications to the petitioned-for tolerances because available data support different conclusions. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for S-metolachlor including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with S-metolachlor follows.

A. Toxicological Profile

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

The existing toxicological database is comprised primarily of studies conducted with metolachlor. Based on a comparison of the findings in toxicity studies with both chemicals, S-metolachlor is considered to be of comparable toxicity to metolachlor and data can be bridged between the two compounds. Both compounds are extensively absorbed and metabolized following oral administration. The combined metolachlor and S-metolachlor toxicity data bases are adequate to characterize the toxicity of S-metolachlor.

S-metolachlor exhibits low acute toxicity via oral, inhalation, and dermal routes of exposure. It causes slight eye irritation, and is non-irritating dermally but is a dermal sensitizer. In subchronic (metolachlor and S-metolachlor) and chronic (metolachlor) toxicity studies in dogs and rats decreased body weight and body weight gain were the most commonly observed effects. No systemic toxicity was observed when metolachlor was administered dermally. No neurotoxicity studies with metolachlor or S-metolachlor are available. However, there was no evidence of neurotoxic effects in the available toxicity studies. Prenatal developmental studies in the rat and rabbit with both metolachlor and S-metolachlor revealed no evidence of a qualitative or quantitative susceptibility

in fetal animals. A 2-generation reproduction study with metolachlor in rats showed no evidence of parental or reproductive toxicity. There are no residual uncertainties with regard to pre- and/or postnatal toxicity. Metolachlor has been evaluated for carcinogenic effects in the mouse and the rat. Metolachlor did not cause an increase in tumors of any kind in mice. In rats, metolachlor caused an increase in benign liver tumors in rats but this increase was seen only at the highest dose tested and was statistically significant compared to controls only in females. There was no evidence of mutagenic or cytogenetic effects *in vivo* or *in vitro*. Based on this evidence, EPA has concluded that metolachlor does not have a common mechanism of carcinogenicity with acetochlor and alachlor which are structurally similar. Taking into account the qualitatively weak evidence on carcinogenic effects and the fact that the increase in benign tumors in female rats occurs at a dose 1,500 times the chronic reference dose (RfD), EPA has concluded that the chronic RfD is protective of any potential cancer effect.

Specific information on the studies received and the nature of the adverse effects caused by S-metolachlor as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "S-Metolachlor: HED Risk Assessment for Proposed New Use...on Bushberry, Caneberry....and Turnip Greens," pp. 34 – 44 in docket ID number EPA–HQ–OPP–2009–0814 -0004.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for S-metolachlor used for human risk assessment is shown in the Table of this unit.

TABLE —SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR S-METOLACHLOR FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (General population including women and children)	NOAEL = 300 milligrams/kilograms/day (mg/kg/day) UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 3.0 mg/kg/day aPAD = 3.0mg/kg/day	Developmental Toxicity Study – Rat LOAEL = 1,000 mg/kg/day based on increased incidence of death, clinical signs (clonic and/or tonic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive lacrimation) and decreased body weight gain.
Chronic dietary (All populations)	NOAEL= 9.7 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.097 mg/kg/day cPAD = 0.097 mg/kg/day	Chronic toxicity - Dog LOAEL = 33 mg/kg/day based on decreased body weight gain in females.
Incidental oral short-term (1 to 30 days)	NOAEL= 50 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100	Developmental Toxicity Study - Rat the LOAEL = 500 mg/kg/day based on increased incidence of clinical signs, decreased body weight/body weight gain, food consumption and food efficiency seen at the LOAEL in maternal animals.
Cancer (Oral, dermal, inhalation)	Metolachlor has been classified as a Group C carcinogen with risk quantitated using a non-linear (RfD) approach.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to S-metolachlor, EPA considered exposure under the petitioned-for tolerances as well as all existing S-metolachlor tolerances in 40 CFR 180.368. EPA assessed dietary exposures from S-metolachlor in food as follows:

Both the acute and chronic analyses assume tolerance-level residues on all crops with established, pending, or proposed tolerances for metolachlor and/or S-metolachlor. In cases where separate tolerance listings occur for both metolachlor and S-metolachlor on the same commodity, the higher value of the two is used in the analyses.

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

Such effects were identified for S-metolachlor. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance level residues and 100 percent crop treated (PCT) for all existing and proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a chronic dietary exposure analysis of S-metolachlor based on the assumption of tolerance level residues and 100 PCT for all existing and proposed uses.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available. or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to metolachlor.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for S-metolachlor. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for S-metolachlor in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of S-metolachlor. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) Screening Concentration in Ground Water (SCI-GROW) models and the USGA National Water-Quality Assessment (NAWQA) Program monitoring data, the Agency calculated conservative estimated drinking water concentrations (EDWCs) of S-metolachlor and metolachlor originating from ground water and surface water. EDWCs for metolachlor and S-metolachlor were calculated for both the parent compound and the ethanesulfonic acid (ESA) and oxanilic acid (OA) degradates. The environmental fate data have been bridged from the racemic mixture (50:50) of metolachlor to the newer isomer (88:12) S-metolachlor, based on similarities in environmental fate behavior. Tier I and Tier II screening models were employed for this assessment. For surface water, PRZM/EXAMS and FIRST Version1.1.1 models were used to estimate drinking water concentrations for the parent S-metolachlor and the ESA and OA degradates, respectively. The SCI-GROW model was used to predict the maximum acute and chronic concentrations present in shallow groundwater. Current NAWQA monitoring data were also used to determine EDWCs. Based on monitoring and modeling data, total EDWCs for peak and average surface water respectively are 219 ppb (78 ppb parent + 48 ppb metolachlor ESA+ 94 ppb metolachlor OA) and 119 ppb (18 ppb parent + 34 ppb metolachlor ESA+ 67 ppb metolachlor OA). Recommended groundwater EDWCs (peak and average) are 126 ppb (33 ppb parent + 64 ppb metolachlor ESA+ 30 ppb metolachlor OA).

For acute exposures EDWCs are estimated to be 219 parts per billion (ppb) for surface water and 126 ppb for ground water.

For chronic exposures EDWCs for cancer and non-cancer assessments are estimated to be 119 ppb for surface water and 126 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model

For acute dietary risk assessment, the water concentration value of 219 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment (cancer and non-cancer), the water concentration of value 126 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

There is potential for residential exposure to S-metolachlor from use of registered products which are applied to residential lawns or turf by professional applicators. Pennant MAGNUM™ (EPA Reg. No. 100-950) is labeled for use on commercial (sod farm) and residential warm-season turf grasses and other non-crop land including golf courses, sports fields, and ornamental gardens. Since Pennant MAGNUM™ is not registered for homeowner purchase or use (i.e., used by professional/commercial applicators), the only potential short-term residential risk scenario anticipated is post-application hand-to-mouth exposure of children playing on treated lawns. S-metolachlor incidental oral exposure is assumed to include hand-to-mouth exposure, object-to-mouth exposure and exposure through incidental ingestion of soil. Small children are the population group of concern. Although the type of site that S-metolachlor may be used on varies from golf courses to ornamental gardens, the scenario chosen for risk assessment (residential turf use) represents what the Agency considers the likely upper-end of possible exposure. Post application exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. Since toxicity was not observed in a dermal toxicity study, up to a dose level of 1,000 mg/kg/day, the only parameter of risk addressed in this assessment is the possible oral exposure of small children from treated turf, or soil.

Further information regarding EPA standard assumptions and generic

inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Other than metolachlor, EPA has not found S-metolachlor to share a common mechanism of toxicity with any other substances, and S-metolachlor does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that S-metolachlor does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No increase in susceptibility was seen in developmental toxicity studies in rat and rabbit or reproductive toxicity studies in the rat with either metolachlor or S-metolachlor. Toxicity to offspring was observed at dose levels the same or greater than those causing maternal or parental toxicity. Based on the results of developmental and reproductive toxicity studies, there is not a concern for increased qualitative and/or quantitative susceptibility following *in utero* exposure to metolachlor or S-metolachlor.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for S-metolachlor is complete, except for an immunotoxicity and acute and subchronic neurotoxicity studies required under the recent amendments to the data requirements. However, based on the results of the available toxicity studies, there is no evidence of immunotoxicity or neurotoxicity. Thus, EPA does not expect these data to change the existing POD for risk assessment.

ii. There is no indication that S-metolachlor is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that S-metolachlor causes an increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to S-metolachlor in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by S-metolachlor.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to S-metolachlor will occupy 2% of the aPAD for infants <1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to S-metolachlor from food and water will utilize 11% of the cPAD for infants <1 year old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of S-metolachlor is not expected.

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

S-metolachlor is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to S-metolachlor. There is potential for residential exposure to S-metolachlor from use of registered products which are applied to residential lawns or turf by professional/commercial applicators. Since such products are not registered for homeowner purchase or use (i.e., used by professional/commercial applicators), the only potential short-term residential risk scenario anticipated is post-application hand-to-mouth exposure of children playing on treated lawns. S-metolachlor incidental oral exposure is assumed to include hand-to-mouth exposure, object-to-mouth exposure and exposure through incidental ingestion of soil. Residential post application exposure to S-metolachlor for this scenario has been used to assess aggregate risk from exposure to food, drinking water, and residential lawns for this analysis. Based on the results of this analysis, short-term aggregate MOE of 860 is not of concern. EPA's level of concern for S-metolachlor is a MOE of 100 or below.

4. *Intermediate-term aggregate exposure.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, S-metolachlor is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective

cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for S-metolachlor.

5. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A. of this document, EPA has concluded that risks calculated based on the chronic RfD are protective of cancer effects.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to S-metolachlor residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available for enforcing the current tolerances. The Pesticide Analytical Manual (PAM), Vol. II, lists a gas chromatography method with nitrogen phosphorus detection (GC/NPD) for determining residues in/on crop commodities (Method I) and a GC method with mass selective detection (GC/MSD) for determining residues in livestock commodities (Method II). These methods determine residues of metolachlor and its metabolites as either CGA-37913 or CGA-49751 following acid hydrolysis.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

No MRLs for S-metolachlor have been established or proposed by Codex. EPA and the Pest Management Regulatory Agency (PMRA) Health Canada have reviewed residue data as workshare projects on carrot, blueberry (Bushberry subgroup 13-07B), and cucumber. Therefore, MRLs for these commodities will be established at the same level in both the United States and Canada. For mustard greens the MRL in the United States will be established at a higher level than in Canada based on differences in the use pattern. There are no MRLs established in Canada for the remaining crops associated with this action. There are no MRLs established in Mexico.

C. Revisions to Petitioned-For Tolerances

The Agency determined that the requested tolerance for sweet sorghum at 0.10 ppm is not needed because of the existing tolerances for S-metolachlor in/on sorghum grain at 0.3 ppm and sorghum stover at 4.0 ppm are adequate to cover residues in/on sweet sorghum commodities. However, the EPA has determined it is appropriate to establish a tolerance on "Sweet sorghum stalk" at 4.0 ppm.

The Agency is removing a tolerance, under § 180.368(a)(2), established at 0.10 ppm for garlic; onion, bulb; and shallot, bulb as it is no longer needed because these commodities are covered under the tolerance established by this action for bulb onion subgroup 3-07A at 0.10 ppm. Additionally, concomitant with the establishment of a separate and higher tolerance for carrot at 4.0 ppm by this action, the existing tolerance for "Vegetable, root, except sugar beet, subgroup 1B"at 0.30 is being revised to read; "Vegetable, root, except sugar beet, subgroup 1B, except carrot".

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

V. Conclusion

Therefore, tolerances are established for the residues of S-metolachlor in or on bushberry, subgroup 13-07B at 0.15 ppm, caneberry, subgroup 13-07A at 0.10 ppm, carrot at 0.40 ppm, cucumber at 0.13 ppm, leafy Brassica greens, subgroup 5B at 1.8 ppm, melon subgroup 9B at 0.10 ppm, okra at 0.10 ppm, onion, bulb, subgroup 3-07A at 0.10 ppm, onion, green, subgroup 3-07B at 2.0 ppm, sesame, seed at 0.13 ppm, sorghum, sweet, stalk at 4.0 ppm, and turnip greens at 1.8 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 7, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.368 is amended as follows:

■ i. In paragraph (a)(2), revise the introductory text;

■ ii. In paragraph (a)(2), in the table, remove the commodities Garlic, bulb and Shallot, bulb; revise the commodities Onion, bulb; Onion, green; and Vegetable, root, except sugar beet, subgroup 1B; and alphabetically add the following commodities;

■ iii. In paragraphs (c)(2) and (d)(2), revise the introductory text.

The amendments read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) * * *

(2) Tolerances are established for residues of S-metolachlor, including its metabolites and degradates, in or on the commodity(s), as defined. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of free and bound S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor, in or on the commodity.

Commodity	Parts per million
* * *	* *
Brassica, leafy greens, subgroup 5B	1.8
Bushberry subgroup 13-07B	0.15
Caneberry subgroup 13-07A	0.10
Carrot, roots	0.40
* * *	* *
Cucumber	0.13
* * *	* *
Melon, subgroup 9A	0.10
* * *	* *
Okra	0.10
Onion, bulb, subgroup 3-07A	0.10
Onion, green, subgroup 3-07B	2.0
* * *	* *
Sesame, seed	0.13
* * *	* *
Sorghum, sweet, stalk	4.0
* * *	* *
Turnip, greens	1.8
* * *	* *
Vegetable, root, except sugar beet, subgroup 1B, except carrot	0.30

* * * * *

(c) * * *

(2) Tolerances with regional registration are established for residues of S-metolachlor, including its metabolites and degradates, in or on the commodities identified in the following table below. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of free and bound S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor, in or on the commodity.

* * * * *

(d) * * *

(2) Tolerances for are established for the indirect or inadvertent residues of S-metolachlor, including its metabolites and degradates, in or on the commodities identified in the following table below. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of free and bound S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor, in or on the commodity.

* * * * *

[FR Doc. 2010–23130 Filed 9–16–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 100503209–0430–02]

RIN 0648–AY85

Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels in Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations amending the limited access program for charter vessels in the guided sport fishery for Pacific halibut in the waters of International Pacific Halibut Commission Regulatory Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). These regulations revise the method of assigning angler endorsements to charter halibut permits to more closely align each endorsement

with the greatest number of charter vessel anglers reported for each vessel that a charter business used to qualify for a charter halibut permit. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

DATES: Effective October 18, 2010.

ADDRESSES: Electronic copies of the Categorical Exclusion, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*. The Environmental Assessment, RIR, and FRFA for the charter halibut limited access program are available from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). Regulations developed by the IPHC are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The most recent IPHC regulations were published March 18, 2010 (75 FR 13024). IPHC regulations affecting sport fishing for halibut and charter vessels in IPHC Areas 2C and 3A may be found in sections 3, 25, and 28 of the March 18 final rule.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating.

Section 773c(c) of the Halibut Act also authorizes the North Pacific Fishery Management Council (Council) to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-developed regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority most notably in the development of its commercial fishery Individual Fishing Quota Program, codified at 50 CFR part 679, subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the limited access program for charter vessels in the guided sport fishery, codified at 50 CFR 300.67. This action is consistent with the Council's authority under section 773(c) of the Halibut Act.

Charter Halibut Limited Access Program

In March 2007, the Council recommended a limited access program for charter vessels in IPHC Areas 2C and 3A. The intent of the program was to curtail growth of fishing capacity in the charter sector by limiting the number of charter vessels that may participate in the guided sport fishery for halibut in Areas 2C and 3A. NMFS published a final rule implementing the program on January 5, 2010 (75 FR 554). Under the program, NMFS will issue a charter halibut permit to a licensed charter fishing business owner based on his or her past participation in the charter halibut fishery. Portions of the limited access program final rule that related to eligibility criteria, the permit application process, and other administrative procedures became effective on February 4, 2010. The requirement to have a charter halibut permit on board a charter vessel fishing for halibut will become effective on February 1, 2011.

Qualifications for Charter Halibut Permit

An applicant must demonstrate participation in the charter halibut fishery during a historic qualifying period and during a recent participation period to receive an initial allocation of a charter halibut permit. The two historic qualifying periods are the sport fishing seasons established by the IPHC in 2004 and 2005 (February 1 through December 31). Applicants need to demonstrate participation only in one of these years–2004 or 2005. The recent participation period is the sport fishing season established by the IPHC in 2008 (February 1 through December 31). This year was selected as the recent participation period because, at the time of program implementation, it was the most recent year for which NMFS had a complete record of saltwater charter vessel logbook data from the Alaska Department of Fish and Game (ADF&G).

The basic unit of participation for receiving a charter halibut permit is a logbook fishing trip. A logbook fishing trip is an event that was reported to ADF&G in a saltwater charter vessel logbook within the requisite time limit in effect when the trip was made.

The minimum participation qualifications include documentation of at least five logbook fishing trips during one of the qualifying years–2004 or 2005–and at least five logbook fishing trips during 2008. Meeting the minimum participation qualifications could qualify an applicant for a non-transferable charter halibut permit. The minimum participation qualifications for a transferable charter halibut permit include documentation of at least 15 logbook fishing trips during one of the qualifying years–2004 or 2005–and at least 15 logbook fishing trips during 2008.

Angler Endorsements

Each charter halibut permit will have an angler endorsement number. The angler endorsement number on the permit is the maximum number of charter vessel anglers that may catch and retain halibut onboard the vessel during a charter vessel fishing trip. The term "charter vessel angler" is defined by regulation at 50 CFR 300.61 to include all persons, paying or non-paying, who use the services of the charter vessel guide onboard the vessel. The angler endorsement assigned to a charter halibut permit limits the number of persons onboard that may catch and retain halibut.

Under the final rule implementing the limited access program (75 FR 554, January 5, 2010), the angler endorsement assigned to a charter halibut permit for all qualified businesses would be equal to the greatest number of anglers reported for any vessel the business used for at least one logbook fishing trip in the qualifying period (2004 and 2005). The minimum angler endorsement would be four. All permits issued to an applicant would have the same angler endorsement.

In February 2010, the Council reviewed the method described in the January 5, 2010, final rule for assigning angler endorsements to the second and subsequent charter halibut permits issued to business owners receiving

more than one permit for an area. The Council noted that in some cases, the greatest number of charter vessel anglers reported for one vessel could be greater than the number of anglers reported on other vessels the business used to qualify for charter halibut permits. For example, if an applicant used three vessels to qualify for three permits, and reported a maximum of six charter vessel anglers for the first vessel's trips, a maximum of four charter vessel anglers for the second vessel, and a maximum of three charter vessel anglers for the third vessel in the qualifying period, under the limited access program final rule the applicant would be issued three charter halibut permits, each with an angler endorsement of six. The Council was concerned about this method of assigning angler endorsements because the total number of angler endorsements the applicant would receive on all permits combined could be greater than the total number of charter vessel anglers the business reported for all of the vessels it used in the qualifying period. The Council also was concerned that the method of assigning angler endorsements under the January 5, 2010, final rule could result in an increase in fishing capacity the Council did not intend. The total number of angler endorsements that would be assigned to permits under the final rule potentially could enable a greater number of charter vessel anglers to catch and retain halibut under the limited access program than qualifying charter operators reported during the qualifying period.

The Council initiated this action to more closely align angler endorsements assigned to the second and subsequent permits issued to a business owner with the permit recipient's vessel-specific activity during the qualifying period. Using the previous example in which the applicant would receive three charter halibut permits, under this action, each permit's angler endorsement would be derived from the number of charter vessel anglers reported for each vessel the applicant used in the qualifying period, with a minimum endorsement of four. The applicant would receive one permit with an angler endorsement of six, and two permits with an angler endorsement of four. The Council reviewed the RIR/IRFA (see **ADDRESSES**) prepared for this action in April 2010, and selected a preferred alternative to revise the method of assigning angler endorsements to charter halibut permits issued to businesses receiving more than one permit for each area, Area 2C or Area 3A.

Angler Endorsements Under This Action

For applicants that qualify for more than one charter halibut permit, NMFS will determine the greatest number of charter vessel anglers the applicant reported for each vessel the applicant used in the qualifying period (2004 and 2005) for an area. Each of these numbers will equal a vessel-specific angler endorsement number that will be assigned to a transferable or non-transferable charter halibut permit issued to the applicant for that area. NMFS will assign a vessel-specific angler endorsement of four if the applicant's greatest number of reported anglers was fewer than four on that vessel in the qualifying period. A vessel-specific angler endorsement number will be used only once to assign an angler endorsement to a charter halibut permit for an area.

For each applicant that is issued more than one charter halibut permit for an area, NMFS will assign the vessel-specific angler endorsement numbers for that area to a permit in descending order, from the largest to the smallest number, beginning with transferable permits, if any. The greatest vessel-specific angler endorsement number derived from any vessel the applicant used in that area in the qualifying period will be assigned to the first permit the applicant receives for that area. Once this vessel-specific angler endorsement number is assigned to a charter halibut permit, that vessel-specific number will not be assigned to any additional charter halibut permits issued to the applicant for that area. The next greatest vessel-specific angler endorsement number will be assigned to the second permit the applicant receives for that area, and this process of assigning endorsement numbers to permits will continue until all permits an applicant receives in that area are assigned an angler endorsement. If the applicant receives charter halibut permits for both Area 2C and Area 3A, this process will be used to assign the vessel-specific angler endorsement to a charter halibut permit for each area.

Effects of This Action

The following briefly describes the effects of revising the method used to assign angler endorsements to charter halibut permits. Additional discussion of the rationale for and effects of this action is provided in the preamble to the proposed rule published on July 6, 2010 (75 FR 38758), and is not repeated here.

This action affects the number of angler endorsements that are assigned to charter halibut permits initially issued to applicants that receive more than one permit in an area. It will not affect the number of transferable and non-transferable charter halibut permits that are initially issued by NMFS under the limited access program prior to the start of the 2011 fishing season. The RIR prepared for this action (see **ADDRESSES**) estimates that approximately 89 qualified charter businesses would receive more than one charter halibut permit in Area 2C, which is approximately 39 percent of the 229 charter businesses that apparently qualify for one or more permit in that area. In Area 3A, approximately 69 apparently qualified charter businesses qualify for more than one charter halibut permit in Area 3A, which is approximately 24 percent of the 291 charter businesses that apparently qualify for one or more permits in that area. This final rule will result in approximately 2,618 angler endorsements assigned to 501 permits in Area 2C. This will be a reduction of approximately 13 percent from the 3,001 angler endorsements estimated to be assigned to charter halibut permits under the method used to assign angler endorsements under the former regulations. In Area 3A, this final rule will result in approximately 3,122 angler endorsements assigned to 410 permits. This will be a reduction of approximately 11 percent from the 3,524 endorsements estimated to be assigned to permits under the former regulations.

This action will reduce the angler endorsement numbers assigned to some charter halibut permits, while leaving other angler endorsement numbers unchanged from the status quo. A permit with fewer angler endorsements will authorize fewer charter vessel anglers to catch and retain halibut on a fishing trip. In general, this could reduce the revenue the charter halibut permit holder receives from using that permit. Transferable charter halibut permits with a reduced number of angler endorsements resulting from this action also likely will transfer for a lower value. Therefore, this action likely will adversely impact a charter halibut permit applicant receiving one or more charter halibut permits with a reduced number of angler endorsements relative to the status quo. However, as described in the RIR/FRFA (see **ADDRESSES**) prepared for this action, these impacts on affected operators are likely not significant. Charter vessel operators that receive a reduced number of angler endorsements under this action could mitigate the effect of this reduction by

increasing the average number of anglers on a charter vessel fishing trip, or by increasing the average number of charter vessel fishing trips associated with an individual permit. Changes in the average number of anglers on an individual charter vessel fishing trip likely would not significantly change the operator's costs and revenues for the trip, and on balance, are unlikely to have a significant economic impact on an individual charter vessel operator. Additionally, although applicants that are initially issued transferable charter halibut permits with a reduced number of angler endorsements resulting from this action likely would receive a lower price for the permit upon transfer, future holders of these charter halibut permits should not be affected. While these future permit holders may be able to generate less gross revenue from using the permit than they otherwise would have from a greater number of angler endorsements, they also should have to pay less for the permit. Overall, the reduced permit value likely will be balanced by the reduced purchase costs of affected permits.

Although this action will have distributional impacts on individual charter business owners, revising the method of assigning angler endorsements to charter halibut permits likely will not impact current charter industry capacity and the sector's ability to meet angler demand. The RIR (see **ADDRESSES**) determined that the number of angler endorsements that will be issued under this action likely will provide sufficient charter capacity to meet current angler demand, and even potentially some increase in demand. Similarly, this action is not expected to have a large impact on angler demand for charter vessel trips or the harvest of halibut by charter vessel anglers because of the action's limited impact on capacity in the charter vessel sector.

The Council intended for NMFS to revise angler endorsements before initially issuing charter halibut permits prior to the 2011 charter fishing season. This final rule will increase administrative costs for NMFS because it will require an appeals process (see Implementation of the This Action section below), in addition to the process established for charter halibut permits under the limited access program final rule (75 FR 554, January 5, 2010). This appeals process will result in NMFS initially issuing charter halibut permits closer to the anticipated start of the 2011 charter season on February 1 than it intended under the status quo. This later permit issuance schedule could create some uncertainty for affected charter halibut permit applicants with respect to planning for the 2011 season, particularly for those applicants who already have indicated they accepted the angler endorsement numbers assigned to their permits under the previous regulations.

Implementation of This Action

To implement this action, NMFS will create an official record of charter business participation in Areas 2C and 3A during the qualifying period and the recent participation period. The official record will be based on data from ADF&G, and will link each logbook fishing trip to an ADF&G Business Owner License and to the person-individual, corporation, partnership, or other entity-that obtained the license. Thus, the official record will include information from ADF&G on the person(s) who obtained ADF&G Business Owner Licenses in the qualifying period and the recent participation period; the logbook fishing trips in those years that met the State of Alaska's legal requirements; the Business Owner License that authorized each logbook fishing trip; and the vessel that made each logbook fishing trip. This is the same method that NMFS used to create an official record of charter business participation under the January 5, 2010, final rule implementing the limited access program. The official record also will include the angler endorsement assigned to each charter halibut permit using the method implemented by this final rule.

NMFS will notify all affected business owners of the revised angler endorsement(s) assigned to the charter halibut permit(s) they will be issued after the effective date of the rule. Affected business owners will have 30 days to challenge NMFS' determination. Charter business owners are allowed to submit documentation or further evidence in support of their claim during this 30–day evidentiary period. If NMFS accepts the business owner's documentation as sufficient to change the agency determination, NMFS will change the official record and issue a charter halibut permit with a revised angler endorsement accordingly. If NMFS does not agree that the further evidence supports the participant's claim, NMFS will issue an initial administrative determination (IAD) denying the participant's claim, and issue the participant's charter halibut permit(s) consistent with the official record. The IAD will describe why NMFS is initially denying some or all of an applicant's claim and will provide instructions on how to appeal the IAD. In such cases, the applicant may not transfer any of the issued permits, even if a permit is otherwise transferable, until NMFS takes Final Agency Action on the applicant's claims. Unless the applicant appeals the IAD, the IAD becomes Final Agency Action 30 days after the IAD is issued.

Charter business owners will be able to appeal an IAD through the NOAA Office of Administrative Appeals (OAA). The OAA is a separate unit within the office of the Regional Administrator for the Alaska Region of NMFS. The OAA is charged with developing a record and preparing a formal decision on all appeals. The OAA decision is subject to review by the Regional Administrator. If the Regional Administrator does not intervene, the OAA decision becomes the Final Agency Action 30 days after the decision is issued. If the Regional Administrator affirms, reverses, or modifies the OAA decision within 30 days from the date the decision is issued, the Regional Administrator's decision is the Final Agency Action. An applicant who is aggrieved by the Final Agency Action may then appeal to the U.S. District Court. Regulations at 50 CFR 679.43 provide a regulatory description of the existing appeals process. NMFS will issue interim permits to applicants who filed timely applications and whose appeal is accepted by NOAA. These interim permits would be effective until Final Agency Action.

Proposed Rule

NMFS published a proposed rule to revise the method of assigning angler endorsements to charter halibut permits on July 6, 2010 (75 FR 38758). The comment period on the proposed rule ended on August 5, 2010. NMFS received five comments from two individuals and two organizations regarding the proposed rule. One comment was not directly related to the action. Two comments discussed specific technical aspects of the regulation, one comment addressed the impact of the regulation on affected entities, and one comment contained suggestions to NMFS for improving the process of developing fisheries management regulations. These comments did not raise new issues or concerns that have not been addressed in the RIR/FRFA prepared to support this action, the preamble to the proposed rule, or the EA/RIR/FRFA prepared to support the charter halibut limited access program (see **ADDRESSES**).

Response to Public Comments

Comment 1: The commenter raises general concerns about NMFS' management of fisheries, asserting that

fishery policies have not benefited American citizens. The commenter also asserts that NMFS is biased and should not be allowed to manage fisheries.

Response: This comment is not specifically related to the proposed rule. The comment recommends broad changes to fisheries management and provides opinions of the Federal Government's general management of marine resources that are outside of the scope of this action. The comment did not raise new relevant issues or concerns that have not been addressed in the RIR/FRFA prepared to support this action or the preamble to the proposed rule.

Comment 2: We understand that under the final rule implementing the limited access program that some angler endorsements included skipper and crew participation recorded in the logbooks. The skipper and crew were providing services to charter vessel anglers and should not be counted toward the history of the vessel for determining angler endorsements.

Response: NMFS used the "total clients" field in the logbook data received from ADF&G to determine the angler endorsement on a charter halibut permit under the former regulations. NMFS will continue to use the "total clients" field to determine the number of angler endorsements assigned to a charter halibut permit under this final rule. The 2004 and 2005 logbooks contained a "total crew" field for charter operators to record the number of crew fishing, and the logbook instructions directed operators not to combine client and crew information. NMFS did not use the "total crew" field for determining angler endorsements.

Comment 3: Two commenters supported the intent of the proposed rule to change the method of assigning angler endorsements under the former regulations. However, the commenters suggested that NMFS should change the method of assigning angler endorsements prior to initially issuing charter halibut permits to ensure that an angler endorsement number does not exceed the number of passengers that were allowed by U.S. Coast Guard (USCG) regulations on the vessel used to qualify for the charter halibut permit during the qualifying period (2004 and 2005).

One of the commenters also suggested that NMFS should not assign an applicant's greatest vessel-specific angler endorsement number to charter halibut permits beginning with transferable permits as described in the proposed rule. This commenter also indicated that these suggested changes should be reflected in the final rule for this action and implemented before permits are initially issued.

Response: No changes are made to the proposed rule. The March 2007 Council motion for the charter halibut permit program directed NMFS to use ADF&G logbook data to determine the angler endorsement number assigned to a charter halibut permit. The Council recommended that the angler endorsement number be equal to the number of charter vessel anglers the applicant reported on a logbook fishing trip in 2004 or 2005, subject to a minimum endorsement of four. The EA/RIR/FRFA prepared for the charter halibut permit program (see **ADDRESSES**) discusses this issue in section 2.5.12.4. This analysis, along with the final rule implementing the charter halibut limited access program (75 FR 554, January 5, 2010), and the RIR/FRFA prepared for this action (see **ADDRESSES**), also noted that the angler endorsement on a charter halibut permit would not supersede USCG licensing or other safety rules or regulations.

The proposed rule for this action is consistent with the Council's recommendation to use ADF&G logbook data as evidence of applicant participation for purposes of implementing the limited access program, including assigning angler endorsements to charter halibut permits. In the final rule implementing the limited access program (75 FR 554, January 5, 2010), NMFS also implemented the Council's recommendation that charter halibut permit applicants sign an affidavit attesting that all legal requirements were met. During the charter halibut permit application period (February 4, 2010, through April 5, 2010), NMFS required applicants to attest by signature on the permit application that "[t]he applicant complied with all legal requirements that pertained to the bottomfish logbook fishing trips in 2004 and 2005 and the halibut logbook fishing trips in 2008 that were reported under the applicant's ADF&G Business License."

Finally, at the April 2010 Council meeting, NMFS described its proposed method for assigning angler endorsements under this action to the Council. Specifically, NMFS proposed to assign an applicant's greatest vessel-specific angler endorsement number to charter halibut permits in descending order, from the largest to the smallest number, beginning with the first transferable permit the applicant would receive. NMFS proposed to assign the next greatest vessel-specific angler endorsement to the second transferable permit the applicant would receive, and continue this process until all transferable and non-transferable permits for an applicant were assigned an angler endorsement. The method also was described in section 1.6.3 of the RIR/IRFA (see **ADDRESSES**) prepared for this action.

Comment 4: The proposed rule states this action would adversely impact applicants who receive a reduced number of angler endorsements. Although this reduced number of angler endorsements is a reduction when compared to the status quo, i.e., the number of angler endorsements an applicant would receive under the current regulations, it is not an actual reduction when compared to historical practices.

Response: NMFS agrees that the impact of a reduced number of angler endorsements on charter halibut permits issued to affected applicants under this action, as discussed in the proposed rule (75 FR 38758, July 6, 2010) and the RIR/FRFA (see **ADDRESSES**), is relative to the status quo. NMFS notes that under both the status quo and this final rule, an angler endorsement number is determined by the applicant's past participation in the charter halibut fishery as reported in ADF&G logbooks, as recommended by the Council.

The proposed rule and the RIR/IRFA noted that this action likely would not have a significant adverse economic impact on applicants receiving a reduced number of angler endorsements, relative to the status quo. First, charter vessel operators receiving a reduced number of angler endorsements under this action may receive less revenue per charter vessel fishing trip relative to the status quo, because fewer anglers would be authorized to catch and retain halibut on each trip. Second, transferable permits with a reduced number of angler endorsements likely will transfer for a lower value relative to the status quo. The proposed rule and the RIR/IRFA also discussed that these impacts likely would not be significant because affected charter vessel operators could mitigate the reduction in angler endorsements by increasing the average number of anglers on a charter vessel fishing trip, or by increasing the average number of charter vessel fishing trips associated with an individual permit, without significantly affecting operating costs or revenues. Additionally, although applicants that are initially issued transferable charter halibut permits with a reduced number of angler endorsements resulting from this action likely would receive a lower price for the permit upon transfer, future holders of these charter halibut permits should not be affected. While

these future permit holders may generate less gross revenue from using the permit than they otherwise would have from a greater number of angler endorsements, they also should have to pay less for the permit. Overall, the reduced permit value likely will be balanced by the reduced purchase costs of affected permits.

Comment 5: One commenter suggested that NMFS implement an effective peer review process for developing proposed and final rules and implementing fishery management programs such as the charter halibut permit program. This review process should include a comparison of the rule to the requirements specified in the Council motion. This process also should include review of regulations by subject matter experts such as Council staff, ADF&G staff, and Council advisory committees.

Response: NMFS agrees that a robust review process is an important component of developing effective fisheries management regulations. NMFS, Alaska Region worked with the Council during the development of this action and considers the Council's recommendations during all stages of a rule's development. NMFS, Alaska Region also considers input by other relevant agency staff, affected stakeholders, and the public when promulgating a final rule. NMFS appreciates the commenter's suggestion for peer review of proposed and final rules and will consider how it might be incorporated in the existing process.

Changes From the Proposed Rule

NMFS did not make any changes from the proposed rule, published on July 6, 2010 (75 FR 38758), to the final rule.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 773c(c) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters, as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

Executive Order 12866

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

Executive Order 12962

This final rule is consistent with Executive Order 12962 as amended September 26, 2008, which requires federal agencies to ensure that recreational fishing is managed as a sustainable activity, and is consistent with existing law.

Regulatory Flexibility Act

A FRFA was prepared as required by section 603 of the Regulatory Flexibility Act. The FRFA describes the economic impact this final rule will have on small entities. The RIR/FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**). The FRFA for this action explains the need for, and objectives of, the rule; summarizes the public comments on the initial regulatory flexibility analysis and agency responses; describes and estimates the number of small entities to which the rule will apply; describes projected reporting, recordkeeping, and other compliance requirements of the rule; and describes the steps the agency has taken to minimize the significant economic impact on small entities, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected. The need for and objectives of this action; a summary of the comments and responses; a description of the action, its purpose, and its legal basis; and a statement of the factual, policy, and legal reasons for selecting the alternative implemented by this action are described elsewhere in this preamble and are not repeated here.

The proposed rule was published in the **Federal Register** on July 6, 2010 (75 FR 38758). An IRFA was prepared and described in the classification section of the preamble to the rule. The public comment period ended on August 5, 2010. NMFS received five comments from two individuals and two organizations. Although none of the comments directly addressed the IRFA, Comment 4 discussed the economic impact of this regulation on affected entities.

The entities directly regulated by this action are guided charter businesses that qualify to receive more than one charter halibut permit in IPHC Areas 2C and 3A. NMFS estimates that under the status quo, 89 firms qualify to receive more than one charter halibut permit in Area 2C, and 69 firms qualify to receive more than one charter halibut permit in Area 3A. While quantitative information on individual charter business revenues is lacking, almost all of these firms are believed to be small entities under the terms of the Regulatory Flexibility Act. The only exceptions may be some lodge-based operations in Southeast Alaska.

The Small Business Administration (SBA) specifies that for marinas and charter/party boats, a small business is one with annual receipts less than $6.0 million. The largest of these charter operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not collect economic data on lodges. All other charter operations likely are small entities based on SBA criteria, because they would be expected to have gross revenues of less than $6.0 million on an annual basis.

The RIR/FRFA (see **ADDRESSES**) prepared for this action did not identify any new projected reporting, recordkeeping, and other compliance requirements on directly regulated entities. Under this final rule, NMFS will notify affected applicants of the change to the angler endorsement assigned to a charter halibut permit that will be issued to an applicant.

NMFS has not identified other Federal rules that may duplicate, overlap, or conflict with this final rule.

The objective of this action is to more closely align angler endorsements assigned to the second and subsequent charter halibut permits issued to a business with the actual greatest number of anglers reported for each vessel that a business used to qualify for charter halibut permits. The Council's preferred alternative for this action, as implemented by this final rule, will reduce the total number of angler endorsements assigned to charter halibut permits from the number of endorsements that would be assigned under the status quo alternative.

As noted above, all or most of the entities that are directly impacted by this regulation are small entities. This action likely will not have a significant adverse impact on some of these entities relative to the status quo alternative. Generally, a reduction in the number of angler endorsements assigned to a charter halibut permit reduces the potential for profit from that permit, because a permit with fewer endorsements will authorize fewer charter vessel anglers on any given fishing trip. However, the RIR/FRFA (see **ADDRESSES**) prepared for this action notes that individual charter halibut permits could be used more or less intensively by charter vessel operators to meet angler demand. Charter vessel operators that receive a reduced number

of angler endorsements under this action could lessen the effect of this reduction by increasing the average number of anglers on a charter vessel fishing trip, or by increasing the average number of charter vessel fishing trips associated with an individual permit. Changes in the average number of anglers on an individual charter vessel fishing trip likely would produce relatively modest changes in the operator's costs and revenues for the trip. On balance, these changes are not likely to have a significant economic impact on an individual charter vessel operator.

The Council and NMFS considered two alternatives for this action. Alternative 1 was the status quo alternative, which was rejected because it did not achieve the Council's objectives for determining the number of angler endorsements assigned to charter halibut permits. Alternative 2 was the Council and NMFS' preferred alternative. The Council and NMFS considered three options for Alternative 2. Option 1 would have determined a vessel-specific angler endorsement for businesses receiving more than one charter halibut permit for all vessels used in one year of the qualifying period, rather than considering all vessel activity in both 2004 and 2005. Option 2 would have used the same one-year restriction for determining angler endorsements, but applied the action to all businesses that would qualify to receive charter halibut permits, rather than limiting the action only to charter businesses that would qualify to receive more than one charter halibut permit. The Council and NMFS rejected Options 1 and 2 because they would result in changes to the status quo method of assigning angler endorsements to the first charter halibut permit issued to affected businesses, in addition to changing the status quo method of assigning angler endorsements to the second and subsequent charter halibut permit issued to affected businesses. In recommending the preferred alternative (Alternative 2, Option 3), which is the alternative implemented by the rule, the Council clarified that it intended to revise the status quo method of assigning an angler endorsement only to the second and subsequent charter halibut permits received by a business receiving more than one permit. The Council did not intend to revise the status quo method of assigning an angler endorsement to the first charter halibut permit received by any qualifying business. Therefore, the preferred alternative, Alternative 2, Option 3, as implemented by this final rule, accomplishes the distributional objectives of the Council with the least adverse impact on directly regulated entities.

Data on cost structure, affiliation, and operational procedures and strategies in the halibut charter vessel sector are unavailable, and NMFS is unable to quantify the economic impacts of this action on affected small entities for any of the options analyzed. The qualitative analysis in the RIR/FRFA (see **ADDRESSES**) estimates that none of the options considered under this action are expected to have a significant impact on small entities. While there may be some costs imposed on small entities through impacts on permit flexibility and implementation expenses, these impacts are likely to be small, because of the limited impact of this action on the operational efficiency of an individual charter operator.

Collection of Information

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by the Office of Management and Budget (OMB) under Control Number 0648–0592. Public reporting burden estimate per response for the charter halibut permit application is two hours. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–7285.

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 the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: September 13, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 300, subpart E as follows:

PART 300–INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.67:

■ a. Redesignate paragraphs (e)(1) and (e)(2) as paragraphs (e)(5) and (e)(6), respectively;

■ b. Revise paragraph (e) introductory text;

■ c. Add paragraphs (e)(1) through (e)(4); and

■ d. Revise newly redesignated paragraph (e)(5) to read as follows:

§ 300.67 Charter halibut limited access program.

* * * * *

(e) *Angler endorsement.* A charter halibut permit will be endorsed as follows:

(1) The angler endorsement number for the first transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period in that area.

(2) The angler endorsement number for each subsequent transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all transferable permits issued to the applicant are assigned an angler endorsement.

(3) The angler endorsement number for the first non-transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period for a vessel not already used to determine an angler endorsement in that area.

(4) The angler endorsement number for each subsequent non-transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all non-transferable permits issued to the applicant are assigned an angler endorsement.

(5) The angler endorsement number will be four (4) if the greatest number of charter vessel anglers reported on any logbook fishing trip for an area in the qualifying period is less than four (4), or no charter vessel anglers were reported

on any of the applicant's logbook fishing trips in the applicant-selected year.

* * * * *

[FR Doc. 2010–23267 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 180
Friday, September 17, 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

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

[Docket # GIPSA–2010–FGIS–0004]

RIN 0580–AB16

Request for Public Comment on the United States Standards for Corn

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers, and Stockyards Administration (GIPSA) is reviewing the United States Standards and grading procedures for corn under the United States Grain Standards Act (USGSA). Since the standards were last revised, the use of corn for ethanol and the number of different varieties of corn has increased tremendously. To ensure that standards and official grading practices remain relevant, GIPSA invites interested parties to comment on whether the current corn standards and grading procedures need to be changed.

DATES: Comments must be received on or before December 16, 2010.

ADDRESSES: You may submit your written or electronic comments on this notice to:

- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- E-Mail comments to *comments.gipsa@usda.gov*.
- *Fax:* (202) 690–2173.
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as "United States Standards for Corn Notice Comments," making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at *http://www.regulations.gov* and in the above office during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720–7486 to make an appointment to read comments received.

FOR FURTHER INFORMATION CONTACT: Ross Heiman at GIPSA, USDA, Beacon Facility, Stop 1404, P.O. Box 419205, Kansas City, MO 64131–6205; Telephone (816) 823–2580; Fax Number (816) 823–4644; e-mail *Ross.D.Heiman@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

Under the authority of the USGSA (7 U.S.C. 76), GIPSA establishes standards for corn and other grains regarding kind, class, quality and condition. The corn standards were established by USDA effective December 1, 1916. Standards specific to corn appear in the USGSA regulations at 7 CFR 810.401–810.405 and were last revised in 1996 (60 FR 61194). The 1996 revisions changed the reporting requirements for test weight to the nearest tenth of a pound, eliminated the count limit on stones for U.S. Sample Grade, and reduced the U.S. Sample Grade Aggregate Weight Tolerance for Stones from more than 0.2 percent by weight to more than 0.1 percent by weight. Stress crack analysis was also offered as official criteria.

The standards facilitate corn marketing and define U.S. corn quality in the domestic and global marketplace. They define commonly used industry terms; contain basic principles governing the application of standards such as the type of sample used for a particular quality analysis; specify grades and grade requirements; and specify special grades and special grade requirements, such as flint corn and waxy corn. Official procedures for determining grading factors are provided in GIPSA's Grain Inspection Handbook, Book II, Chapter 4, "Corn," which also includes standardized procedures for additional quality attributes not used to determine grade, such as stress crack analysis. Together, the grading standards and procedures allow buyers and sellers to communicate quality requirements, compare corn quality using equivalent forms of measurement, and assist in price discovery. To learn more about corn standardization and quality, visit the GIPSA Web site at *http://www.gipsa.usda.gov*.

GIPSA's grading and inspection services are provided through a network of federal, state, and private laboratories that conduct tests to determine the quality and condition of corn and other commodities. The tests used to measure grain quality are conducted in accordance with applicable standards using approved methodologies and can be applied at any point in the marketing chain. These tests yield rapid, reliable, and consistent results. In addition, GIPSA-issued certificates describing the quality and condition of graded corn are accepted as prima facie evidence in all Federal courts (7 U.S.C. 79(d)). U.S. corn standards and the affiliated grading and testing services offered by GIPSA verify that a seller's corn meets specified requirements, and ensure that customers received the quality of corn they purchased.

In order for U.S. standards and grading procedures for corn to remain relevant, GIPSA is issuing this advance notice of proposed rulemaking to invite interested parties to submit comments, ideas, and suggestions on all aspects of the U.S. corn standards and grading procedures.

Authority: 7 U.S.C. 71–87k.

J. Dudley Butler,
Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–23190 Filed 9–16–10; 8:45 am]
BILLING CODE P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AB17

[Docket # GIPSA–2010–FGIS–0009]

Request for Public Comment on the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers, and Stockyards Administration (GIPSA) is reviewing the United States Standards and grading procedures for Rough Rice, Brown Rice for Processing, and Milled Rice under the Agriculture Marketing Act of 1946 (AMA). Since the standards were last revised, numerous changes have occurred in the breeding and production practices of rice; the technology used to harvest, process, and test rice; and also rice marketing. To ensure that standards and official grading practices remain relevant, GIPSA invites interested parties to comment on whether the current rice standards and grading procedures need to be changed.

DATES: Comments must be received on or before December 16, 2010.

ADDRESSES: You may submit your written or electronic comments on this notice to:

- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *E-Mail: comments.gipsa@usda.gov.*
- *Fax:* (202) 690–2173
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as "United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice Notice Comments," making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720–7486 to make an appointment to read comments received.

FOR FURTHER INFORMATION CONTACT: Beverly A. Whalen at GIPSA, USDA, Beacon Facility, Stop 1404, P.O. Box 419205, Kansas City, MO 64131–6205; Telephone: (816) 823–4648; Fax Number: (816) 823–4644; e-mail: *Beverly.A.Whalen@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Under the authority of the AMA (7 U.S.C. 1621–1627), as amended, GIPSA establishes and maintains a variety of quality and grade standards for agricultural commodities that define commodity quality in the domestic and global marketplace. Standards developed by GIPSA under the AMA include rice, whole dry peas, split peas, feed peas, lentils, and beans. The AMA standards are voluntary and widely used in private contracts, government procurement, marketing communication, and, for some commodities, consumer information. The U.S. Standards for Rough Rice, Brown Rice for Processing, and Milled Rice standards were last revised in 1993 (58 FR 68015) and appear in the regulations at 7 CFR 868.202–868.316. The standards facilitate the marketing of rice in foreign and domestic trade, and provide a uniform measure of quality by providing a common language to describe commodity attributes for U.S. producers, exporters and their customers. Official procedures for inspections are provided in GIPSA's Rice Inspection Handbook for determining the various grading factors. To learn more about Rough Rice, Brown Rice for Processing, and Milled Rice standardization and quality, visit the GIPSA Web site at *http://www.gipsa.usda.gov.*

GIPSA inspects shipments of rice in accordance with AMA standards to establish the grade of the rice and issues inspection certificates for each shipment. GIPSA-issued certificates describing the quality and condition of graded rice are accepted as *prima facie* evidence in all Federal courts (7 U.S.C 1622(h). U.S. rice standards and the affiliated grading and testing services offered by GIPSA verify that a seller's rice meets specified requirements, and ensure that customers receive the quality of rice they purchased. In addition to Federal usage, the rice standards are applied by one State and one private cooperator.

In order for U.S. standards and grading procedures for Rough Rice, Brown Rice for Processing, and Milled Rice to remain relevant, GIPSA is issuing this advance notice of proposed rulemaking to invite interested parties to submit comments, ideas, and suggestions on all aspects of the U.S. rice standards and grading procedures.

Authority: 7 U.S.C. 1621–1627.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–23188 Filed 9–16–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. APHIS-2009-0067]

RIN 0579-AD18

Live Goats and Swine for Export; Removal of Certain Testing Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the livestock exportation regulations to eliminate the requirement for pre-export tuberculosis and brucellosis testing of goats and breeding swine intended for export to countries that do not require such tests. This action would facilitate the exportation of goats and breeding swine by eliminating the need to conduct pre-export tuberculosis and brucellosis testing when the receiving country does not require such testing.

DATES: We will consider all comments that we receive on or before November 16, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0067*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2009-0067, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0067.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Antonio Ramirez, Senior Staff

Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.6 requires that goats intended for exportation be tested for tuberculosis and, for some goats, brucellosis prior to export. Section 91.9 requires that breeding swine intended for exportation be tested for brucellosis prior to export.

The regulations provide certain exceptions to the testing requirements for goats. Specifically, the regulations in § 91.6(a)(4) exempt goats being exported for immediate slaughter from complying with export requirements set forth in the section, including the testing requirements for tuberculosis and brucellosis. There are no exceptions to the brucellosis testing requirement for breeding swine in § 91.9.

Some countries do not require that goats and breeding swine be tested for tuberculosis and brucellosis prior to export. Even in such cases, though, our regulations require that such testing be conducted. Thus, these requirements can create an unnecessary burden for producers when testing is not required to satisfy the import regulations of the country to which they are exporting goats and breeding swine. To relieve this unnecessary burden, we are proposing to amend the regulations to exempt goats and breeding swine from tuberculosis and brucellosis testing prior to export if such testing is not required by the receiving country.

Specifically, we would amend paragraph (a)(4) of § 91.6 by adding provisions that would exempt all goats over 1 month of age being exported from the United States from that section's tuberculosis testing requirements, if such testing is not required by the receiving country. We would also add provisions that would exempt dairy and breeding goats being exported from the United States from that section's brucellosis testing requirements.

For swine, we would add a new paragraph to § 91.9 to provide that breeding swine being exported from the United States do not have to be tested for brucellosis if such testing is not required by the receiving country.

Currently, the provisions in § 91.9 are contained in a single paragraph (a); that paragraph addresses both the condition that swine being exported from the United States have not been fed garbage at any time and the condition that breeding swine being exported from the United States test negative for brucellosis. In order to make the provisions of § 91.9 clearer, and in order to accommodate the paragraph with the proposed testing exemption, we would split the current paragraph (a) into two paragraphs. The proposed new paragraph concerning testing requirements would be added as paragraph (c).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this action. The economic analysis is posted with this proposed rule on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

The analysis identifies live goat and swine exporters as the small entities most likely to be affected by this action and considers the costs associated with the elimination of tuberculosis and brucellosis testing requirements for goats and swine being exported to countries that do require such tests. Based on the information presented in the analysis, we expect that the goat and swine wholesale trading industry would experience a reduction in compliance costs as a result of this action although the savings would be small in comparison to the value of the animals being exported. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we propose to amend 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 91.6, paragraph (a)(4) is revised to read as follows:

§ 91.6 Goats.

(a) * * *

(4) *Exemptions.* (i) Goats exported for immediate slaughter need not comply with the requirements of paragraphs (a)(1), (a)(2), (a)(3), and (a)(5) of this section.

(ii) Tuberculosis testing is not required for goats over 1 month of age exported to a country that does not require goats from the United States to be tested for tuberculosis as described in paragraph (a)(1) of this section.

(iii) Brucellosis testing is not required for dairy and breeding goats exported to a country that does not require goats from the United Stated to be tested for brucellosis as described in paragraph (a)(1) of this section.

* * * * *

■ 3. Section 91.9 is revised to read as follows:

§ 91.9 Swine.

(a) No swine shall be exported if they were fed garbage at any time. The swine shall be accompanied by a certification from the owner stating that they were not fed garbage, and that any additions to the herd made within the 30 days immediately preceding the export shipment have been maintained isolated from the swine to be exported.

(b) Except as provided in paragraph (c) of this section, all breeding swine shall be tested for and show negative test results to brucellosis by a test prescribed in "Standard Agglutination Test Procedures for the Diagnosis of Brucellosis" or "Supplemental Test Procedures for the Diagnosis of Brucellosis." The test results shall be classified negative in accordance with the provisions prescribed in the Recommended Brucellosis Eradication Uniform Methods and Rules, chapter 2, part II, G, 1, 2, and 3.

(c) Breeding swine exported to a country that does not require breeding swine from the United States to be tested for brucellosis need not comply with the requirements of paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 0579-0020)

Done in Washington, DC, this 13th day of September 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–23235 Filed 9–16–10: 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. APHIS-2009-0078]

RIN 0579-AD25

Removal of the List of Ports of Embarkation and Export Inspection Facilities from the Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the live animal export regulations by removing the list of designated ports of embarkation and their associated export inspection facilities. As a result of this rulemaking, those ports and facilities would henceforth be listed on the Internet rather than in the regulations, thus enabling us to amend the list, when necessary, in a timelier manner than we can now and allowing us greater flexibility in regulating animal exports.

DATES: We will consider all comments that we receive on or before November 16, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0078*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2009-0078, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0078.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Courtney Bronner Williams, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD; 20737-1231; (301) 734-8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals exported by land to Canada or Mexico, must be exported through designated ports of embarkation, unless the exporter can show that the animals would suffer undue hardship if they were required to be moved to a designated port of embarkation.

Paragraph (a) of § 91.14 lists ports that have been designated by the Animal and Plant Health Inspection Service (APHIS) as having met the requirements for use as ports of embarkation. To receive such a designation from APHIS, a port must have an export inspection facility available for the inspection, holding, feeding, and watering of animals prior to exportation. Approved export inspection facilities, along with their contact information, are also listed in § 91.14(a). Under the regulations, export inspection facilities must meet the standards contained in § 91.14(c) concerning physical construction requirements, facility size, inspection implements (e.g., pens and animal restraining devices), cleaning and disinfection, feed and water, access by inspectors, animal handling arrangements, testing and treatment of animals, facility location, disposal of animal wastes, lighting, office and restroom facilities, and walkways.

Because the designated ports of embarkation and associated export inspection facilities are now listed in the regulations, the list can only be amended to add or remove ports or export inspection facilities or to update contact information by means of rulemaking. In order to allow for more timely changes, we are proposing to remove this list from the regulations. In its place, we would add a new paragraph (a) stating that all ports that have export inspection facilities that an APHIS veterinarian has determined satisfy the requirements of § 91.14(c) would be designated as ports of embarkation. The proposed paragraph would further state that the list of designated ports and inspection facilities can be obtained from an APHIS Veterinary Services area office or viewed on the Internet on the APHIS Web site. Finally, proposed paragraph (a) would provide, as does the introductory text of the existing paragraph (a), that all animals, except animals being exported by land to Mexico or Canada, must be exported through the listed ports or through other ports designated in special cases by the Administrator, as provided in § 91.14(b).

We are also proposing some changes to § 91.14(d), which pertains to approval and denial, revocation, or suspension of approval of export inspection facilities. Currently, the paragraph states that approval of an export inspection facility will be denied or revoked if the facility fails to meet the standards contained in § 91.14(c). The operator of the facility is notified in writing if approval is denied or revoked, in the latter case, at least 60 days prior to the date of the proposed revocation. The written notice details the deficiencies of the facility, and the operator is given an opportunity to respond. Pending a final determination, approval of any facility may be denied or suspended by the Administrator when he has reason to believe that the facility does not meet the standards set forth in the regulations.

The paragraph, as currently written, is somewhat ambiguous regarding the circumstances that may trigger a revocation of approval. In order to clarify the regulations and ensure that standards are being maintained at ports

and facilities covered under these regulations, we are proposing to amend paragraph (d) to require that designated ports of embarkation and export facilities be reevaluated annually for compliance with § 91.14(c) by means of an APHIS inspection.

We would also remove the provisions pertaining to suspension and/or proposed revocation of approval, including the requirement that we notify the operator of the facility 60 days prior to the latter. For purposes of enforcement, the existing categories of suspension and revocation are essentially the same: In either case, the port or facility loses its eligibility for use as a designated port of embarkation. Moreover, there is no distinction between the requirements for reinstatement of a facility that has had its approval suspended and one that has had its approval revoked. In both the former case and the latter, the facility is reinstated when it can demonstrate that it meets the requirements of § 91.14(c). The elimination of the category of suspension, therefore, would not change the way the regulations are enforced but would simplify them. Under our proposed paragraph (d), if a facility were to fail an annual compliance inspection, it would be removed immediately from the list of designated facilities. Proposed paragraph (d) would also clarify the procedure for reinstatement by indicating that operators of facilities that fail either an initial inspection or an annual compliance inspection would have the opportunity to request another inspection after remedying the deficiencies listed in the written notice from APHIS. The existing regulations do not address the issue of reinstatement directly.

Finally, we would make minor editorial changes to §§ 91.14(b) and 91.15(a), the current text of which contains references to the list of ports in current § 91.14(a).

By eliminating the need for rulemaking each time the list of designated ports of embarkation and associated export inspection facilities needs to be changed, this proposed rule would allow revisions to that list to be made much more quickly than they can at present. Our ability to revise the list in a timely manner will make the process of regulating animal exports more flexible and efficient.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

This proposed rule would amend the live animal export regulations by removing the list of designated ports of embarkation and their associated export inspection facilities. As a result of this rulemaking, those ports and facilities would henceforth be listed on the Internet rather than in the regulations, allowing us to amend the list, when necessary, in a timelier manner than we can now.

Those entities most likely to be economically affected by the rule would be exporters of live animals and domestic livestock producers. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers). Affected entities could include beef cattle ranching and farming operations, dairy cattle and milk production operations, hog and pig farming operations, sheep and goat farming operations, and cattle feedlots.

The Small Business Administration has established guidelines for determining which businesses are to be considered small. Based on the most recent data we have regarding annual receipts, it is likely that most of the entities that could be affected by this proposed rule are small.

However, this proposal would only amend APHIS' administrative process for changing the list of designated embarkation ports and associated export inspection facilities. The proposed action would not make any changes in the status of any designated embarkation port or associated export inspection facility, nor would it alter the technical criteria by which designated embarkation ports and associated export inspection facilities are added to or removed from this list. We expect that this proposed rule will have little effect on U.S. entities other than benefits they could derive from timelier changes to the list of designated ports of embarkation and associated export inspection facilities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we propose to amend 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 91.14 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) All ports that have export inspection facilities which an APHIS veterinarian has determined satisfy the requirements of paragraph (c) of this section are hereby designated as ports of embarkation. A list of designated ports of embarkation can be viewed on the Internet at (*http://www.aphis.usda.gov/regulations/vs/iregs/animals/*) or obtained from a Veterinary Services area office. Information on area offices is available at (*http://www.aphis.usda.gov/animal_health/area_offices/*). All animals, except animals being exported

by land to Mexico or Canada, shall be exported through said ports or through ports designated in special cases under paragraph (b) of this section.

(b) In special cases, other ports may be designated as ports of embarkation by the Administrator, with the concurrence of the Commissioner of the Bureau of Customs and Border Protection, when the exporter can show to the satisfaction of the Administrator that the animals to be exported would suffer undue hardship if they are required to be moved to a port listed as a designated port of embarkation in accordance with paragraph (a) of this section. Ports shall be designated in special cases as ports of embarkation only if the inspection facilities are approved as meeting the requirements of paragraph (c) of this section.

* * * * *

(d) *Approval and denial or revocation of approval.* Approval of each export inspection facility for designation under paragraph (a) of this section, and in special cases under paragraph (b) of this section, shall be obtained from the Administrator. Approval of an export inspection facility under paragraph (a) or (b) will be denied or revoked for failure to meet the standards in paragraph (c) of this section. Designated ports of embarkation and export facilities shall be reevaluated annually, by means of an APHIS site inspection, for continued compliance with the standards contained in paragraph (c) of this section. If the port or facility fails to pass the annual inspection, its designation will be revoked, and it will be removed from the list of designated ports and facilities. A written notice of any proposed denial or revocation shall be given to the operator of the facility, and he will be given an opportunity to present his views thereon. Such notice shall list in detail the deficiencies concerned. After remedying the deficiencies, an operator may request another inspection. Approval of a port of embarkation in connection with the designation of an export inspection facility in special cases shall be limited to the special case for which the designation was made.

* * * * *

■ 3. In § 91.15, paragraph (a) is revised to read as follows:

§ 91.15 Inspection of animals for export.

(a) All animals offered for exportation to any foreign country, except by land to Mexico or Canada, shall be inspected within 24 hours of embarkation by an APHIS veterinarian at an export inspection facility at a port listed as a designated port of embarkation in accordance with § 91.14(a), or at a port or inspection facility designated by the Administrator in a special case under § 91.14(b).

* * * * *

Done in Washington, DC, this 13th day of September 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–23245 Filed 9–16–10: 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 114

[Docket No. APHIS-2009-0028]

RIN 0579-AD06

Viruses, Serums, Toxins, and Analogous Products; Expiration Date Required for Serials and Subserials and Determination of Expiration Date of Product

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal and reproposal.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations concerning expiration dating to clarify that the expiration date of a serial or subserial of a veterinary biologic should be computed from the date of the initiation of the first potency test. We also propose to require the expiration dating period (stability) of a product to be confirmed by conducting a real-time stability study with a stability-indicating assay; require stability monitoring of products after licensing; and specify a single standard for determining the expiration date for veterinary biologics in place of the current standard that specifies different procedures for products contingent upon whether they consist of viable or nonviable organisms. These amendments would update and clarify the regulations concerning expiration dating and establish a single uniform standard for determining the stability of veterinary biological products. This proposed rule replaces a previously published proposed rule, which we are withdrawing as part of this document.

DATES: We will consider all comments that we receive on or before November 16, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0028*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2009-0028, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0028.

Reading Room: You may read any comments that we receive on Regulations.gov (see the link above) or in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737-1231; (301) 734-8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 114, "Production Requirements for Biological Products" (referred to below as the regulations), include requirements applicable to computing expiration dates and determining expiration dating periods (stability) for veterinary biologics. Currently, § 114.12 of the regulations requires each serial or subserial of veterinary biological product prepared in a licensed establishment to be given an expiration date, and § 114.13 provides that the expiration date for each product shall be computed from the date of the initiation of the potency test.

The computed expiration date of a serial or subserial of biological product is inextricably linked to the stability of such product. The expiration date of a veterinary biologic designates the end of the period during which such product, when properly stored and handled, can be expected with reasonable certainty to

be efficacious. The most precise determination of the stability of a veterinary biologic occurs when the potency of such product is measured at the end of its predicted shelf life (expiration date). Typically, however, products are licensed and serials or subserials are released for marketing before the first production serials reach the end of their predicted shelf life.

Thus, prior to licensure, licensees and permittees must submit preliminary stability data that provides a level of confidence that the product will remain efficacious throughout the dating period shown on its labeling. Typically, such data is obtained by subjecting the product to extreme temperatures for a specified time period and measuring the relative strength of each fraction by conducting a potency test. Products that pass the potency test are licensed with the provision that the dating period must be confirmed by real-time stability testing at the end of the predicted shelf life. Currently, the requirement prescribed under § 114.13 of the regulations for confirming stability is contingent upon whether a product consists of viable or nonviable organisms. For products consisting of viable organisms, each serial must be tested for potency at release and at the approximate expiration date until a statistically valid stability record has been established; for nonviable biological products, each serial presented in support of licensure (prelicensing serials) must be tested for potency at release and at or after the dating requested. Products with satisfactory potency tests at the beginning and end of dating are considered to be efficacious throughout the requested dating period. Current science, however, considers stability estimates based on potency tests conducted at the beginning and end of dating (a two-point profile) to be inaccurate and imprecise.

To address this situation, on April 28, 2005, we published in the **Federal Register** (70 FR 21985-21987, Docket No. 04-064-1) a proposed rule[1] to amend the regulations concerning expiration dating to require veterinary biologics licensees and permittees to confirm the proposed expiration dating period of products by potency testing serials on multiple occasions throughout the proposed dating period. The proposed rule also would have required stability data to be submitted to the Animal and Plant Health Inspection Service (APHIS) for review and filing; the stability data approved for filing date to be specified in the filed Outline of Production; and a plan for monitoring the stability of the product and the suitability of its proposed dating period.

We solicited comments on our proposal for 60 days ending on June 27, 2005. We received six comments by that date. The comments were from three licensed manufacturers, two national trade associations representing manufacturers of animal health products, and a professional association. All of the commenters agreed with the need to establish a uniform standard for determining expiration dating; however, most expressed concern that the proposed rule lacked detail, and suggested that such detail be added and the rule reproposed.

In response to these comments, we have provided specifics that we believe address the perceived ambiguity in the proposed rule. Therefore, we are withdrawing the April 22, 2005, proposed rule referenced above and replacing it with the proposed changes described in this document. The proposed requirements for determining expiration dating that would apply to each licensee and permittee that prepares and distributes veterinary biologics are described below.

Definitions

The regulations in 9 CFR part 101 contain the definitions of terms used in the regulations concerning veterinary biologics. The proposed changes to part 114 of the regulations would make it necessary for us to add a definition in § 101.5 for a term used in the proposed regulations: *Stability-indicating assay.* We would define *stability-indicating assay* as a validated quantitative analytical procedure (in vitro or live animal test) that can detect changes over time in the pertinent properties of a veterinary biologic.

Expiration Date Required for a Serial

We are proposing to change the title of § 114.12 from "Expiration date required" to "Expiration date required for a serial." In addition, we propose to amend this section by adding the wording "computed from the date of the initiation of the first potency test." These changes are intended to clarify the fact that the requirements in this section pertain to serials or subserials of product, and that APHIS interprets the "date of the initiation of the potency test" to mean the on-test date of the first potency test conducted on a serial or subserial. This interpretation is consistent with the APHIS policy in that regard.

Determination of the Expiration Dating Period of a Product

We are proposing to change the title of § 114.13 from "Expiration date determination" to "Determination of the expiration dating period of a product." This change would clarify the fact that the requirements in that section pertain to determining the stability of a product rather than the expiration date of a serial or subserial of such product. The proposed revision of this section would:

- Prescribe a single, uniform standard for determining the stability of veterinary biologics in place of the current standards, which prescribe different procedures for products consisting of viable and nonviable organisms;
- Remove the wording "computed from the date of the initiation of the potency test" and providing that the expiration dating period of a product would be based on the testing of production serials beginning on the day of filling into final containers or the date final formulation of the product if such date is specified in the filed Outline of Production;
- Require testing of serials or subserials using a stability-indicating assay on multiple occasions throughout the predicted dating period in place of the current requirement, which only requires potency testing at the beginning and end of the dating period in order to confirm stability;
- Require the stability data to be submitted to APHIS for review and filing and the approved for filing date to be specified in section VI of the filed Outline of Production; and
- Require the periodic testing of serials or subserials to monitor the stability and suitability of the approved dating period.

APHIS is proposing these amendments because it has been shown that the potency of most veterinary biologics degrade in a nonlinear fashion, which may cause potency to degrade more quickly than previously estimated. Testing on only two occasions would be reasonable only if potency loss has a strictly linear pattern, and this is usually not the case. Thus, when confirming the dating period, APHIS is proposing to require the stability of a product to be evaluated as a function of time by requiring serials to be tested on multiple occasions with a stability-indicating assay.

The changes and test procedures prescribed in this proposal would update and standardize expiration date determination for veterinary biologics in §§ 114.12 and 114.13 by establishing a single, uniform standard for all products

[1] To view the proposed rule and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2005-0041*).

based on testing and monitoring with a stability-indicating assay.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule would amend the Virus-Serum-Toxin Act regulations in §§ 114.12 and 114.13 concerning expiration dates and the determination of the stability of veterinary biologics to: Change the title of the sections; clarify that the "date of the initiation of the potency test" is the on-test date of the first potency test conducted on a serial or subserial; require veterinary biologics licensees and permittees to evaluate the stability of veterinary biologics as a function of time by testing serials for potency on multiple occasions with a stability-indicating assay throughout and after their proposed dating period; require the stability data approved for filing date to be specified in the filed Outline of Production; and require monitoring of the stability of the product and the suitability of its dating period. In addition, the proposed changes to the regulations are consistent with the recommendations of the collaborative initiative by regulatory authorities and industry associations known as International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH). VICH is concerned with harmonization of technical requirements for the registration of veterinary medicinal products among three regions: The European Union, Japan, and the United States. The proposed stability testing guidelines are consistent with those adopted by VICH as an international standard for the generation and submission of stability data for veterinary medicinal products. The overall benefit of these proposed amendments would be to reduce the differences in technical requirements for veterinary biologics among regulatory agencies in different countries.

This proposed rule would affect all licensed manufacturers of veterinary biologics. Currently, there are approximately 125 veterinary biologics manufacturers, including permittees. According to the standards of the Small Business Administration, most veterinary biologics establishments are small entities. Relative to the baseline of the existing regulations in §§ 114.12 and 114.13, we do not believe that the changes we are proposing would result in new or additional effects on small entities subject to the regulations, as the current testing protocols would not change; we are simply clarifying those existing protocols. All veterinary biologics manufacturers are currently required to confirm the expiration dating of the products that they produce and to submit the data to APHIS for review and filing. In addition, the proposed requirements to test serials of product on multiple occasions when confirming expiration dating, and to monitor stability post-licensing are not expected to have a significant economic impact because most veterinary biologics manufacturers routinely test and monitor the stability of products throughout their dating period.

Under the changes to the regulations described in this proposed rule, veterinary biologics with a 2-year dating period would require 7 test occasions, for a total of 21 tests of 3 serials. To confirm expiration dating under current regulations, many licensees may be required to test 10 serials twice, a total of 20 tests. This is about the same number of tests. The most recent data compiled by APHIS show that over one 3-year period, 101 veterinary biologics manufacturers submitted 105 stability studies to the Center for Veterinary Biologics, an average per manufacturer of 1 every 3 years. The proposed amendment to the regulations would not necessitate an increase in the number of stability studies required to be performed, or an increase in associated testing costs, as these proposed changes will primarily apply to newly licensed products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the category of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies where they are necessary to address local disease conditions or eradication programs. However, where safety, efficacy, purity, and potency of biological products are concerned, it is the Agency's intent to occupy the field. This includes, but is not limited to, the regulation of labeling. Under the Act, Congress clearly intended that there be national uniformity in the regulation of these products. There are no administrative proceedings which must be exhausted prior to a judicial challenge to the regulations under this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 114

Animal biologics, Reporting and recordkeeping requirements.

■ Accordingly, we propose to amend 9 CFR parts 101 and 114 as follows:

PART 101—DEFINITIONS

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 101.5 is amended by adding new paragraph (s) to read as follows:

§ 101.5 Testing terminology.

* * * * *

(s) *Stability-indicating assay.* A stability-indicating assay is a validated quantitative analytical procedure that can detect changes over time in the pertinent properties of the product.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

■ 3. The authority citation for part 114 continues to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 114.12 is revised to read as follows:

§ 114.12 Expiration date required for a serial.

Unless otherwise provided for in a Standard Requirement or filed Outline of Production, each serial or subserial of biological product prepared in a licensed establishment shall be given an expiration date computed from the date of the initiation of the first potency test. A licensed biological product shall be considered worthless under the Virus-Serum-Toxin Act after the expiration date appearing on the label.

■ 5. Section 114.13 is revised to read as follows:

§ 114.13 Determination of the expiration dating period of a product.

An expiration dating period determined by the stability of each of its fractions shall be assigned to each product. Stability shall be determined with a stability-indicating assay that can detect changes over time in the pertinent properties of the product. Stability criteria include the specifications for potency at release, potency throughout the dating period, and the length of the dating period. When tested at any time during the dating period, the potency of the product shall not be less than the minimum specified in the filed Outline of Production. Prior to licensure, the licensee shall propose an expiration dating period for the product based on preliminary data available about the stability of each of its fractions. If the preliminary stability data are acceptable, the product may be licensed with the provision that the proposed expiration dating period must be confirmed by conducting a real-time stability study with a stability-indicating assay as follows:

(a) In the case of a newly licensed product with acceptable preliminary stability data and the real-time stability study is not conducted in animals, at least three production serials of the product shall be selected and tested during the proposed dating period. Each serial shall be tested beginning on the day of filling into final containers or the date of final formulation specified in the filed Outline of Production, and at the following intervals:

(1) Every 3 months during the first year of storage,

(2) Every 6 months during the second year of storage, and

(3) Annually thereafter throughout the proposed dating period.

(b) In the case of a newly licensed product with acceptable preliminary stability data and the real-time stability study is conducted in animals, at least three production serials shall be tested as follows:

(1) One test per serial shall be conducted beginning on the day of filling into final containers or the date of final formulation specified in the filed Outline of Production.

(2) One test per serial shall be conducted at thebe end of the proposed dating period.

(3) One test per serial shall be conducted between the initial and final test, but at a different interval for each serial.

(c) In the case of a newly licensed product, and licensed products whose stability studies were completed prior to **[Effective date of final rule]**, a real-time stability study conducted with a stability-indicating assay in accordance with paragraphs (a) or (b) of this section shall be completed in support of changes to one of the stability criteria or for major changes to the potency test.

(d) In the case of a licensed product with an unconfirmed expiration dating period that is tested in animals with a test that is not a stability-indicating assay, the following shall apply:

(1) Testing involving the use of a non-stability-indicating assay specified in the filed Outline of Production to confirm the expiration dating period for such product shall be completed by **[Date 42 months after effective date of the final rule]**, or

(2) Subsequent to **[Date 42 months after effective date of the final rule]**, such testing to confirm expiration dating shall be completed with a stability-indicating assay. Products not meeting the requirement to confirm the expiration dating with a stability-indicating assay shall be withheld from the market.

(e) At the completion of the real-time stability study to confirm or change expiration dating, the data shall be submitted to Animal and Plant Health Inspection Service for approval for filing and the approved for filing date shall be specified in section VI of the filed Outline of Production at the next revision.

(f) For products licensed subsequent to **[Effective date of the final rule]**, the licensee or permittee shall submit a plan to monitor the stability of the product and the suitability of its dating period that includes regularly testing serials for potency with a stability-indicating assay during and at the end of dating.

Done in Washington, DC, this 3rd day of September 2010.

John Ferrell,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2010–23186 Filed 9–16–10: 10:57 am]

BILLING CODE 3410–34–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[Docket No. USCG–2010–0785]

Port Access Route Study: The Approaches to San Francisco

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Coast Guard announces a public meeting to receive comments on the study entitled "Port Access Route Study: Off San Francisco" that was published in the **Federal Register** on Thursday, December 10, 2009. As stated in that document, the Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the continued applicability of and the potential need for modifications to the current vessel routing in the approaches to San Francisco.

DATES: A Public meeting will be held on Wednesday, October 20, 2010 from 6:30 p.m. to 8:30 p.m. to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at the meetings.

ADDRESSES: The October 20, 2010 public meeting will be held at the Executive Inn and Suites at 1755 Embarcadero, Oakland, California. Visitor parking is available in the lots outside the hotel.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the study, please call or e-mail LTJG Lucas Mancini, Coast Guard; telephone 510–437–3801, e-mail *Lucas.W.Mancini@uscg.mil*. If you have questions on viewing the docket call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published a notice of study in the **Federal Register** on December 10, 2009 (74 FR 65543), entitled "Port Access Route Study: Off San Francisco" in which we did not state a plan to hold a public meeting. We have decided to hold a meeting in order to give the public and waterway users a chance to comment in person.

In the notice of PARS, we discussed our intent to help reduce the risk of marine casualties and increase the efficiency of vessel traffic in the study region. Our goal is to assess whether the current vessel routing system is effective

in its predictability of vessel movements, which may decrease the potential for collisions, oil spills, and other events that could threaten the marine environment.

You may view the notice of PARS in our online docket, in addition to comments submitted thus far by going to *http://www.regulations.gov*. Once there, insert "USCG–2009–0576" in the "keyword" box and click "search." If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this study by submitting comments at the meeting either orally or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be posted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

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).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LTJG Lucas Mancini at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding its Port Access Route Study in the Approaches to San Francisco on Wednesday October 20, 2010 from 7 p.m. to 9 p.m. at the Executive Inn and Suites located at 1755 Embarcadero, Oakland California, telephone 510–536–6633. We will provide a written summary of the meeting and additional comments received at the meeting in the docket.

Dated: September 2, 2010.

S.P. Metruck,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 2010–23176 Filed 9–16–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Express Mail Open and Distribute and Priority Mail Open and Distribute

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 705.16 to require the use of a single-ply address label containing a service barcode with unique Service Type Code "723" or a "DB" prefix along with new Tag 257, Tag 267, or Label 257S, on all Express Mail® Open and Distribute containers. The Postal Service also proposes to revise the service commitment for Express Mail Open and Distribute as a guaranteed end of day product; and to add a five-pound minimum weight requirement for Express Mail Open and Distribute and Priority Mail® Open and Distribute sacks.

DATES: Submit comments on or before October 18, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 4446, Washington, DC 20260–4446. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC 20260–0004. E-mail comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov*, with a subject line of "Open and Distribute Changes Comments." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Jewelyn Harrington at 202–268–7648 or Garry Rodriguez at 202–268–7281.

SUPPLEMENTARY INFORMATION:

Express Mail

Express Mail Open and Distribute service is designed to provide mailers with expedited service to destination delivery units and other mail processing facilities. Currently, Express Mail Open and Distribute service follows the same mailing requirements and delivery standards as Express Mail service.

The requirement to use the Express Mail Label 11 series with a 13-digit barcode prevents the Postal Service from differentiating between Express Mail and Express Mail Open and Distribute products.

The delivery standards for Express Mail service are intended for residential/business customers and as a result are delivered by 12 noon or 3 p.m. Express Mail Open and Distribute is a product that is delivered to a processing facility or delivery unit for further processing of the contents.

To account for the Express Mail Open and Distribute product, the Postal Service is proposing to require mailers to place a single-ply address label with a service barcode on all Express Mail Open and Distribute containers and to submit an electronic file. The service barcode is required to be a USS 128 or Code 39 barcode with a "DB" prefix, or concatenated GS1–128 (eVS approved mailers) symbology with a unique Service Type Code (STC) "723". The text; "USPS SCAN ON ARRIVAL," must appear above the barcode. This scan information is exclusive to the Open and Distribute service and will assist in facilitating correct scan behavior.

This proposed requirement is in accordance with instructions for barcode specifications, electronic file format and testing, and the certification process in Publication 91, *Confirmation Services Technical Guide*.

The Postal Service also proposes to replace Tag 157 with Tag 257 (DDU), Tag 267 (SCF, NDC), and Label 257S (DDU), to assist in the verification of the arrival at the destination facility for all Express Mail Open and Distribute containers.

Generally, the Postal Service processing window is 12 noon to 6 a.m. The window to dispatch mail from plants to delivery units is from 4 a.m. to 9 a.m. To better align the Express Mail Open and Distribute product with processing and dispatch windows, without loss of service, we are proposing to change the service commitment to end of day (11:59 p.m.).

Express Mail and Priority Mail

In addition, processing facilities currently receive Express Mail Open and Distribute and Priority Mail Open and Distribute sacks containing mail that weighs less than five pounds, making it difficult to identify that the sack contains mail.

The handling of low volume sacks in plants has been indentified as

problematic with the Open and Distribute product. Because of the risk of sacks being mishandled as empty equipment, limiting our effort to meet service commitments, we are proposing to establish a five-pound minimum weight requirement for all Express Mail Open and Distribute and Priority Mail Open and Distribute sacks.

The proposed changes to Express Mail Open and Distribute and Priority Mail Open and Distribute will provide better visibility of the product and enable the Postal Service to monitor service performance based on the product.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

16.0 Express Mail Open and Distribute and Priority Mail Open and Distribute

16.1 Prices and Fees

16.1.1 Basis of Price

[Revise the first and second sentence of 16.1.1 as follows:]

Mailers must pay Express Mail and Priority Mail postage based on the weight of the entire contents of the shipment. The minimum weight requirement is five pounds, and the maximum weight limit for each container is 70 pounds. * * *

16.1.2 Zone Prices

[Revise 16.1.2 as follows:]

Compute zone prices, for the applicable class of mail, from the accepting Post Office to the destination facility for the container (not the destination Post Office for the enclosed mail).

* * * * *

16.1.5 Payment Method

[Revise the text in 16.1.5 as follows:]

Postage payment methods are as follows:

a. Postage on the enclosed mail may be paid by any method permitted for that mail class, except for ordinary postage stamps requiring cancellation.

b. Express Mail postage may be paid under any of the options listed in 414.1.1, except Click-N–Ship. Express Mail postage must be affixed to blue Tag 257, to yellow Tag 267, to the Open and Distribute tray box, or be part of the address label.

c. Priority Mail postage may be paid under 424.1.1. Priority Mail postage must be affixed to or hand-stamped on green Tag 161, pink Tag 190, or the Open and Distribute tray box, or be part of the address label.

* * * * *

16.2 Basic Standards

* * * * *

16.2.2 Content Standards

[Revise the DMM reference numbers in the parentheses at the end of the first sentence of 16.2.2 as follows:]

* * * (see 410 for Express Mail standards and 420 for Priority Mail standards).* * *

[Revise the last sentence of 16.2.2 as follows:]

* * * Mailers are not required to place bundles of mail in sacks or trays when all of the mail enclosed in an Open and Distribute sack is destined to a 5-digit facility.

16.3 Additional Standards for Express Mail Open and Distribute

16.3.1 Service Objectives

[Revise the first sentence and add new second sentence in 16.3.1 as follows:]

The Express Mail service guarantee for Express Mail Open and Distribute is receipt by end of day (11:59 p.m.) and ends upon receipt by scan of the Express Mail Open and Distribute container at the destination postal facility. * * *

* * * * *

16.5 Preparation

16.5.1 Containers for Expedited Transport

Acceptable containers for expedited transportation are as follows:

[Revise item a to reflect new tags as follows:]

a. An Express Mail Open and Distribute shipment must be contained in a USPS-approved sack using Tag 257 or Tag 267 or in a USPS-provided Express Mail Open and Distribute tray box (Tag 257 and Tag 267 are not required for tray boxes; only the 4x6 address label should be applied), except as provided in 16.5.1c and 16.5.1d.

* * * * *

[Revise item c to reflect new labels as follows:]

c. An Express Mail or Priority Mail Open and Distribute shipment destined to a DDU may be contained in a USPS-provided Express Mail Flat Rate Envelope using Label 257S or Priority Mail Flat Rate Envelope or boxes using Label 190S.

* * * * *

[Revise the heading of 16.5.2 as follows:]

16.5.2 Express Mail and Priority Mail Sack Labels

[Revise the text in 16.5.2 as follows:]

Labels for Express Mail or Priority Mail sacks containing Open and Distribute shipments must be barcoded and meet the requirements in 708.6.0. All lines of information must be completely visible when inserted into the label holder. Label sacks as follows:

a. Line 1 (destination line) provides information on the destination entry office where the enclosed mail is to be distributed.

1. For destination delivery unit (DDU) distribution, use the facility name and ZIP Code found in the Drop Shipment Address File available at the USPS FAST Web site at *https://fast.usps.com* (click Resources in the left-hand navigation bar, then Go for "Drop Ship Product File Download").

2. For SCF distribution, use the destination in L005, Column B.

3. For ADC distribution, use the destination in L004, Column B (Priority Mail Open and Distribute Only).

4. For NDC distribution, use the destination in L601, Column B.

5. For ASF distribution, use L602, Column B (Priority Mail Open and Distribute Only).

b. For Line 2 (content line), print "EXPRESS MAIL OPEN AND DIST" or "PRIORITY MAIL OPEN AND DIST," as applicable.

c. For Line 3 (origin line), show the city and state of the entry Post Office or

the mailer's name and the city and state of the mailer's location. It is recommended that the mailer's name also appear with the city and state of the entry Post Office. See 708.6.2.5 for additional standards.

[Revise the tag numbers in the heading of 16.5.3 as follows:]

16.5.3 Tags 257 and 267—Express Mail Open and Distribute

[Revise the text in 16.5.3 as follows:]

Tag 257 and Tag 267 provide a place to affix Express Mail postage and the address label for the destination facility. Tag 257 or Tag 267 must be attached to each Express Mail sack, in addition to the Express Mail sack label, to identify it as an Express Mail Open and Distribute shipment as follows:

a. Attach Tag 267 to sacks used as Express Mail Open and Distribute containers destined to a NDC or SCF facility.

b. Attach Tag 257 to sacks used as Express Mail Open and Distribute containers destined to a DDU. Label 257S may be affixed to containers used for Express Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

16.5.4 Tags 161 and 190—Priority Mail Open and Distribute

* * * Tag 161 or Tag 190 must be attached to each Priority Mail sack, in addition to the Priority Mail sack label, or container to identify it as a Priority Mail Open and Distribute shipment as follows:

* * * * *

[Revise the last sentence in item b as follows:]

b. * * * Label 190S may be affixed to containers used for Priority Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

* * * * *

16.5.6 Address Labels

[Revise the first sentence in 16.5.6 as follows:]

In addition to Tag 257, Tag 267, Tag 161, or Tag 190, USPS-provided containers and envelopes and mailer-supplied containers used for Express Mail Open and Distribute or Priority Mail Open and Distribute must bear an address label that states "OPEN AND DISTRIBUTE AT:" followed by the facility name. * * *

16.5.7 Address Label Service Barcode Requirement

[Revise the introductory text of 16.5.7 as follows:]

An electronic service barcode using the USS 128, USS 39, or concatenated GS1–128 (eVS approved mailers) symbology for Express Mail Open and Distribute, and the concatenated GS1–128 symbology for Priority Mail Open and Distribute, must be incorporated in the address label. Mailers must prepare address labels using the formats in 16.5.8 through 16.5.12. The labels must include either a service type code, "723" with a GS1–128 barcode or "DB" prefix with a USS 128 or USS 39 barcode for Express Mail Open and Distribute or "55/123" for Priority Mail Open and Distribute, to identify the service. The human-readable text "USPS SCAN ON ARRIVAL" must appear above the barcode. USPS certification is required from the National Customer Support Center (NCSC) for each printer used to print barcoded open and distribute address labels, except for barcodes created using USPS Shipping Assistant. NCSC contact information, formatting specifications for barcodes and electronic files, and certification, are included in Publication 91, Confirmation Services Technical Guide.

Mailers can use the following options available to create a label with a service barcode for Express Mail Open and Distribute and Priority Mail Open and Distribute address labels:

* * * * *

16.6 Enter and Deposit

* * * * *

16.6.2 Entry

[Revise the first sentence of 16.6.2 as follows:]

A PS Form 3152, *Confirmation Services Certification*, (Priority Mail Open and Distribute) or PS Form 3152–E (Express Mail Open and Distribute) must accompany each Open and Distribute shipment. * * *

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–23315 Filed 9–16–10; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Implementation of the Intelligent Mail Package Barcode

AGENCY: Postal Service™.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Postal Service is proposing to incorporate standards into Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) for the optional use of Intelligent Mail® package barcodes (IMpb), no later than January of 2011; and expects to require the mandatory use of IMpb on all domestic packages beginning in January 2012.

DATES: Comments must be received on or before September 27, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, Postal Service, 475 L'Enfant Plaza, SW., Room 4446, Washington, DC 20260–4446. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC 20260–0004. Email comments containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov*, with a subject line of "Intelligent Mail Package Barcode comments." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Juliaann Hess at 202–268–7663 or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking is intended to provide information and assistance to mailers in planning for future mailings and preparing for system changes necessary to adopt the new IMpb format and electronic files. The subsequent proposed rule to this advance notice, will provide standards for the optional use of IMpb no later than January of 2011, and will propose the mandatory use of IMpb barcodes on all domestic packages in January 2012. The Postal Service looks forward to receiving and considering industry feedback on its proposed timeline prior to publishing final standards.

The term "package" is used to encompass any domestic mailpiece meeting the characteristics in DMM sections 101.3, 401.1, and all Express Mail® and Priority Mail® mailpieces, regardless of their shape, including flat-rate items.

Piece-level package information is needed in the shipping industry to expand product lines, increase competitiveness, provide greater visibility to mailers and the Postal Service, and to create a more comprehensive service performance measurement tool. Today, without the purchase of an extra service such as Delivery Confirmation™, Signature Confirmation™, or insurance, package tracking and delivery information is limited. Barcodes are not currently

required on packages; and the barcodes now being used are unable to incorporate the data necessary to meet the needs of the USPS Intelligent Mail strategy. Packages that currently bear barcodes designed to provide delivery and tracking information only do not always include a routing code (a barcode that represents the destination ZIP™ Code). The current barcodes have limited revenue protection capabilities, due to the absence of information associating the piece with its specific payment method: and have limited integration of multiple extra services.

IMpb and Electronic Documentation

The IMpb will provide piece-level data to enable the Postal Service to increase efficiency, add value to its package product line, and enhance its package tracking capabilities. The IMpb is a 34-digit modulated barcode that generally follows the specifications of the GS1–128 symbology. GS1–128 barcodes are a special type of global standard Code 128 barcodes, which make use of Application Identifiers (AI) to define the encoded data and how it is used. The IMpb incorporates features of the GS1–128 symbology to allow for the unique identification and tracking of domestic packages from induction to delivery. The GS1–128 barcode symbology is already a requirement for users of electronic Confirmation Services and the Electronic Verification System® (eVS®). Customers currently participating in these programs will not need to change the symbology of the barcode; however the elements within the barcode and layout will change.

There are several barcode variations for use at the commercial and retail level that will provide the flexibility to accommodate the diverse shipping needs of Postal Service customers. To improve routing, tracking, and service capabilities, the Postal Service is providing advance notice of a future proposal to require customers to include the correct ZIP + 4 Code in the barcode of each package, or to transmit this information to the USPS via an electronic file.

Enhancements to the current requirements for electronic files used, in conjunction with parcel barcodes, will be necessary to support the additional features incorporated into IMpb. Electronic files now used for packages do not provide adequate space for supplemental fields, limiting their ability to support the additional piece-level information received from customers. The new electronic file format will include expanded package identification code fields to accommodate up to a 34-digit barcode string, and will require fewer file types to support any combination of products and services. In addition, customers will be required to include the destination ZIP + 4 Code in the electronic file for all records. This additional ZIP Code information will assist in the routing and tracking of our package products. An optional field for the delivery point code of the destination address has also been added to the electronic file to provide additional information to improve service. A listing of electronic file formats is located in the addendum to Publication 91, *Addendum for Intelligent Mail Package Barcode (IMpb) and 3-digit Service Type Code.*

The data construction of the IMpb barcode will be different from that of the current Confirmation Services barcode. Detailed specifications for IMpb barcode construction are available in the "Barcode Data" section of the specification document, *Barcode, Package, Intelligent Mail (USPS2000508).* The most significant change in the barcode data is in the service type code. Currently, barcodes use a 2-digit service type code that can represent multiple mail classes or products, limiting the number of extra services that may be integrated into a single barcode. When two or more extra services are used, a barcode representing each extra service is usually required on the mailpiece, resulting in the need to scan multiple barcodes at delivery.

The IMpb will use unique 3-digit service type codes which identify the exact product and extra service(s) combination, eliminating the need for separate barcodes and separate scanning, enabling more efficient package handling. A list of the 3-digit service type codes is available in the addendum to Publication 91.

To increase package visibility, the Postal Service will scan the IMpb throughout processing using automated mail processing equipment and Intelligent Mail devices. Mailers who include extra services with their packages will have scan data, including acceptance, enroute, and delivery-type data available to them. Mailers will also be able to increase package visibility by associating each package with the appropriate sack, or an approved alternate container, which bears an accurately encoded Intelligent Mail tray label. Each sack or alternate container may then be electronically associated to a pallet (or similar container) that bears an accurately encoded Intelligent Mail container placard.

The Intelligent Mail package barcode will:

- Require a routing code to aid in processing packages on automated sorting equipment.
- Use a channel-specific Application Identifier (AI) that associates the barcode to the payment method, supporting revenue assurance protection.
- Contain a 3-digit service type code, which will identify the exact mail class and service combination, reducing the number of barcodes on a package.
- Permit the use of a 6-digit or 9-digit numeric Mailer ID (MID).

These enhancements will add data-stream efficiency within mail processing, delivery, payment, and reporting. Packages without the addition of extra services must also bear Intelligent Mail package barcodes and will be identified through the use of specific mail class service type codes.

Intelligent Mail barcodes, used on letters and flats, will not be permitted on packages in lieu of the IMpb.

Additional Information

Mailers can access the following references on the RIBBS® Web site at *ribbs.usps.gov:*

- Proposed addendum to Publication 91, *Addendum for Intelligent Mail Package Barcode (IMpb) and 3-digit Service Type Code.*
- Specification document, *Barcode, Package, Intelligent Mail (USPS2000508).*

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–23313 Filed 9–16–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0314; FRL–9202–6]

Approval and Promulgation of Implementation Plans; Oklahoma; State Implementation Plan Revisions for Interstate Transport of Pollution, Prevention of Significant Deterioration, Nonattainment New Source Review, Source Registration and Emissions Reporting and Rules of Practice and Procedure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve part of a State Implementation Plan (SIP) revision submitted by the State of Oklahoma for the purpose of addressing the "good neighbor" provisions of Clean

Air Act (the Act or CAA) section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. This SIP revision satisfies a portion of the State's obligation to submit a SIP revision that demonstrates that adequate provisions are in place to prohibit air emissions from adversely affecting another State's air quality through interstate transport. In this action, EPA is proposing to approve the Oklahoma Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from sources in Oklahoma do not interfere with measures required in the SIP of any other State under part C of the CAA to prevent "significant deterioration of air quality." EPA is also proposing to approve portions of the revision to the Oklahoma SIP submitted on February 14, 2002, which relate to Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) for major sources, source registration and emissions reporting and other rules of practice and procedure (except for revisions relating to minor sources). Finally, for purposes of the 1997 8-hour ozone NAAQS, EPA also is proposing to approve the portions of the SIP revision submitted on June 24, 2010 to include nitrogen oxides (NO_X) as an ozone precursor in Oklahoma's PSD SIP. This action is being taken under section 110 and parts C and D of the Act.

DATES: Written comments must be received on or before October 18, 2010.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0314, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2007–0314. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), 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 or Mr. Bill Deese at 214–665–7253 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 cent 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 submittal is also available for public inspection during official business hours, by appointment, at the Oklahoma Department of Environmental Quality, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6645; fax number (214) 665–7263; e-mail address *young.carl@epa.gov.* For further information regarding PSD or NNSR, contact: Rick Barrett or Dinesh Senghani, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7227 or (214) 665–7221; fax number (214) 665–7263; e-mail address *barrett.richard@epa.gov* or *senghani.dinesh@epa.gov.*

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

Outline

I. What action is EPA proposing to take?

A. Oklahoma Demonstration of Adequate Provisions Prohibiting Emissions That Interfere With Prevention of Significant Deterioration Measures in Other States

We are proposing to approve a submission from the State of Oklahoma demonstrating that the State has adequately addressed one of the required elements of the CAA section 110(a)(2)(D)(i), the element that requires that the State Implementation Plan prohibit air pollutant emissions from sources within a State from interfering

with measures required to prevent significant deterioration of air quality in any other State. We are proposing to determine that emissions from sources in Oklahoma do not interfere with measures to prevent significant deterioration of air quality in any other State for the 1997 8-hour ozone NAAQS or of the 1997 $PM_{2.5}$ NAAQS (CAA section 110(a)(2)(D)(i)(II)). In this action, we are not addressing the elements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, that pertain to prohibiting air pollutant emissions from within Oklahoma from: (1) Significantly contributing to nonattainment in any other State, (2) interfering with maintenance of the relevant NAAQS in any other State and (3) interfering with measures required to protect visibility in any other State. These will be addressed in future rulemakings.[1]

In conjunction with our proposed finding that emissions from sources in Oklahoma are not interfering with any other State's PSD program, we are proposing to approve: (1) The portion of the SIP revision submitted by the State on February 14, 2002 related to PSD for major stationary sources and major modifications; and (2) the portion of the SIP revision submitted June 24, 2010 addressing NO_X as an ozone precursor for PSD. We are proposing to approve these portions of the two SIP revision submittals as revisions to the Oklahoma PSD SIP.

EPA proposes to approve the foregoing revisions relevant to section 110(a)(2)(D)(i) pursuant to section 110 and part C of the Act.

B. Oklahoma SIP Revisions Submitted on February 14, 2002 and June 24, 2010

1. February 14, 2002 Submittal

In addition to proposing to approve the portion of the SIP revision submitted on February 14, 2002 that relates to PSD as a revision to the Oklahoma PSD SIP, we also are proposing to approve the portions that relate to: (1) NNSR permitting requirements for major stationary sources and major modifications as a revision to the Oklahoma NNSR SIP; (2) source registration and emissions reporting as part of the Oklahoma Major NSR SIP and (3) other rules of practice and procedure as part of the Oklahoma Major NSR SIP. We are proposing to approve (2) and (3) as meeting the PSD and NNSR SIP requirements. We are not acting upon the SIP revision submittal for Minor NSR SIP purposes, only for Major NSR SIP purposes. We will take separate action later in the **Federal Register** on the submittal with regard to the Minor NSR SIP requirements.

The submitted revision affects Title 252 of the Oklahoma Administrative Code (OAC 252). the official compilation of agency rules and executive orders for the State of Oklahoma. The majority of the revisions are administrative in nature, stemming from the State's initiative to repeal or otherwise modify redundant or incorrect language within the OAC. The variety of revisions includes recodified portions of the Oklahoma SIP, deletions of duplicative and outdated rules, and edits that simplify text and correct errors.

The revisions submitted in 2002 proposed for approval are discussed in more detail in the Technical Support Document (TSD) found in the electronic docket for this action. The electronic docket can be found at the Web site *http://www.regulations.gov* (docket number EPA–R06–OAR–2007–0314).

2. June 24, 2010 Submittal

In addition, we are proposing to approve only the portion of the SIP revision submitted by Oklahoma on June 24, 2010 to regulate NO_X emissions as a precursor to ozone in its PSD program for major sources. We are only acting on the June 24, 2010 submittal as it relates to NO_X as an ozone precursor. We will take separate action on the remainder of the June 24, 2010 submittal in a future **Federal Register** notice.

II. What is a SIP?

Section 110(a) of the Clean Air Act (CAA) requires each State to develop a plan that provides for the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). EPA establishes NAAQS under section 109 of the CAA. Currently, the NAAQS address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

The plan developed by a State is referred to as the State implementation plan (SIP).

The content of the SIP is specified in section 110 of the CAA, other provisions of the CAA, and applicable regulations. SIPs can be extensive, containing State regulations or other enforceable measures and various types of supporting information, such as emissions inventories, monitoring networks, and modeling demonstrations.

A primary purpose of the SIP is to provide the air pollution regulations, control strategies, and other means or techniques developed by the State to ensure that the ambient air within that State meets the NAAQS. However, another important aspect of the SIP is to ensure that emissions from within the State do not have certain prohibited impacts upon the ambient air in other States through interstate transport of pollutants. This SIP requirement is specified in section 110(a)(2)(D) of the CAA. Pursuant to that provision, each State's SIP must contain provisions adequate to prevent, among other things, emissions that interfere with measures required to be included in the SIP of any other State to prevent significant deterioration of air quality in any other State.

States are required to update or revise SIPs under certain circumstances. One such circumstance is EPA's promulgation of a new or revised NAAQS. Each State must submit these revisions to EPA for approval and incorporation into the Federally-enforceable SIP.

III. What is the background for this proposed action?

On July 18, 1997, EPA promulgated new NAAQS for 8-hour ozone and for fine particulate matter ($PM_{2.5}$). This action is being taken in response to the promulgation of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. This action does not address the requirements for the 2006 $PM_{2.5}$ NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in later actions.

Section 110(a)(1) of the CAA requires States to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to States for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards.

[1] In a separate action we have proposed to limit the interstate transport of NO_X emissions from Oklahoma that affect the ability of downwind States to attain and maintain compliance with the 1997 ozone NAAQS pursuant to CAA 110(a)(2)(D)(i)(I) (75 FR 45210, August 2, 2010).

As identified in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other States; (2) interfere with maintenance of the NAAQS in other States; (3) interfere with provisions to prevent significant deterioration of air quality in other States; or (4) interfere with efforts to protect visibility in other States.

On May 1, 2007, we received a SIP revision from the State of Oklahoma intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards. In this rulemaking we are addressing only the requirement that pertains to preventing sources in Oklahoma from emitting pollutants that will interfere with measures required to prevent significant deterioration of air quality in other States. In its submission, the State of Oklahoma stated that its New Source Review program for major sources satisfies this requirement. With this submission, the State would meet the requirement as contemplated in the 2006 Guidance for SIP submissions to meet the third element of CAA 110(a)(2)(D)(i).

On February 14, 2002 and June 24, 2010, the State of Oklahoma also submitted revisions to its SIP regulations to EPA. The 2002 revisions require certain stationary sources of air pollution to report annual emissions (an emissions inventory) to the State by March 1 of each year, with the provision for an extension of up to 60 days. The revisions also incorporate requirements of the Oklahoma Uniform Environmental Permitting Act (UEPA), which requires that the Oklahoma Department of Environmental Quality fit licenses, permits, certificates, approvals and registrations into a category, or Tier, established under the uniform environmental permitting rules. The UEPA was created to streamline the permitting process and is located in Oklahoma Statute Title 27A Environment and Natural Resources, Chapter 2 Oklahoma Environmental Quality Code, Sections 1 through 12. We previously approved portions of the February 14, 2002 submittal, (73 FR 79400, December 29, 2008), but did not act on other portions.

The June 24, 2010 submittal included revisions to the Oklahoma PSD regulations necessary to address NO_X as a precursor for the 1997 8-hour ozone NAAQS (PSD Requirements for Attainment Areas, OAC 252:100–8). These revisions are discussed below. The June 24, 2010 submittal also included revisions to Subchapter 8 in OAC 252:100 (Permits for Part 70 Sources), which are severable from the NO_X requirements addressed in this proposed action. As we are still reviewing the approvability of these other revisions, we are not proposing to take action on them in this proposed rulemaking. We intend to act on these other revisions in a future rulemaking.

IV. What is EPA's evaluation of the State's submissions?

A. Interference With PSD Measures in Other States

The third element of section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other State's required measures to prevent significant deterioration of its air quality. EPA's 2006 Guidance made recommendations for SIP submissions to meet this requirement with respect to both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.

EPA believes that Oklahoma's submission is consistent with the 2006 Guidance, when considered in conjunction with other PSD program revisions that EPA is proposing to approve in this action. The State's submittal states that Oklahoma's New Source Review (NSR) program for major sources prohibits any source or other type of emission activity within the State from emitting any air pollutant in amounts which will interfere with measures required to be included in the applicable implementation plan of any other State to prevent significant deterioration of air quality. Oklahoma's regulations for its PSD program were approved by EPA and made part of the SIP on August 25, 1983 (48 FR 38636).[2] Oklahoma's requirement to demonstrate that an emissions increase would not interfere with another State's PSD measures (OAC 252:100–8–35(a)(1)) was previously approved by EPA as Section 1.4.4(f) of Oklahoma Regulation 1.4 (see the table at 40 CFR 52.1920(c)). Oklahoma submitted OAC 252:100–35 as a SIP revision on February 14, 2002. The revision recodified the regulation. The 2002 submittal is further discussed below and in the TSD for this action. Oklahoma submitted further revisions to its PSD program regulations on June 24, 2010 as discussed below.

Consistent with EPA's November 29, 2005, Phase 2 rule for the 1997 8-hour ozone NAAQS (70 FR 71612), the State submitted a SIP revision on June 24, 2010, to modify its PSD program to address NO_X as an ozone precursor (OAC 252:100–8). These revisions are further discussed below. EPA believes that the PSD revision for the 1997 8-hour ozone NAAQS that makes NO_X an ozone precursor for PSD purposes, taken together with the PSD SIP, the proposed revisions to the PSD SIP and the interstate transport SIP, satisfies the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS, i.e., there will be no interference with any other State's required PSD measures because the Oklahoma SIP as proposed for approval meets current CAA requirements.

For the $PM_{2.5}$ NAAQS, Oklahoma stated in its section 110(a)(2)(D)(i) submission that its NSR program includes an interim PSD permitting program for $PM_{2.5}$. On July 29, 2010 the Oklahoma Department of Environmental Quality sent a letter to EPA and stated that they would implement the $PM_{2.5}$ NAAQS consistent with Federal case law, and EPA Administrator petition decisions. ODEQ further stated that: (1) They will not proceed on the general presumption that PM_{10} is always a reasonable surrogate for $PM_{2.5}$, (2) for any permit application in which the applicant is seeking to rely on the Surrogate Policy, they will include in the permit record an adequate rationale or demonstration to support the use of PM_{10} as a surrogate based on the facts and circumstances of the specific permit, (3) the permit record will include an explanation of how the impacts from the proposed source construction/modification on the $PM_{2.5}$ levels were determined, and (4) they will be mindful of the limits provided in the policy itself, such as the need to identify the technical difficulties that justify the application of the policy in each specific case. The ODEQ letter is included in the electronic docket for this action. With these clarifications, EPA believes that Oklahoma's approach to $PM_{2.5}$ permitting is appropriate.

On the basis of the analysis presented above EPA is proposing to determine that the Oklahoma SIP as revised with respect to PSD program requirements, satisfactorily addresses the requirement of CAA section 110(a)(2)(D)(i)(II) that emissions from Oklahoma sources do not interfere with PSD measures in

[2] The New Source Review regulations in the Oklahoma SIP are found in: (1) OAC 252:100–8, Part 7, (PSD Requirements for Attainment Areas) and (2) OAC 252:100–8, Part 9, (Major Sources Affecting Nonattainment Areas). There are currently no nonattainment areas in Oklahoma.

other any other State for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS.

B. Oklahoma SIP Revisions Submitted on February 14, 2002

As discussed above, the SIP revision submitted by Oklahoma on February 14, 2002 includes revisions that are administrative in nature and incorporate requirements of the Oklahoma Uniform Environmental Permitting Act.

Portions of the February 14, 2002, submittal already have been approved by EPA on December 29, 2008 (73 FR 79400). In that action, we identified the portions of the submittal for which we took no action: Chapter 4 (Rules of Practice and Procedure): Subchapters 1 (General Procedures), Subchapter 7 (Environmental Permit Process), and Appendix C (Permitting Process Summary); Chapter 100 (Air Pollution Control): Subchapter 5 (Registration, Emission Inventory and Annual Operating Fees), Subchapter 7 (Permits for Minor Sources), Subchapter 8 (Permits for Part 70 Sources), and Subchapter 9 (Excess Emissions Reporting Requirements). We noted we would take action on these sections in separate rulemakings. On July 16, 2010 the State submitted a letter to EPA withdrawing their 2002 submittal for Subchapter 9 (Excess Emissions Reporting Requirements).

We are proposing to approve the provisions of this 2002 SIP revision submittal as part of the Oklahoma major NSR SIP. We have reviewed the revisions being proposed for approval and believe they are consistent with the applicable requirements of the CAA for major NSR. Our evaluation of these revisions is discussed in more detail in the TSD found in the electronic docket for this action. The electronic docket can be found at the Web site *http://www.regulations.gov* (docket number EPA–R06–OAR–2007–0314).

The revisions also require certain stationary sources of air pollution to report annual emissions (an emissions inventory) to the State by March 1 of each year, with the provision for an extension of up to 60 days (OAC 252:100–5–2.1). The revisions requiring reporting of emissions from stationary sources is consistent with our Air Emissions Reporting Requirements (40 CFR 51, Subpart A), which calls for States to report emissions from stationary sources.

The provisions submitted by the State that we are proposing to approve as part of the Oklahoma Major NSR SIP are the following:

- Chapter 4 (Rules of Practice and Procedure): Subchapter 1 (General Provisions).
- Chapter 4, Subchapter 7 (Environmental Permit Process), Part 1 (The Process) and Part 3 (Air Quality Division Tiers and Time Lines).
- Chapter 4, Appendix C (Permitting Process Summary).
- Chapter 100: Subchapter 5 (Registration, Emission Inventory and Annual Operating Fees).[3]
- Chapter 100: Subchapter 8 (Permits for Part 70 Sources), Part 1 (General Provisions).
- Chapter 100: Subchapter 8, Part 5 (Permits for Part 70 Sources).
- Chapter 100: Subchapter 8, Part 7 (Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas).
- Chapter 100: Subchapter 8, Part 9 (Major Sources Affecting Nonattainment Areas).

Thus EPA is proposing approval of these provisions as meeting the requirements of section 110 and parts C and D of the Act for a major NSR SIP.

At this time we are not taking action on any portion of the February 14, 2002 revision that pertains to minor new source review. The minor new source review submitted provisions are severable from the major NSR requirements and are severable from the transport SIP requirements addressed in this action. We intend to act on these provisions in a future rulemaking.

C. Oklahoma PSD SIP Revisions Submitted on June 24, 2010

The Oklahoma Department of Environmental Quality made a SIP revision submitted on June 24, 2010 to meet the requirements of the 8-hour NAAQS by including revisions to regulate NO_X emissions in its PSD permit program as a precursor to ozone. The revisions add:

- NO_X as an ozone precursor in the definition of Regulated NSR pollutant (OAC 252:100–8–31),
- That a major source that is major for NO_X shall be considered major for ozone in the definition of Major stationary source (OAC 252:100–8–31),
- A NO_X emissions rate of 40 tons per year or more in the definition of Significant (OAC 252:100–8–31), and
- That any net emissions increase of 100 tons per year or more of NO_X subject to PSD would require an ambient impact analysis, including the gathering of air quality data (OAC 252:100–8–33).

For the 1997 8-hour ozone NAAQS, the revision to the definition of Regulated NSR pollutant meets the Federal definition in 40 CFR 51.166(b)(49) for NO_X as an ozone precursor. The revision that a major source that is major for NO_X shall be considered major for ozone meets the Federal definition in 40 CFR 51.166(b)(1). The revision to include a NO_X emissions rate of 40 tons per year or more in the definition of "Significant" meets the Federal requirement for significant emission rate for NO_X emissions in 40 CFR 51.166(b)(23)(i). The revision that any net emissions increase of 100 tons per year or more of NO_X subject to PSD would require an ambient impact analysis, including the gathering of air quality data meets the Federal requirement for ambient air impact analysis for ozone precursors under the footnote for 40 CFR 166(i)(5)(i)(e). Thus, EPA is proposing approval of these revisions as meeting the requirements of CAA section 110 and 40 CFR 51.166 for establishing NO_X emissions as a precursor for ozone.

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 proposes to approve 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);

[3] The revisions also require certain stationary sources of air pollution to report annual emissions (an emissions inventory) to the State by March 1 of each year, with the provision for an extension of up to 60 days (OAC 252:100–5–2.1). The revisions requiring reporting of emissions from stationary sources is consistent with our Air Emissions Reporting Requirements (40 CFR 51, Subpart A), which calls for States to report emissions from stationary sources. We are approving this as it applies to major stationary sources and major modifications.

- 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 proposed 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 9, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–23291 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0557; FRL–9202–8]

Approval and Promulgation of State Implementation Plan Revisions; State of North Dakota; Interstate Transport of Pollution for the 1997 $PM_{2.5}$ and 8-hour Ozone NAAQS: "Interference With Maintenance" Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing partial approval of the State Implementation Plan (SIP) revisions called "Interstate Transport of Air Pollution" addressing the "interference with maintenance" requirement of Clean Air Act (CAA) section 110(a)(2)(D)(i) for the 1997 fine particulate matter ($PM_{2.5}$) and 8-hour ozone National Ambient Air Quality Standards (NAAQS). In this action EPA proposes to approve the North Dakota Interstate Transport SIP sections that address the requirements of section 110(a)(2)(D)(i) prohibiting a state's emissions from interfering with maintenance by any other state of the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before October 18, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0557, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *mastrangelo.domenico@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2009–0557. 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 instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6436, *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *North Dakota* and *State* mean the State of North Dakota.

Table of Contents

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking 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 substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone and for $PM_{2.5}$. This action is being taken in response to the promulgation of the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS. This action does not address the requirements for the 2006 24-hour $PM_{2.5}$ or 2008 8-hour ozone NAAQS; those standards will be addressed in later actions.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

On April 6, 2009, EPA received a SIP revision from the State of North Dakota intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards. In this rulemaking, EPA is addressing only the requirements that pertain to preventing sources in North Dakota from emitting pollutants that will interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS by other states. In its submission, the State of North Dakota indicated that its current SIP is adequate to prevent such interference. With this submission, the state intended to meet the recommendations of the 2006 Guidance for SIP submissions to meet the second element of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone standards.

III. What action is EPA proposing?

EPA is proposing partial approval of the North Dakota Interstate Transport of Air Pollution SIP for the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS. The addition to the North Dakota SIP of section 7.8, "Interstate Transport of Air Pollution," was adopted by the State of North Dakota on April 1, 2009 and submitted to EPA on April 6, 2009. EPA is proposing to approve the language and demonstrations of the North Dakota Interstate Transport SIP that address element (2) of section 110(a)(2)(D)(i), *i.e.*, the prohibition of interference with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS by any other state.

IV. What is the State process to submit this material to EPA?

Section 110(k) of the CAA addresses EPA's rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The North Dakota Department of Health (NDDH) held a public hearing on October 7, 2008 for the addition to the North Dakota SIP of the Interstate Transport non-regulatory provisions. The NDDH adopted the provisions on April 1, 2009 and submitted them to EPA on April 6, 2009.

EPA has reviewed the submittal by the NDDH and has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

V. EPA's Review and Technical Information

A. EPA's Evaluation of Interference With Maintenance

The second element of section 110(a)(2)(D)(i) requires that a state's SIP must prohibit any source or other type

of emissions activity in the state from emitting pollutants that would "interfere with maintenance" of the applicable NAAQS by any other state. This term is not defined in the statute. Therefore, EPA has interpreted this term in past regulatory actions, such as the 1998 NO_X SIP Call, in which EPA took action to eliminate emissions of NO_X that significantly contributed to nonattainment, or interfered with maintenance of, the then applicable ozone NAAQS through interstate transport of NO_X and the resulting ozone.[1] The NO_X SIP Call was the mechanism through which EPA evaluated whether or not the NO_X emissions from sources in certain states had such prohibited interstate impacts, and if they had such impacts, required the states to adopt substantive SIP revisions to eliminate the NO_X emissions, whether through participation in a regional cap and trade program or by other means.

After promulgation of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, EPA again recognized that regional transport was a serious concern throughout the eastern U.S. and therefore developed the 2005 Clean Air Interstate Rule (CAIR) to address emissions of SO_2 and NO_X that exacerbate ambient ozone and $PM_{2.5}$ levels in many downwind areas through interstate transport.[2] Within CAIR, EPA likewise interpreted the term "interfere with maintenance" as part of the evaluation of whether or not the emissions of sources in certain states had such impacts on areas that EPA determined would either be in violation of the NAAQS, or would be in jeopardy of violating the NAAQS, in a modeled future year unless action were taken by upwind states to reduce SO_2 and NO_X emissions. Through CAIR, EPA again required states that had such interstate impacts to adopt substantive SIP revisions to eliminate the SO_2 and NO_X emissions, whether through participation in a regional cap and trade program or by other means.

EPA's 2006 Guidance addressed section 110(a)(2)(D)(i) requirements for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. For those states subject to CAIR, EPA indicated that compliance with CAIR would meet the two requirements of section 110(a)(2)(D)(i)(I) for these NAAQS. For states not within the CAIR region, EPA recommended that states evaluate whether or not emissions from their sources would "interfere with maintenance" by other states, following the conceptual approach adopted by EPA in CAIR. After recommending various types of information that could be relevant for the technical analysis to support the SIP submission, such as the amount of emissions and meteorological conditions in the state, EPA further indicated that it would be appropriate for the state to assess impacts of its emissions on other states using considerations comparable to those used by EPA "in evaluating significant contribution to nonattainment in the CAIR."[3] EPA did not make specific recommendations for how states should assess "interference with maintenance" separately, and discussed the first two elements of section 110(a)(2)(D)(i) together without explicitly differentiating between them.

In 2008, however, the U.S. Court of Appeals for the DC Circuit found that CAIR and the related CAIR Federal implementation plans were unlawful.[4] Among other issues, the court held that EPA had not correctly addressed the second element of section 110(a)(2)(D)(i)(I) in CAIR. The court noted that "EPA gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance."[5] EPA's approach, the court reasoned, would leave areas that are "barely meeting attainment" with "no recourse" to address upwind emissions sources.[6] The court therefore concluded that a plain language reading of the statute requires EPA to give independent meaning to the interfere with maintenance requirement of section 110(a)(2)(D) and that the approach used by EPA in CAIR failed to do so.

In addition to affecting CAIR directly, the court's decision in the North Carolina case indirectly affects EPA's recommendations to states in the 2006 Guidance with respect to the interference with maintenance element of section 110(a)(2)(D)(i) because the agency's guidance suggested that states use an approach comparable to that used by EPA in CAIR. States such as North Dakota developed and adopted their Interstate Transport SIP not long after the Court's July 2008 decision, but well before EPA, in the Transport Rule Proposal (see below), was able to propose a new approach for the interference with maintenance element. Without recommendations from EPA, North Dakota's SIP may not have sufficiently differentiated between the significant contribution to nonattainment and interference with maintenance elements of the statute, and relied in a general way on the difference between monitored concentrations and the 1997 8-hour ozone NAAQS to evaluate the impacts of State emissions on maintenance of the NAAQS in neighboring states. EPA believes that it is necessary to evaluate these state submissions for section 110(a)(2)(D)(i)(I) in such a way as to assure that the interfere with maintenance element of the statute is given independent meaning and is appropriately evaluated using the types of information that EPA recommended in the 2006 Guidance. To accomplish this, EPA believes it is necessary to use an updated approach to this issue and to supplement the technical analysis provided by the state in order to evaluate the submissions with respect to the interfere with maintenance element of section 110(a)(2)(D)(i).

EPA has recently proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule Proposal), in order to address the judicial remand of CAIR.[7] As part of the Transport Rule Proposal, EPA specifically reexamined the section 110(a)(2)(D) requirement that emissions from sources in a state must not "interfere with maintenance" of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS by other states. In the proposal, EPA developed an approach to identify areas that it predicts to be close to the level of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in the future, and therefore at risk to become or continue to be nonattainment for these NAAQS unless emissions from sources in other states are appropriately controlled. This approach starts by identifying those specific geographic areas for which further evaluation is appropriate, and differentiates between areas where the concern is with interference with maintenance, rather than with significant contribution to nonattainment.

[1] See, 63 FR 57356 (October 27, 1998). EPA's general approach to section 110(a)(2)(D) was upheld in Michigan v. EPA, 213 F.3d 663 (DC Cir. 2000), cert denied, 532 U.S. 904 (2001). However, EPA's approach to interference with maintenance in the NO_X SIP Call was not explicitly reviewed by the court. See, *North Carolina* v. *EPA*, 531 F.3d 896, 907–09 (DC Cir. 2008).

[2] See, 70 FR 25162 (May 12, 2005).

[3] 2006 Guidance at 5.

[4] *See, North Carolina* v. *EPA*, 531 F.3d 896 (DC Cir. 2008).

[5] Id. at 909.

[6] Id.

[7] *See* "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone," 75 FR 45210 (August 2, 2010).

As described in more detail below, EPA's analysis evaluates data from existing monitors over three overlapping three-year periods (*i.e.*, 2003–2005, 2004–2006, and 2005–2007), as well as air quality modeling data, in order to determine which areas are predicted to be violating the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in 2012, and which areas are predicted potentially to have difficulty with maintaining attainment as of that date. In essence, if an area's projected data for 2012 indicates that it would be violating the NAAQS based on the average of these three overlapping periods, then this monitor location is appropriate for comparison for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D)(i). If, however, an area's projected data indicate that it would be violating the NAAQS based on the highest single period, but not over the average of the three periods, then this monitor location is appropriate for comparison for purposes of the interference with maintenance element of the statute.

By this method, EPA has identified those areas with monitors that are appropriate "maintenance-only sites" or maintenance "receptors" for evaluating whether the emissions from sources in another state could interfere with maintenance in that particular area. EPA then uses other analytical tools to examine the potential impacts of emissions from upwind states on these maintenance receptors in downwind states. EPA believes that this new approach for identifying those areas that are predicted to have maintenance problems is appropriate to evaluate the section 110(a)(2)(D)(i) SIP submission of a state for the interference with maintenance element.[8] EPA's 2006 Guidance did not provide this specific recommendation to states, but in light of the court's decision on CAIR, EPA will itself follow this approach in acting upon the North Dakota submission.

As explained in the 2006 Guidance, EPA does not believe that section 110(a)(2)(D)(i) SIP submissions from all states necessarily need to follow precisely the same analytical approach as CAIR. In the 2006 Guidance, EPA stated that: "EPA believes that the contents of the SIP submission required by section 110(a)(2)(D)(i) may vary depending upon the facts and circumstances related to the specific NAAQS. In particular, the data and analytical tools available at the time the State develops and submits a SIP for a new or revised NAAQS necessarily affects the contents of the required submission."[9] EPA also indicated in the 2006 Guidance that it did not anticipate that sources in states outside the geographic area covered by CAIR were significantly contributing to nonattainment, or interfering with maintenance, in other states.[10] As noted in the Transport Rule Proposal, EPA continues to believe that the more widespread and serious transport problems in the eastern United States are analytically distinct. For the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, EPA believes that nonattainment and maintenance problems in the western United States are relatively local in nature with only limited impacts from interstate transport.[11] In the Transport Rule Proposal, EPA did not calculate interstate ozone or $PM_{2.5}$ contributions to or from western States.

Accordingly, EPA believes that section 110(a)(2)(D)(i) SIP submissions for states not evaluated in the Transport Rule Proposal may be evaluated using a "weight of the evidence" approach that takes into account available relevant information, such as that recommended by EPA in the 2006 Guidance for states outside the area affected by CAIR. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may interfere with maintenance of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in other states. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a given situation.

As a result, in the Transport Rule Proposal, EPA focused its modeling on a domain including eastern states. The Transport Rule Proposal's modeling domain includes all states east of the Rockies, from North Dakota in the north to Texas in the south and eastward, and its analysis results include estimates of North Dakota's contribution to the maintenance-only sites within the Transport Rule Proposal's modeling domain for the 1997 annual $PM_{2.5}$ and 8-hour ozone NAAQS. To reach a comprehensive determination on whether emissions from North Dakota interfere with maintenance of the NAAQS by any other states we use these estimated contributions in combination with other types of information that allow us to assess whether emissions from North Dakota interfere with maintenance of the NAAQS by states outside the Eastern modeling domain.

B. North Dakota Transport SIP

To meet the requirements of section 110(a)(2)(D)(i), the State of North Dakota on April 6, 2009 made a SIP submission to EPA addressing interstate transport for the 1997 $PM_{2.5}$ and the 8-hour ozone NAAQS. EPA has previously approved this submission for purposes of the significant contribution to nonattainment and of the interference with PSD elements of section 110(a)(2)(D)(i).[12] The State's submittal focused primarily on whether emissions from North Dakota sources significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in other states. Following the 2006 Guidance and consistent with EPA's approach in CAIR, North Dakota did not evaluate whether emissions from the State sources interfere with maintenance of these NAAQS by other states separately from significant contribution to nonattainment in other states. Instead, the State presumed that if North Dakota sources were not significantly contributing to violations of the NAAQS in other states, then no further specific evaluation was necessary for purposes of the interference with maintenance element of section 110(a)(2)(D)(i). As explained above, however, CAIR was remanded to EPA, in part because the court found that EPA had failed to give independent meaning to the "interfere with maintenance" requirement, a flaw that EPA has remedied in the Transport Rule Proposal. However, North Dakota submitted its Interstate Transport SIP without the benefit of EPA's new interpretation. We therefore discuss in more detail the approach of the Transport Rule Proposal and apply it to our assessment of whether North Dakota's emissions interfere with maintenance of the relevant NAAQS by any other states.

Below, we discuss in greater detail relevant methods and techniques of the

[8] To begin this analysis, EPA first identifies all monitors projected to be in nonattainment or, based on historic variability in air quality, projected to have maintenance problems in 2012. These maintenance areas are at risk not to stay in attainment because they are so close to the level of the 1997 ozone and $PM_{2.5}$ NAAQS that minor variations in weather or emissions could result in violations of the NAAQS in 2012.

[9] 2006 Guidance at 4.

[10] Id. at 5.

[11] *See*, Transport Rule Proposal, 75 FR 45210, 45277.

[12] *See*, 75 FR 33174 (June 11, 2010).

Transport Rule Proposal, followed by our assessment of whether emissions from North Dakota interfere with maintenance of the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS.

On July 6, 2010, the EPA Administrator signed a proposed rule in response to the judicial remand of CAIR. The Transport Rule Proposal, published August 2, 2010, includes a new approach to determine whether emissions from a state interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS by other states. In this action, EPA is using modeling results from the Transport Rule Proposal to assess whether North Dakota emissions interfere with maintenance of the NAAQS by states included in the proposed rule's modeling domain. We use a comparable approach to assess whether North Dakota interferes with maintenance of the NAAQS by western states, not modeled for ozone or $PM_{2.5}$ contributions from North Dakota.

In the Transport Rule Proposal, EPA projected future concentrations of ozone and $PM_{2.5}$ at monitors to identify areas that are expected to be out of attainment with NAAQS or to have difficulty maintaining compliance with the NAAQS in 2012. These areas are referred to as nonattainment and maintenance receptors respectively. These nonattainment and maintenance receptors are based on projections of future air quality at existing ozone and $PM_{2.5}$ monitoring sites in those locations. EPA then used these sites as the receptors for examining the contributions of emissions from sources located in upwind states to nonattainment and maintenance problems at these monitoring locations.

For ozone, EPA evaluated air quality, or ozone concentrations, relative to the 1997 8-hour ozone NAAQS. The 1997 8-hour ozone NAAQS is set at 0.8 parts per million. The 8-hour ozone standard is met if the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration is less than or equal to 0.08 ppm (i.e., less than 85 ppb based on the rounding convention in 40 CFR part 50 Appendix I). This 3-year average is referred to as the "design value."

For $PM_{2.5}$, EPA evaluated concentrations for both the annual $PM_{2.5}$ NAAQS and the 24-hour $PM_{2.5}$ NAAQS. The 1997 annual $PM_{2.5}$ NAAQS is met when the 3-year average of the annual mean concentration is 15.0 micrograms per cubic meter ($\mu g/m^3$) or less. The 3-year average annual mean concentration is computed at each site by averaging the daily Federal Reference Method (FRM) samples by quarter, averaging these quarterly averages to obtain an annual average, and then averaging the three annual averages to get the design value. The 1997 24-hour $PM_{2.5}$ NAAQS is met when the 3-year average of the annual 98th percentiles is 65 $\mu g/m^3$ or less.[13] The 3-year average mean 98th percentile concentration is computed at each site by averaging the three individual annual 98th percentile values at each site. The 3-year average 98th percentile concentration is referred to as the 24-hour average design value.

To project future ozone and annual $PM_{2.5}$ design values, EPA relies on monitoring data from the Air Quality System (AQS) combined with photochemical air quality modeling results. The Transport Rule Proposal generates the projected future ozone values based on an average of three design value periods which include the years 2003–2007 (*i.e.*, design values for 2003–2005, 2004–2006, and 2005–2007). The average of the three design values creates a "5-year weighted average" value. The 5-year weighted average values were then projected to the future years that were analyzed for the Transport Rule Proposal.[14] EPA used the 5-year weighted average concentrations to project concentrations anticipated in 2012 to determine which monitoring sites are expected to be nonattainment in this future year. EPA also projected 2012 design values based on each of the three year periods (*i.e.*, 2003–2005, 2004–2006, and 2005–2007.) The highest projection, referred to as "maximum design value," gives an indication of potential variability in future projections due to differences in actual meteorology and emissions from what was modeled.

EPA identified those sites that are projected to be attainment based on the 5-year weighted average design value, but that have a maximum design value (based on a single three year period) that exceeds the NAAQS, as maintenance receptors. These sites are attaining the NAAQS based on the projected average design values, but EPA anticipates that there will be more difficulty in maintaining attainment of the NAAQS at these locations if there are adverse variations in meteorology or emissions. These projected maintenance sites are the ones that EPA has used to determine if emissions from North Dakota sources potentially interfere with maintenance of the 1997 8-hour ozone NAAQS and 1997 annual $PM_{2.5}$ NAAQS in other states in this action.

To evaluate ambient impacts from upwind states to maintenance receptors, the Transport Rule Proposal uses a two step approach for measuring each state's significant contribution. In the first step, EPA evaluates through air quality modeling, contributions from individual states to downwind maintenance receptors. States whose contributions to any downwind receptors which are above the "significant contribution" threshold, one percent of the relevant NAAQS, are considered "linked" to those receptors for the purpose of the second step. In the second step, EPA uses maximum cost thresholds, informed by air quality considerations, to determine the portion of each state's contribution that constitutes its "interference with maintenance," or "significant contribution."[15]

EPA Transport Rule Proposal proposed a threshold for "interference with maintenance" at one percent of the NAAQS for both $PM_{2.5}$ and ozone.[16] For the 1997 annual $PM_{2.5}$ EPA proposed in the Transport Rule Proposal a threshold of 0.15 $\mu g/m^3$, without any further rounding up.[17] States contributing less than 0.15 $\mu g/m^3$ to downwind maintenance receptors are below the threshold and as a result are excluded from further analysis. States contributing 0.15 $\mu g/m^3$ or more are above the threshold and are "linked" to the counties in which the affected receptors are located. States with "linkages" to downwind maintenance receptors are included in the analytical process that determines the controls (if any) required for compliance with the "interference with maintenance" element of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ standards.

For the 1997 8-hour ozone standard, EPA Transport Rule Proposal proposed a threshold for "interference with maintenance" at 0.8 ppb, one percent of the NAAQS. State contributions of 0.8 ppb and higher are considered above the threshold, while state contributions less than 0.8 ppb are below the threshold and such states are excluded from further analysis. States contributing significantly, 0.8 ppb or more, to

[13] The 2006 24-hour $PM_{2.5}$ NAAQS, which is not the subject of this action, is met when the 3-year average of the annual 98th percentile $PM_{2.5}$ concentrations is 35 $\mu g/m^3$ or less.

[14] *See*, Transport Rule Proposal, at 45246.

[15] For details, *see*: id., at 45233 et seq., and "Air Quality Modeling Technical Support Document," (AQMTSD) (June 2010), available at Regulations.gov as Document ID No. EPA–HQ–OAR–2009–0491–0047. For greater detail on air quality contributions *see*: "Transport Rule Air Quality Contributions," Document ID No. EPA–HQ–OAR–2009–0491–0060.

[16] Transport Rule Proposal, at 45237.

[17] Note that, differently from CAIR, the Transport Rule decouples the precision of air quality thresholds from the monitoring reporting requirements and uses 2-digit values representing one percent of the NAAQS. Id.

downwind maintenance receptors are considered to be "linked" to the counties in which they are located and are included in the follow-up process that determines the controls (if any) required of such states to satisfy the "interfere with maintenance" element of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standard.[18]

$PM_{2.5}$

In the Transport Rule Proposal, EPA projected future concentrations of $PM_{2.5}$ to identify receptors that are expected to have difficulty maintaining compliance with the NAAQS in 2012, referred to as maintenance-only sites or maintenance receptors. For the 1997 annual $PM_{2.5}$ NAAQS, the Transport Rule Proposal identified 16 maintenance receptors in its modeling domain. The monitors at risk for maintenance are located in seven states, including two in Illinois (Cook County), four in West Virginia, six in Ohio, and one each in Kentucky, New York, Pennsylvania and Texas.[19] To determine the states in the Eastern domain that contribute significantly to maintenance receptors, the Transport Rule models the states' $PM_{2.5}$ contribution to the maintenance receptors in these states. The largest contribution from North Dakota emissions to the maintenance receptors in these states was estimated to be 0.05 $\mu g/m^3$, a level two thirds below the "significant contribution" threshold of 0.15 $\mu g/m^3$.[20] This small contribution excluded North Dakota from the Transport Rule Proposal's follow-up analysis for the states that contributed significantly and were "linked" to at least one of the monitors at risk for maintenance of the NAAQS.[21]

To assist in the evaluation of whether emissions from a state's sources interfere with maintenance of the NAAQS in western states, EPA has developed, independent of the Transport Rule Proposal, a modeling analysis identifying monitors at risk for maintenance of the NAAQS within a modeling domain that includes the western states. The analysis presented in the memo, "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States" (Western States Design Values), uses model results from the Transport Rule Proposal modeling Continental U.S. 36 km grid, which is coarser than the 12 km grid used in the Transport Rule, but does not necessarily yield less reliable results.[22]

EPA's modeling analysis of western states to identify monitors at risk for maintenance of the 1997 annual $PM_{2.5}$ NAAQS identifies only two such maintenance-only receptors, in Los Angeles and Orange Counties, California. These monitors are at least 1,100 miles from North Dakota's closest area (the State's southwestern corner,)[23] and mountain ranges between North Dakota and the southern California maintenance receptors, such as the Rocky Mountains, Wasatch and the Sierra Nevada, present large obstacles to $PM_{2.5}$ transport from North Dakota to the two maintenance receptors in Los Angeles and Orange Counties. In addition, west of the Continental Divide the prevailing winds generally move from south-westerly, westerly, or north-westerly directions, as indicated by the typical movement of weather systems. Thus, geography, topography and meteorology of the region that encompasses North Dakota and California make it unlikely for $PM_{2.5}$ emissions and/or its precursors to contribute significantly to California's maintenance receptors, and thus interfere with maintenance of the annual $PM_{2.5}$ 1997 NAAQS at these receptors.

It must also be noted that there are no maintenance receptors in any of the western states adjacent, or relatively close, to North Dakota, such as Montana, Idaho, Wyoming, and Utah. In fact, 2012 projected design values for the annual $PM_{2.5}$ peaked in Utah, Montana and Idaho at concentrations below 12 $\mu g/m^3$, and in Wyoming at concentrations below 10 $\mu g/m^3$.[24]

Turning to the 1997 24-hour $PM_{2.5}$ NAAQS, in the Transport Rule Proposal EPA did not evaluate nonattainment receptors because there were no violations of these standards in portions of the U.S. covered by the 12 km grid, which includes the 37 states east of the Rockies.[25] In fact, based on recent monitoring data (2007–2009 design values that are under final EPA review), the highest 24-hour $PM_{2.5}$ design value in 47 of the 48 states of the continental U.S. (not including California) is 50 $\mu g/m^3$, which is well below the level of the 1997 24-hour $PM_{2.5}$ NAAQS of 65 $\mu g/m^3$.[26] Therefore, outside of California, there are no areas that we would expect to have difficulty in maintaining the 1997 24-hour $PM_{2.5}$ NAAQS. In California, the most recent (2009) 24-hour $PM_{2.5}$ design values show that the only monitors that might be at risk for maintenance of the 1997 24-hour $PM_{2.5}$ NAAQS are in Turlock, Fresno, and Bakersfield, in the northern, central and southern sections of the San Joaquin Valley.[27] The high mountain ranges on three sides of the Valley's boundaries (Coast Mountain with 5,000 feet peaks on the west, Sierra Nevada range with 14,000 feet peaks on the east, and Tehachapi Mountains with 6,000 feet along the southern boundary) are an obstacle to transport of $PM_{2.5}$ and its precursors into the valley. As noted earlier in our discussion of the impacts from North Dakota emissions on annual $PM_{2.5}$ concentrations, and in this case too, the geography (nearly 1,200 miles distance), topography (high mountain ranges between North Dakota and California), and meteorology (southwesterly or westerly directions of prevailing winds) make it highly unlikely that emissions from North Dakota contribute significantly to the San Joaquin Valley monitors at risk for maintenance of the 24-hour $PM_{2.5}$ NAAQS.

In conclusion, our analysis indicates that emissions of $PM_{2.5}$ and/or its precursors from the sources in North Dakota are unlikely to interfere with maintenance of the 24-hour and the annual $PM_{2.5}$ NAAQS by any other states.

8-Hour Ozone

In the Transport Rule Proposal, EPA projected future concentrations of ozone to identify receptors, referred to as maintenance receptors, that are expected to have difficulty maintaining compliance with the 1997 8-hour ozone NAAQS in 2012. To determine states that impact maintenance-only sites, in the Transport Rule Proposal EPA models the states' ozone contribution to these receptors. For the 8-hour ozone NAAQS, EPA identified 16 maintenance

[18] Id.

[19] Table IV.C–8, id., at 45248.

[20] Table IV.C–13, id., at 45255.

[21] For "linkages" between states and maintenance-only sites see Table IV.C–15, id., at 45259–60.

[22] EPA's August 23, 2010 memo, "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States," at 5.

[23] This distance is estimated on a straight path from North Dakota's southwestern corner to Los Angeles. Any emissions from North Dakota sources reaching the Los Angeles and Orange Counties would travel a longer distance because the sources would be farther east and/or north than the State's southwestern corner, and because long range transport air parcel pathways rarely follow a straight path.

[24] Western States Design Values (August 23, 2010) at 9–11.

[25] EPA did not model projections for the 24-hour $PM_{2.5}$ NAAQS in the 36 km grid modeling domain. For the states included in the Eastern domain see Table IV.C–13, Transport Rule Proposal, at 45255.

[26] Data undergoing review from EPA's Air Quality System, which is EPA's repository of ambient air quality data. (*See http://www.epa.gov/ttn/airs/airsaqs/*).

[27] The AQS preliminary design value data shows that in 2009 design values at monitors in these locations ranged from 60 $\mu g/m^3$ in Fresno and Turlock, to 70 $\mu g/m^3$ in Bakersfield.

receptors in its modeling domain. The monitors at risk for maintenance are located in a handful of states, including eight monitors in Texas, four in Connecticut, two in Georgia, and one each in New York and Pennsylvania.[28] The largest contribution from North Dakota emissions to the 16 maintenance receptors in these states was estimated to be 0.0 ppb, resulting in the exclusion of the State's emissions from further analysis, and in the conclusion that North Dakota emissions do not interfere with maintenance of the 1997 8-hour ozone NAAQS by any states in the eastern U.S.A.

As noted earlier, EPA has also developed a modeling analysis identifying maintenance receptors within a modeling domain that includes the western states.[29] In the western states EPA identified only four monitors at risk for maintenance of the 1997 8-hour ozone NAAQS, and all four are in California, in Mercer, Placer, Riverside, and Sacramento Counties. Geography and topography are not favorable to ozone transport from North Dakota, which is approximately 1200 miles northeast of the counties referenced above. In the absence of significant northeasterly regional transport winds, mountain ranges between North Dakota and the California maintenance receptors, such as the Rocky Mountains, the Wasatch and the Sierra Nevada, present serious obstacles to ozone transport from North Dakota to California. Thus, geography and topography reduce the likelihood of transport from North Dakota to California's maintenance receptors.

Prevailing wind orientation in fact strongly supports the conclusion that emissions from North Dakota sources are unlikely to interfere with maintenance of the 1997 8-hour ozone standard in California. West of the Continental Divide the prevailing winds generally move from south-westerly, westerly, or north-westerly directions, as indicated by the typical movement of weather systems. To further evaluate the direction of regional transport winds affecting the California maintenance receptors, EPA Region 8 has plotted back trajectories starting at each maintenance receptor on high ozone days. High ozone days include the top one third of the exceedance days (for the 1997 8-hour ozone NAAQS) registered at each monitor in 2005 and 2006. As shown by the trajectories mapped for all four maintenance receptors in Figure 3.1, Appendix A of EPA's supporting documentation, on high ozone days air parcels converge on the Mercer, Placer, Sacramento and Riverside monitors from the northwest, south and southeast, but there are no pathways from the east/northeast directions reaching even as far as the eastern Nevada border, let alone North Dakota.

For a large number of receptors in western states, EPA's modeling analysis could not calculate 2012 projected design values because these receptors did not have at least 5 days with base year concentrations equal to or greater than 70 ppb, as required by EPA's modeling guidance. However, the observed maximum design values at these sites in the 2003–2007 period were generally well below the 1997 ozone NAAQS. The highest (non-California[30]) site had a maximum design value of 77 ppb. Additionally, the 2012 modeling results at western monitors (where a future year design value could be estimated,) shows a downward trend in ozone. There are no areas in the West where ozone is predicted to be higher in 2012 (without CAIR) compared to 2005. On these bases it is plausible to conclude that it is highly unlikely, but not impossible, for these monitors to be at risk for maintenance of the 1997 8-hour ozone NAAQS.

In conclusion, data and weight of evidence analysis presented in this section support the position of the North Dakota Interstate Transport SIP (adopted into the State SIP on April 1, 2009 and submitted to EPA April 6, 2009) that emissions from North Dakota do not interfere with maintenance of the 1997 8-hour ozone NAAQS by any other state, consistent with the requirements of element (2) of CAA section 110(a)(2)(D)(i).

VI. Proposed Action

EPA is proposing partial approval of the addition to the North Dakota SIP of the "Interstate Transport of Air Pollution" SIP addressing the requirements of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing approval of the language in Section 7.8.1, subsection B., "Nonattainment and Maintenance Area Impact," that specifically addresses element (2) of section 110(a)(2)(D)(i), the requirement that the SIP contain adequate provisions prohibiting emissions from North Dakota from interfering with maintenance of the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS by any other state. The language in Section 7.8.1, subsection B., that addresses element (1) of section 110(a)(2)(D)(i) was approved by EPA in a June 3, 2010 Federal Register action.

VII. Statutory and Executive Order Review

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 2835, 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

[28] Table IV.C–12, Transport Rule Proposal, at 45252–53

[29] Western States Design Values (August 23, 2010).

[30] We are excluding the California monitors from this portion of our analysis because above we have already demonstrated that North Dakota's emissions are unlikely to interfere with maintenance at the modeled California maintenance monitors in the northern, central and southern sections of the state. The factors we considered—distance, topography, and wind orientation—apply equally to the un-modeled monitors and make it plausible to conclude that the same demonstration is true for North Dakota emissions' impact on California non-modeled monitors.

• 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: September 9, 2010.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2010–23292 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1035; FRL–9202–7]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 8-hour Ozone NAAQS: "Interference With Maintenance" Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve the "State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act section 110(a)(2)(D)(i)(I)—Interstate Transport Regarding the 1997 8-Hour Ozone Standard" addressing the "interference with maintenance" requirement of section 110(a)(2)(D)(i)(I). On June 18, 2009 the State of Colorado submitted an interstate transport State Implementation Plan (SIP) addressing the interstate transport requirements under section 110(a)(2)(D)(i) of the Clean Air Act (CAA). In this action, EPA is proposing to approve the Colorado Interstate Transport SIP provisions that address the section 110(a)(2)(D)(i)(I) requirement prohibiting a state's emissions from interfering with maintenance of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by any other state. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before October 18, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–1035, by one of the following methods:

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

• *E-mail: mastrangelo.domenico@epa.gov*

• *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2007–1035. 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 instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6436, *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *Colorado* and *State* mean the State of Colorado.

Table of Contents

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

Identify the rulemaking 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 substitute language for your requested changes.

Describe any assumptions and provide any technical information and/or data that you used.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

Provide specific examples to illustrate your concerns, and suggest alternatives.

Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone and for fine particulate matter ($PM_{2.5}$). This action is being taken in response to the promulgation of the 1997 8-hour ozone NAAQS. This action does not address the requirements for the 1997 or 2006 $PM_{2.5}$, or the 2008 8-hour ozone NAAQS; those standards will be addressed in later actions.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

On June 18, 2009, EPA received a SIP revision from the State of Colorado intended to address the requirements of section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone standards. In this rulemaking, EPA is addressing only the requirements that pertain to preventing sources in Colorado from emitting pollutants that will interfere with maintenance of the 1997 8-hour ozone NAAQS by other states. In its submission, the State of Colorado indicated that its current SIP is adequate to prevent such interference. With this submission, the state intended to meet the recommendations of the 2006 Guidance for SIP submissions to meet the second element of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standard.

III. What action is EPA proposing?

EPA is proposing approval of a portion of the Colorado Interstate Transport of Air Pollution SIP addressing the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone NAAQS. On December 30, 2008, the Colorado Air Quality Control Commission (AQCC) adopted the "State of Colorado Implementation Plan to Meet the Requirements of the Clean Air Act Section 110(a)(2)(d)(i)(I)—Interstate Transport Regarding the 1997 8-Hour Ozone Standard" (Colorado Interstate Transport SIP). Colorado submitted this SIP revision to EPA on June 18, 2009. In this **Federal Register** action EPA is proposing to approve only the language and demonstration that, in this SIP revision, address the requirements of element (2), i.e., the prohibition of interference with maintenance of the 1997 8-hour ozone NAAQS by any other state.

IV. What is the State process to submit these materials to EPA?

Section 110(k) of the CAA addresses EPA's rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The Colorado AQCC held in early December 2008 a public hearing for the Colorado Interstate Transport SIP revision, adopted it on December 30, 2008, and the State submitted it to EPA on June 18, 2009.

On November 18, 2009, the AQCC provided EPA with an exact color duplicate of the SIP adopted by the AQCC on December 30, 2008 and included in the June 18, 2009 submittal to EPA. In the original submittal, AQCC provided a black and white copy. The SIP's color duplicate, available for review as part of the Docket, makes it easier to understand modeling results reported in several graphs that are part of the SIP technical demonstration.

EPA has reviewed the submittal from the State of Colorado and has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

V. EPA's Review and Technical Information

A. EPA's Evaluation of Interference With Maintenance

The second element of section 110(a)(2)(D)(i) requires that a state's SIP must prohibit any source or other type of emissions activity in the state from

emitting pollutants that would "interfere with maintenance" of the applicable NAAQS by any other state. This term is not defined in the statute. Therefore, EPA has interpreted this term in past regulatory actions, such as the 1998 NO_X SIP Call, in which EPA took action to eliminate emissions of NO_X that significantly contributed to nonattainment, or interfered with maintenance of, the then applicable ozone NAAQS through interstate transport of NO_X and the resulting ozone.[1] The NO_X SIP Call was the mechanism through which EPA evaluated whether or not the NO_X emissions from sources in certain states had such prohibited interstate impacts, and if they had such impacts, required the states to adopt substantive SIP revisions to eliminate the NO_X emissions, whether through participation in a regional cap and trade program or by other means.

After promulgation of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, EPA again recognized that regional transport was a serious concern throughout the eastern U.S. and therefore developed the 2005 Clean Air Interstate Rule (CAIR) to address emissions of SO_2 and NO_X that exacerbate ambient ozone and $PM_{2.5}$ levels in many downwind areas through interstate transport.[2] Within CAIR, EPA likewise interpreted the term "interfere with maintenance" as part of the evaluation of whether or not the emissions of sources in certain states had such impacts on areas that EPA determined would either be in violation of the NAAQS, or would be in jeopardy of violating the NAAQS, in a modeled future year unless action were taken by upwind states to reduce SO_2 and NO_X emissions. Through CAIR, EPA again required states that had such interstate impacts to adopt substantive SIP revisions to eliminate the SO_2 and NO_X emissions, whether through participation in a regional cap and trade program or by other means.

EPA's 2006 Guidance addressed section 110(a)(2)(D) requirements for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. For those states subject to CAIR, EPA indicated that compliance with CAIR would meet the two requirements of section 110(a)(2)(D)(i)(I) for these NAAQS. For states not within the CAIR region, EPA recommended that states evaluate whether or not emissions from their sources would "interfere with maintenance" in other states, following the conceptual approach adopted by EPA in CAIR. After recommending various types of information that could be relevant for the technical analysis to support the SIP submission, such as the amount of emissions and meteorological conditions in the state, EPA further indicated that it would be appropriate for the state to assess impacts of its emissions on other states using considerations comparable to those used by EPA "in evaluating significant contribution to nonattainment in the CAIR."[3] EPA did not make specific recommendations for how states should assess "interfere with maintenance" separately, and discussed the first two elements of section 110(a)(2)(D) together without explicitly differentiating between them.

In 2008, however, the U.S. Court of Appeals for the DC Circuit found that CAIR and the related CAIR federal implementation plans were unlawful.[4] Among other issues, the court held that EPA had not correctly addressed the second element of section 110(a)(2)(D)(i)(I) in CAIR. The court noted that "EPA gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance."[5] EPA's approach, the court reasoned, would leave areas that are "barely meeting attainment" with "no recourse" to address upwind emissions sources.[6] The court therefore concluded that a plain language reading of the statute requires EPA to give independent meaning to the interfere with maintenance requirement of section 110(a)(2)(D) and that the approach used by EPA in CAIR failed to do so.

In addition to affecting CAIR directly, the court's decision in the North Carolina case indirectly affects EPA's recommendations to states in the 2006 Guidance with respect to the interfere with maintenance element of section 110(a)(2)(D)(i)(I) because the agency's guidance suggested that states use an approach comparable to that used by EPA in CAIR. States such as Colorado developed and adopted their Interstate Transport SIPs not long after the Court's July 2008 decision, but well before EPA, in the Transport Rule Proposal (see below), was able to propose a new approach for the interference with maintenance element. Without recommendations from EPA, Colorado's SIP may not have sufficiently differentiated between the significant contribution to nonattainment and interference with maintenance elements of the statute, and relied in a general way on the difference between monitored concentrations and the 1997 8-hour ozone NAAQS to evaluate the impacts of State emissions on maintenance of the NAAQS in neighboring states. EPA believes that it is necessary to evaluate these state submissions for section 110(a)(2)(D)(i)(I) in such a way as to assure that the interfere with maintenance element of the statute is given independent meaning and is appropriately evaluated using the types of information that EPA recommended in the 2006 Guidance. To accomplish this, EPA believes it is necessary to use an updated approach to this issue and to supplement the technical analysis provided by the state in order to evaluate the submissions with respect to the interfere with maintenance element of section 110(a)(2)(D)(i).

EPA has recently proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule Proposal), in order to address the judicial remand of CAIR.[7] As part of the Transport Rule Proposal, EPA specifically reexamined the section 110(a)(2)(D)(i) requirement that emissions from sources in a state must not "interfere with maintenance" of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS by other states. In the proposal, EPA developed an approach to identify areas that it predicts to be close to the level of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in the future, and therefore at risk to become or continue to be nonattainment for these NAAQS unless emissions from sources in other states are appropriately controlled. This approach starts by identifying those specific geographic

[1] *See*, 63 FR 57356 (October 27, 1998). EPA's general approach to section 110(a)(2)(D) was upheld in *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000), cert denied, 532 U.S. 904 (2001). However, EPA's approach to interference with maintenance in the NO_X SIP Call was not explicitly reviewed by the court. *See*, *North Carolina* v. *EPA*, 531 F.3d 896, 907–09 (D.C. Cir. 2008). Continued

[2] *See*, 70 FR 25162 (May 12, 2005).

[3] Memorandum from William T. Harnett entitled, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," Aug. 15, 2006, p. 5. ("2006 Guidance"). Available for review in EPA's September 15, 2010 docket document entitled: "Relevant Guidance and Supporting Documentation for the Proposed Rulemaking **Federal Register** Action Docket ID # EPA–R08–OAR–2007–1035."

[4] *See*, *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008).

[5] *Id.* at 909.

[6] *Id.*

[7] *See* "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone." 75 FR 45210 (August 2, 2010).

areas for which further evaluation is appropriate, and differentiates between areas where the concern is with interference with maintenance, rather than with significant contribution to nonattainment.

As described in more detail below, EPA's analysis evaluates data from existing monitors over three overlapping three year periods (i.e., 2003–2005, 2004–2006, and 2005–2007), as well as air quality modeling data, in order to determine which areas are predicted to be violating the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in 2012, and which areas are predicted potentially to have difficulty with maintaining attainment as of that date. In essence, if an area's projected data for 2012 indicates that it would be violating the NAAQS based on the average of these three overlapping periods, then this monitor location is appropriate for comparison for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D)(i). If, however, an area's projected data indicate that it would be violating the NAAQS based on the highest single period, but not over the average of the three periods, then this monitor location is appropriate for comparison for purposes of the interfere with maintenance element of the statute.

By this method, EPA has identified those areas with monitors that are appropriate "maintenance sites" or maintenance "receptors" for evaluating whether the emissions from sources in another state could interfere with maintenance in that particular area. EPA then uses other analytical tools to examine the potential impacts of emissions from upwind states on these maintenance receptors in downwind states. EPA believes that this new approach for identifying those areas that are predicted to have maintenance problems is appropriate to evaluate the section 110(a)(2)(D)(i) SIP submission of a state for the interfere with maintenance element.[8] EPA's 2006 Guidance did not provide this specific recommendation to states, but in light of the court's decision on CAIR, EPA will itself follow this approach in acting upon the Colorado submission.

As explained in the 2006 Guidance, EPA does not believe that section 110(a)(2)(D)(i) SIP submissions from all states necessarily need to follow precisely the same analytical approach as CAIR. In the 2006 Guidance, EPA stated that: "EPA believes that the contents of the SIP submission required by section 110(a)(2)(D)(i) may vary depending upon the facts and circumstances related to the specific NAAQS. In particular, the data and analytical tools available at the time the State develops and submits a SIP for a new or revised NAAQS necessarily affects the contents of the required submission."[9] EPA also indicated in the 2006 Guidance that it did not anticipate that sources in states outside the geographic area covered by CAIR were significantly contributing to nonattainment, or interfering with maintenance, in other states.[10] As noted in the Transport Rule Proposal, EPA continues to believe that the more widespread and serious transport problems in the eastern United States are analytically distinct. For the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, EPA believes that nonattainment and maintenance problems in the western United States are relatively local in nature with only limited impacts from interstate transport.[11] In the Transport Rule Proposal, EPA did not calculate interstate ozone or $PM_{2.5}$ contributions to or from western states.

Accordingly, EPA believes that section 110(a)(2)(D)(i) SIP submissions for states not evaluated in the Transport Rule Proposal may be evaluated using a "weight of the evidence" approach that takes into account available relevant information, such as that recommended by EPA in the 2006 Guidance for states outside the area affected by CAIR. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area. the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may interfere with maintenance of the 1997 8-hour ozone NAAQS in other states. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a given situation.

B. Colorado Transport SIP

To meet the requirements of section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone standard, the State of Colorado developed and submitted to EPA on June 18, 2009 an Interstate Transport SIP that focused primarily on the "significant contribution to nonattainment" requirement of section 110(a)(2)(D)(i) and, as noted earlier, addressed only in a limited way the interference with maintenance requirement of section 110(a)(2)(D)(i)(I). On June 3, 2010, EPA approved the Colorado Interstate Transport SIP provision that require that emissions from a state's sources do not significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS in any other state. To demonstrate that emissions from Colorado do not interfere with maintenance of the 1997 8-hour ozone NAAQS in neighboring states, the Colorado Interstate Transport SIP uses results from Colorado's 2009 "8-Hour Ozone Attainment Plan" for the DMA/NFR nonattainment area, and a report from the Western States Air Resource (WESTAR) Council to underscore that: (a) Local anthropogenic ozone contribution to high ozone concentrations in Denver is only about 25%; and (b) on days of highest ozone concentrations (reflecting a design value of 84.9 ppb) in the DMA/NFR area, the projected design values decrease to 63 ppb or less for all downwind Colorado counties east of an imaginary north-south line approximately 70 miles east from Denver.[12] EPA does not agree with the State of Colorado Interstate Transport SIP's assessment that these results demonstrate that "the magnitude of ozone transport from Colorado to other states is too low to * * * interfere with maintenance by any other state with respect to the 0.08 ppm NAAQS" as the sole basis for evaluating the state's interference.[13] The limited contribution of local emissions to nonattainment in the DMA/NFR and the quick drop in ozone levels in the easternmost Colorado counties, in and by themselves do not exclude a potential for interference with maintenance of the 8-hour ozone NAAQS from Colorado emissions to downwind maintenance areas. Rather, as a reflection of emission levels, the relatively (to the 1997 8-hour ozone

[8] To begin this analysis, EPA first identifies all monitors projected to be in nonattainment or, based on historic variability in air quality, projected to have maintenance problems in 2012. These maintenance receptors are close to the level of the 1997 ozone and $PM_{2.5}$ NAAQS such that minor variations in weather or emissions could result in violations of the NAAQS in 2012.

[9] 2006 Guidance at 4.

[10] *Id.* at 5.

[11] *See*, Transport Rule Proposal, 75 FR 45210, 45277.

[12] Colorado Interstate Transport SIP, December 12, 2009, Figure 5 at 15. Note that the modeling analysis domain for the DMA/NFR attainment plan was limited to the State's territory, and that the 70 mile distance represents the approximate distance from Denver to the western border of Morgan County, Colorado.

[13] Id. at 17.

NAAQS) moderate ozone concentrations in eastern Colorado and in neighboring states somewhat reduce the probability that State emissions interfere with maintenance of the NAAQS by these states.[14]

EPA is evaluating the Colorado Interstate Transport SIP taking into account the methodologies and analysis results developed in the Transport Rule Proposal in response to the judicial remand of CAIR. As noted previously, the Transport Rule Proposal includes a new approach to determine whether emissions from a state interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS by other states. In this action, EPA is using a comparable approach to that of the Transport Rule Proposal in order to determine if emissions from Colorado sources interfere with maintenance of the 1997 8-hour ozone NAAQS by other states.

To evaluate ambient impacts from upwind states to maintenance receptors, the Transport Rule Proposal evaluates, through air quality modeling of each state's emissions, the contribution from individual states to downwind maintenance receptors. States that contribute pollutant concentrations below the significance threshold for interference with maintenance, proposed at one percent of the NAAQS, are excluded from further analysis.[15] For the 1997 8-hour ozone standard state contributions of 0.8 ppb and higher are considered above the threshold, while ozone contribution less than 0.8 ppb are below the threshold.

In the Transport Rule Proposal, EPA projected future concentrations of ozone at monitors to identify areas that are expected to be out of attainment with NAAQS or to have difficulty maintaining compliance with the NAAQS in 2012. To determine the states that may cause interference at the maintenance receptors, the Transport Rule Proposal models the states' ozone contribution to these maintenance receptors. Because the Transport Rule Proposal does not model the contribution of emissions from Colorado (and other western states not fully inside the Transport Rule Proposal's modeling domain) to 8-hour ozone maintenance receptors in other states, our assessment relies on a weight of evidence approach that considers relevant information (such as identification of maintenance receptors and estimates of ozone contributions) from the Transport Rule Proposal pertaining to states within its modeling domain, and additional material such as geographical and meteorological factors, modeling analysis results from other studies, back trajectory analyses, and AQS monitoring data. While conclusions reached for each of the factors considered in the following analysis are not in and by themselves determinative, consideration of these factors together provides a reliable qualitative conclusion that emissions from Colorado are not likely to interfere with maintenance of the 1997 8-hour ozone NAAQS at monitors in other states.

Our analysis begins by assessing Colorado's contribution to the closest maintenance receptors for the 1997 8-hour ozone standard. The Transport Rule Proposal identifies within its modeling domain (consisting of 37 states east of the Rocky Mountains, and the District of Columbia) 16 maintenance receptors, among which the eight closest to Colorado are eight receptors in the Dallas Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) 8-hour ozone nonattainment areas.[16]

Two of the three DFW area maintenance receptors are in Dallas County (Hinton Street and Dallas Executive Airport sites), and the third is in Tarrant County (Keller site).[17] These monitors are at least 500 miles from Colorado.[18] Distance by itself is not an obstacle to long range transport of ozone and/or its precursors. NO_X, the primary ozone precursor that is the object of the Transport Rule Proposal, may be transported for long distances, and contribute significantly to high ozone concentrations in other states. However, with increasing distance there are greater opportunities for ozone or NO_X dispersion and/or removal from the atmosphere due to the effect of winds or chemical sink processes. As a result, one may conclude that the approximately 500 miles from Colorado sources of $_X$ emissions to the DFW area maintenance receptors reduces, but does not exclude, the possibility that the Colorado emissions interfere with maintenance of the NAAQS at these receptors.

Because pollutant transport is linked to wind direction, we examine how frequently air masses from Colorado pass through or end in the DFW area that includes the maintenance receptors identified above. The State of Texas' 2007 attainment demonstration for the DFW area points out, without quantifying contributions, how heavily the area's ozone concentrations are affected by substantial transport from other areas. Average ozone background levels for DFW (reflecting concentrations contributed to the area by emissions from sources within Texas but outside the nonattainment area, and from sources outside Texas) are estimated to range between 44 and 61 ppb, with peak averages between 64 and 68 ppb on days when 8-hour ozone concentrations exceed the 1997 standard.[19]

To evaluate the impact of wind direction on ozone transport from Colorado to the DFW maintenance receptors, we rely on the results of two back trajectory studies, including a set of trajectories with end points at the maintenance receptors in the DFW area.[20] EPA generated these trajectories using the HYSPLIT 4.9 online computer application, selecting the archived Eta Data Assimilation System (EDAS) meteorological data sets with the highest degree of resolution (40 km).[21] Back trajectories were run for the days of the 2005–2006 years in which ozone concentrations at these receptors exceeded the 1997 8-hour NAAQS—i.e., monitored ozone concentrations were 85 ppb or above. Exceedance days were identified using the Air Quality System (AQS), EPA's repository of monitored ambient air quality data. At each monitor, trajectories were started at 22

[14] Similar evidence is provided by the substantial gap between the 1997 8-hour ozone standard and the design values at monitors in adjacent downwind states such as Kansas, New Mexico, Utah, and Wyoming. Id. at 7–8.

[15] Transport Rule Proposal, 75 FR 45210, 45254.

[16] The remaining eight maintenance-only sites are in a handful of East Coast states: Connecticut, Georgia, New York and Pennsylvania. See Table IV C–12, Transport Rule Proposal, at 45252–253.

[17] The 500 mile estimate represents the approximate distance between Lamar, in the southeastern corner of Colorado, and Dallas, Texas. The monitors' Site ID Numbers are: Hinton, 48–113–0069; Executive Airport, 48–113–0087; and Keller, 48–439–2003. See id. For monitors' site names, see online TCQE web page at *http://www.tceq.state.tx.us/cgi-bin/compliance/monops/site_info.pl.*

[18] This distance underestimates the average distance covered by emissions from Colorado sources for at least two reasons: (a) Most Colorado sources are further north and/or west from the DFW area than Lamar; (b) 500 miles represents the distance along a straight pathway from Lamar to Dallas, Texas, as compared to the pathways full of twists and turns that often characterize the long range transport of air parcels.

[19] "Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area: Attainment Demonstration," TCEQ, May 23, 2007, p. i.

[20] USEPA Region 8 mapped back trajectories using software and data files maintained by the National Oceanic and Atmospheric Administration (NOAA) Air Resource Laboratory (ARL).

[21] Draxler, R.R. and Rolph, G.D., HYSPLIT (HYbrid Single-Particle Lagrangian Integrated Trajectory) Model (2010), available via NOAA ARL READY Web site, *http://ready.arl.noaa.gov/HYSPLIT.php.* NOAA Air Resources Laboratory, Silver Spring, MD. See also Rolph, G.D., Real-time Environmental Applications and Display sYstem (READY) Web site (2010), *http://ready.arl.noaa.gov.* NOAA Air Resources Laboratory, Silver Spring, MD.

Coordinated Universal Time (UTC), equivalent to 4 p.m. CST, and were run backwards in time for 72 hours (three days). The trajectory height at the starting point is 1500 meters above ground level. From the individual back trajectories, "spider web" maps were generated for all three monitors combined and for each monitor (Figure 1.1 and Figures 1.1.a through 1.1.c in Appendix A of EPA's TSD).[22] These maps indicate that air parcel pathways from Colorado and ending at maintenance receptors in Dallas and Tarrant Counties are rare during the three days preceding ozone exceedances at these receptors. On only one day, of the 35 exceedance days at maintenance receptors in 2005–2006, did the air mass pathway go through Colorado, and even in this one instance air parcels crossed the State along a short pathway through its northeast corner, before continuing on their southeastward course.[23]

Back trajectory analysis results included in the May 23, 2007 DFW area Attainment Demonstration corroborate these conclusions. The analysis, also based on the HYSPLIT model, includes all days during the years 2001–2003, with trajectories of 48 hours (2 days) duration, heights of 100, 500 and 1300 meters, and start times of 20, 21 and 22 UTC (2, 3, and 4 p.m. CST). The resulting density plots in Figure 3–1 of the DFW attainment demonstration clearly show that during most of the ozone season, on high and low ozone days, air parcels from Colorado infrequently end in or pass through the DFW area.[24]

Because back trajectory analysis results map pathways of air parcels that may or may not transport pollutants, they cannot be considered determinative as to the transport of ozone and its precursors, or of the absence of such transport, from Colorado emissions. However, the rarity of air parcel trajectories from Colorado to the DFW area and to its maintenance receptors strongly support the conclusion that emissions of ozone and its precursors from Colorado are not likely to interfere with maintenance of the 1997 ozone NAAQS at these receptors.

A final piece of evidence of a different type is found in a modeling analysis developed by EPA to assist the State of New Mexico in its assessment of ozone and $PM_{2.5}$ transport from New Mexico to other states. This modeling analysis, part of the New Mexico Interstate Transport SIP submission of July 30, 2007, relies on data developed by the Central Regional Air Planning Association (CENRAP) that includes a 2002 third quarter CENRAP modeling dataset.[25] It is based on a 36 km national grid that includes Colorado, and uses the ozone source apportionment tool (OSAT) to determine potential linkages between state emissions and downwind states.[26] Modeling results indicate that at the height of the 2002 ozone season, the highest ozone contribution from Colorado emissions to the DFW monitors (including its maintenance receptors) averaged 0.4 ppb or less. That is well below the contribution threshold of 0.8 ppb, used in the proposed Transport Rule.

The other five Texas monitors identified by the Transport Rule Proposal as maintenance-only receptors in Texas are located in Harris County, which lies within the HGB nonattainment area. This area is at least 700 miles from Colorado.[27] General considerations on the effect of distance on ozone transport from Colorado to the DFW area, discussed above, also apply to the potential for transport from Colorado to the maintenance receptors in the HGB area. The greater distance (by about one third) between Colorado and the HGB area increases the chance for dispersion of any Colorado ozone during its transport to HGB maintenance receptors, and increases the odds for air masses from Colorado to pick up greater quantities of ozone and/or precursors during their longer travel through emissions rich Texas. Again, these considerations reduce, but do not exclude, the possibility of emissions from Colorado interfering with maintenance of the 8-hour ozone NAAQS at the HGB maintenance receptors.

A similar conclusion is suggested by the EPA back trajectories mapped for the HGB maintenance receptors. Using the same online HYSPLIT 4.9 online computer application as for the DFW trajectories,[28] EPA ran back trajectories from the HGB area maintenance receptors for all 2005–2006 ozone exceedances days. The pathways of air parcels ending at, or passing through, these monitors when ozone concentrations reached levels of 85 ppb or higher are shown in Figure 2.1 of Appendix A in EPA's supporting documentation. At each monitor, trajectories started at 22 Coordinated Universal Time (UTC), equivalent to 4 p.m. CST, and ran backwards in time for 72 hours (three days), at 1500 meters above ground level.[29] Results show that air parcel pathways passing 1500 meters above the HGB maintenance receptors at 4 p.m. on exceedance days rarely came from Colorado. Figure 3 of the back trajectories report shows that only in one out of 53 exceedance days at the maintenance receptors did the air parcel's pathway go through Colorado. Even in this one instance, the pathway crossed Colorado for a very short distance through the State's northeast corner, before continuing on its southeastward course.[30]

Back trajectory analysis results from a 2009 report, "Effects of Meteorology on Pollutant Trends" report, corroborate these conclusions. The analysis uses HYSPLIT with EDAS meteorological datasets to plot 72-hour back trajectories centered in Houston, at 300 meters height and for various times of the day. Trajectories are plotted for all days with available data between May 1 and October 31, 2000–2007. A clustering algorithm built into HYSPLIT is used to group individual back trajectories into several classes based on shape and direction.[31] Due to the greater number of days plotted, the six clusters of trajectories shown in Figures 6–17 to 6–22 include a much larger number of air parcel pathways than EPA's back

[22] *See* back trajectory maps in Appendix A of the EPA's TSD supporting documentation in Docket ID No. EPA–R08–OAR–2007–1035.

[23] EPA's TSD is available for review as part of the supporting documentation for Docket ID N. EPA–R08–OAR–2007–1035.

[24] Dallas-Port Worth Attainment Demonstration, May 23, 2007, at 3–1 to 3–2.

[25] "New Mexico State Interstate Transport SIP," submitted to EPA July 30, 2007: Appendix D, Exhibit 9 Modeling Data and Report for New Mexico," at 2.

[26] For details on the model and on the analysis see: *id.*

[27] The 700-mile estimate represents the approximate distance between Lamar, in the southeastern corner of Colorado, and Houston, Texas. The five monitoring sites' names (ID No.) are: Aldine (48–201–0024), Northwest Harris (48–201–0029), Lynchburg Ferry (48–201–1015), Clinton (48–201–1035), and Seabrook Friendship Park (48–201–1050). The approximate 850-mile distance between Denver and Houston is intended to represent the distance to be covered by the emissions from Colorado to the five maintenance monitors. It is to be noted that the measured distance represents that of the straight (and shortest) path, which does not reflect the more circuitous paths followed by air parcels.

[28] *See* note 24 above.

[29] *See* Table 1, EPA's "Back Trajectories Analysis Documentation," Table 1.

[30] The trajectory's path that ended at the Northwest Harris receptor on August 31, 2006, is almost the same as the one that on June 15, 2005 ended at the Keller receptor in Tarrant. This is likely to be a coincidence, or an indication about the pathways of air masses that go through eastern Colorado before ending in eastern Texas (DFW and HGB areas).

[31] Dave Sullivan, "Effects of Meteorology on Pollutant Trends," March 16, 2009, at 27–34. This report is available as one of the documents in EPA's TSD documentation, and may also be reviewed online at *http://www.tceq.state.tx.us/assets/public/implementation/air/am/contracts/reports/da/5820586245FY0801-20090316-ut-met_effects_on_pollutant_trends.pdf.*

trajectory analysis referenced above, but still show similar results concerning trajectories from Colorado. Air parcels from Colorado to the Houston area are rare, as shown by the few trajectories from Colorado in cluster 3 (Figure 6–19) as compared with the total sample of 1416 trajectories included in the six clusters. Figure 6–15 summarizes effectively the overall scarcity of wind pathways from Colorado, and from the west/lower northwest sector in general, to the HGB area. It shows the mean centerlines for the six identified clusters, and at their closest point to Colorado's borders the mean centerline (number 3) is still at an estimated distance of approximately 200 miles.

Again, back trajectories map pathways of air parcels that may or may not transport pollutants, and they cannot be considered determinative as to the transport of ozone and its precursors. However, the infrequency of air parcels trajectories from Colorado to the HGB area in general, and to its maintenance receptors in particular, strongly support the conclusion that ozone precursors' emissions and ozone from Colorado are not likely to interfere with maintenance of the 1997 ozone NAAQS at these receptors.

The EPA modeling analysis referenced earlier (concerning contribution from Colorado sources to the DFW area) includes information on the contribution of the State emissions to the HGB area as well. The 2002 modeled contribution from Colorado ozone emissions to the HGB area is estimated at 0.3 ppb or less. This fraction of the significant contribution threshold of 0.8 ppb, set in EPA's Transport Rule Proposal of August 2, 2010, strengthens our assessment that Colorado emissions are unlikely to interfere with maintenance of the 1997 ozone NAAQS at the HGB maintenance receptors.[32]

As noted previously, eight of the 16 maintenance receptors identified within the modeling by the Transport Rule Proposal analysis are in a handful of East Coast states: Connecticut, Georgia, New York and Pennsylvania.[33] The westernmost states "linked" by the Transport Rule Proposal to the eight maintenance receptors in these states include Indiana, Kentucky, Tennessee, and Alabama. None of the 13 states west of these contributing states and east of Colorado (such as North and South Dakota and Nebraska) was found to contribute significantly to the maintenance receptors in the east.[34] In addition, among the 13 non-contributing states closer than Colorado to the maintenance receptors in the east, there are states such as Illinois, Wisconsin, Iowa, Missouri, Arkansas, and Louisiana that in 2005 had NO_X emissions up to twice as high as Colorado's. Because the analysis for the Transport Rule Proposal found that these states with substantially larger NO_X emissions than Colorado, and closer than Colorado to the maintenance receptors in the east, do not to contribute significantly to maintenance receptors in Connecticut, Georgia, New York and Pennsylvania, it is logical to conclude that it is quite unlikely for Colorado emissions to interfere with maintenance of the 1997 8-hour ozone NAAQS at these same receptors.

To assist in the evaluation of whether states' emissions interfere with maintenance of the NAAQS in western states, EPA has developed, independent of the Transport Rule Proposal, a modeling analysis identifying monitors at risk for maintenance of the NAAQS within a modeling domain that includes the western states.[35] The analysis presented in the memo, "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States" (Western States Design Values), uses model results from the Transport Rule modeling Continental U.S. 36 km grid, which is coarser than the 12 km grid used in the Transport Rule, but does not necessarily yield less reliable results.[36]

EPA's modeling analysis of western states to determine the monitors that are at risk for maintenance of the 1997 8-hour ozone NAAQS identifies only four such maintenance receptors, and all four are in California, in Mercer, Placer, Riverside, and Sacramento Counties. Distance and topography are not favorable to ozone transport from Denver, which is approximately 750 miles east of the monitors in Placer and Sacramento Counties, and 850 miles northeast to a Riverside County monitor. In the absence of significant northwesterly regional transport winds, mountain ranges between Denver and the California maintenance receptors, such as the Rocky Mountains, the Wasatch and the Sierra Nevada, present large obstacles to ozone transport from Colorado to California. Thus, geography and topography reduce the likelihood of transport from Colorado to California's maintenance receptors.

Prevailing wind orientation in fact strongly supports the conclusion that Colorado's emissions are unlikely to interfere with maintenance of the 1997 8-hour ozone standard in California. West of the Continental Divide the prevailing winds generally move from south-westerly, westerly, or north-westerly directions, as indicated by the typical movement of weather systems. To further evaluate the direction of regional transport winds affecting the California maintenance receptors, we have plotted back trajectories starting at each maintenance receptor on high ozone days. High ozone days include the top one-third of the exceedance days (for the 1997 8-hour ozone NAAQS) registered at each monitor in 2005 and 2006. As shown by the trajectories mapped for all four maintenance receptors in Figure 3.1, Appendix A of EPA's supporting documentation, on high ozone days air parcels converge on the Mercer, Placer, Sacramento and Riverside monitors from the northwest, south and southeast, but there are no pathways from the east/northeast directions reaching even as far as the eastern Nevada border, let alone Colorado.

For a large number of receptors in western states, EPA's modeling analysis could not calculate 2012 projected design values because these receptors did not have at least 5 days with base year concentrations equal to or greater than 70 ppb, as required by EPA's modeling guidance. However, the observed maximum design values at these sites in the 2003–2007 period were generally well below the 1997 ozone NAAQS. The highest (non-California[37]) site had a maximum design value of 77 ppb. Additionally, the 2012 modeling results at western monitors (where a future year design value could be estimated, shows a

[32] New Mexico State Interstate Transport SIP, 2007, Appendix D, at 52.

[33] Table IV C–12, Transport Rule, at 196–197.

[34] In addition to North Dakota, South Dakota and Nebraska, the 13 states include: Kansas, Oklahoma, Minnesota, Iowa, Missouri, Arizona, Wisconsin, Michigan, Illinois, and Louisiana. Table IV–C–21, Transport Rule Proposal, at 45269–70.

[35] A memorandum in the docket for this action provides the information EPA used in order to identify monitors that are receptors for evaluation of interference with maintenance for certain states in the western United States. See, Memorandum from Brian Timin of EPA's Office of Air Quality Planning and Standards, Air Quality Modeling Group entitled "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States"

"Memorandum to Docket EPA–R08–OAR–2007–1035," EPA. August 23, 2010.

[36] Id. at 5.

[37] We are excluding the California monitors from this portion of our analysis because above we have already demonstrated that Colorado's emissions are unlikely to interfere with maintenance at the modeled California maintenance monitors in the northern, central and southern sections of the state. The factors we considered—distance, topography, and wind orientation—apply equally to the un-modeled monitors and make it plausible to conclude that the same demonstration is true for Colorado emissions' impact on California non-modeled monitors.

downward trend in ozone. There are no areas in the West where ozone is predicted to be higher in 2012 (without CAIR) compared to 2005. On these bases it is plausible to conclude that it is highly unlikely, but not impossible, for these monitors to be at risk for maintenance of the 1997 8-hour ozone NAAQS.

In conclusion, the variety of data and the weight of evidence analysis presented in this section support the position of the Colorado Interstate Transport SIP (adopted into the State SIP on December 30, 2008 and submitted to EPA June 18, 2009) that emissions from Colorado do not interfere with maintenance of the 1997 8-hour ozone NAAQS by any other state, consistent with the requirements of element (2) of CAA section 110(a)(2)(D)(i).

VI. Proposed Action

EPA is proposing partial approval of the Colorado SIP to meet the requirements of Section 110(a)(2)(D)(i)(I) regarding the 1997 8-hour ozone standard. Specifically, in this action EPA is proposing to approve only the language and demonstration that address the requirements of element (2): Prohibition of interference with maintenance of the 1997 8-hour ozone NAAQS by any other state. EPA approved in a June 3, 2010 final action the language and demonstration addressing element (1): Prohibition of significant contribution to nonattainment of the 1997 8-hour ozone NAAQS in any other state.

VII. Statutory and Executive Order Review

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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: September 9, 2010.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2010–23294 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0569; FRL–9200–7]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Diego Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the definition of volatile organic compounds (VOC). We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 18, 2010.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2010–0569], by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://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: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: Rule 2, Definitions. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 29, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–23129 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2010–0614–201036; FRL–9203–1]

Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Atlanta, GA 1997 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Georgia, through the Georgia Department of Natural Resources (GA DNR), submitted a letter on June 9, 2010, with a request for EPA to grant a one-year extension of the attainment date for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Atlanta, Georgia Area (hereafter referred to as the "Atlanta Area"). The Atlanta Area consists of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton Counties. In today's action, EPA is proposing to determine that the State of Georgia has met the Clean Air Act (CAA or the Act) requirements to obtain a one-year extension to its attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. As a result, EPA is proposing to approve a one-year extension of the 1997 8-hour ozone moderate attainment date for the Atlanta Area. Specifically, EPA is proposing to extend the Atlanta Area's attainment date from June 15, 2010, to June 15, 2011.

DATES: Comments must be received on or before October 18, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0614 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* "EPA–R04–OAR–2010–0614" Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–0614. 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Spann can also be reached via

electronic mail at *spann.jane@epa.gov*. Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1997 8-Hour Ozone NAAQS

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered) (69 FR 23857, April 30, 2004).[1] Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Atlanta Are a was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004) using 2001–2003 ambient air quality data (69 FR 23857, April 30, 2004). At the time of designation the Atlanta Area was classified as a marginal nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of Section 181(a) of the CAA. This established an attainment date 3 years after the June 15, 2004, effective date for areas classified as marginal areas for the 1997 8-hour ozone nonattainment designations. Therefore, the Atlanta Area's original attainment date was June 15, 2007. (*See* 69 FR 23951, April 30, 2004.)

The Atlanta Area failed to attain the 1997 8-hour ozone NAAQS by June 15, 2007 (the applicable attainment date for marginal nonattainment areas), and did not qualify for any extension of the attainment date as a marginal area. As a consequence of this failure, on March 6, 2008, EPA published a rulemaking determining that the Atlanta Area failed to attain and, consistent with Section 181(b)(2) of the CAA, the Atlanta Area was reclassified by operation of law to the next highest classification, or "moderate" nonattainment. (*See* 72 FR 58572, October 16, 2007.) When an area is reclassified, a new attainment date for the reclassified area must be established. Section 181 of the CAA explains that the attainment date for moderate nonattainment areas shall be as expeditiously as practicable, but no later than six years after designation, or June 15, 2010. EPA further required that Georgia submit the SIP revisions meeting the new moderate area requirements as expeditiously as practicable, but no later than December 31, 2008. Georgia submitted SIP revisions to address the moderate area requirements for the Atlanta Area on October 21, 2009. EPA is in the process of reviewing these submissions and will take action on these submissions in rulemaking separate from today's proposed action.

Under certain circumstances, the CAA allows for extensions of the attainment dates prescribed at the time of the original nonattainment designation. *See* below for further discussion.

B. CAA Requirements for One-Year Extension Requests

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether an ozone nonattainment area attained the NAAQS. CAA Section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified to the next classification. However, in accordance with CAA Section 181(a)(5), EPA may grant up to 2 one-year extensions of the attainment date under specified conditions. Specifically, Section 181(a)(5) states:

"Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) The State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year."

With regard to the first element, "applicable implementation plan" is defined in Section 302(q) of the CAA as, the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

The language in Section 181(a)(5)(B) reflects the form of the 1-hour ozone NAAQS, which is exceedance based and does not reflect the 1997 8-hour ozone NAAQS, which is concentration based. Because Section 181(a)(5)(B) does not reflect the form of the 8-hour NAAQS and application would produce an absurd result, EPA interprets this provision in a manner consistent with Congressional intent but reflecting the form of the 1997 8-hour NAAQS. Therefore, EPA adopted an interpretation of Sections 172(a)(2)(C) and 181(a)(5) that an area will be eligible for the first of the one-year extensions under the 8-hour NAAQS if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less.[2] The area will be eligible for the second extension if the area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less. No more than 2 one-year extensions may be issued for a single nonattainment area.

EPA interprets the CAA and implementing regulations to allow the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less, if

[1] EPA issued a revised 8-hour ozone NAAQS in 2008. EPA subsequently reconsidered the 2008 NAAQS, and proposed a new 8-hour ozone NAAQS on January 19, 2010 (75 FR 2938). Final 8-hour ozone NAAQS are expected to be effective in October 2010. The current proposed action, however, is being taken with regard to the 1997 8-hour ozone NAAQS. Requirements for the Atlanta Area for the 2010 8-hour ozone NAAQS will be addressed in the future.

[2] *See* 40 CFR 51.907. The preamble language can be found in the Phase 1 Implementation Rule 69 FR 23951 (April 30, 2004).

a second one-year extension is requested).[3]

II. Today's Actions

EPA is proposing to determine that Georgia has met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. As a result, EPA is proposing to extend the Atlanta Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS. EPA's proposed action is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for 2009, and on EPA's preliminary determination that the State is meeting its federally-approved state implementation plan. If today's proposed action is finalized, the Atlanta Area's attainment date for the 1997 8-hour ozone NAAQS will be extended one-year from June 15, 2010, to June 15, 2011.

III. EPA's Analysis of the State's Requests for an Attainment Date Extension for the Atlanta Area for the 1997 8-Hour Ozone NAAQS

As was explained above in this rulemaking, EPA interprets the CAA and implementing regulations to allow the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less, if a second one-year extension is requested). Below provides EPA's analysis of how Georgia has met these minimum requirements.

(1) The State Requests a One-Year Extension

The State of Georgia, through GA DNR, submitted a letter on June 9, 2010, requesting that EPA grant a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. The letter contained a certification that the State is complying with all requirements and commitments pertaining to the Atlanta Area in the applicable implementation plan; and that the Atlanta Area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (*i.e.*, 2009) for this initial request for an extension. EPA's analysis of the certification from Georgia, and of the ambient air quality monitoring data for the Atlanta Area for the 1997 8-hour ozone NAAQS (*i.e.*, in relation to the State's attainment date extension request) is provided below.

(2) All Requirements and Commitments in the EPA-Approved SIP for the Area Have Been Complied With

In the letter submitted by GA DNR, on June 9, 2010, the State discusses implementation of state measures in the SIP. One of the required elements for a one-year extension required under Section 181(a)(5) of the CAA is that the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan (as that term is defined in Section 302(q) of the CAA). EPA has conducted an independent review of whether Georgia is in compliance with the applicable implementation plan for the Atlanta Area as intended by Section 181(a)(5)(A) of the CAA, and has made the preliminary determination that the State is in compliance. This preliminary determination is based on EPA's belief that the state is currently meeting the EPA-approved state implementation plan for the Atlanta Area.

On October 21, 2009, the State of Georgia submitted SIP revisions to address the requirements related to the 1997 8-hour ozone attainment demonstration for the Atlanta Area. Nonetheless, EPA does not and did not view submission or approval of this attainment demonstration as relevant for meeting the "applicable implementation plan" for the Atlanta Area with regard to Section 181(a)(5)(A) of the CAA. EPA is currently reviewing the approvability of this attainment demonstration submission and will make a final determination on the approvability through a separate rulemaking in the **Federal Register.**

(3) The Area Has a 4th Highest Daily 8-Hour Average of 0.084 ppm or Less for the Attainment Year

In the letter submitted by GA DNR, on June 9, 2010, the State has certified that the 4th highest daily 8-hour average ozone concentration for the Atlanta Area in 2009 was below 0.084 ppm, and that the 2009 ozone data which are included in EPA's Air Quality System (AQS) meets necessary quality control and quality assurance requirements. Table 1 provides the 2009 4th highest concentrations at the monitors in the Atlanta Area.

TABLE 1—2009 4TH HIGHEST CONCENTRATIONS FOR THE ATLANTA AREA

Monitoring site ID	City, county	2009 4th highest concentration (ppm)
13–067–0003	Kennesaw, Cobb	0.076
13–077–0002	Coweta	0.065
13–089–0002	Decatur, DeKalb	0.077
13–097–0004	Douglasville, Douglas	0.072
13–121–0055	Atlanta, Fulton	0.077
13–135–0002	Lawrenceville, Gwinnett	0.073
13–151–0002	McDonough, Henry	0.074
13–223–0003	Paulding	0.067
13–247–0001	Conyers, Rockdale	0.070

EPA has reviewed the 1997 8-hour ozone NAAQS ambient air quality monitoring data for the Atlanta Area, consistent with the requirements contained in 40 CFR part 50 and as recorded in the EPA AQS database. On the basis of that review, EPA has preliminarily concluded that for the attainment year, 2009, the Atlanta Area's 4th highest daily 8-hour average concentration was 0.077 ppm which is below the 8-hour ozone NAAQS of 0.08 ppm (effectively 0.084 ppm).

Because the statutory provisions have been satisfied, EPA is proposing

[3] *See* 40 CFR 51.907. The preamble language can be found in the Phase 1 Implementation Rule 69 FR 23951 (April 30, 2004).

approval of Georgia's attainment date extension request for the Atlanta Area for the 1997 8-hour ozone NAAQS.

IV. Proposed Actions

EPA is proposing to approve Georgia's June 9, 2010, request for EPA to grant a one-year extension (from June 15, 2010, to June 15, 2011) of the Atlanta Area attainment date for the 1997 8-hour ozone NAAQS because EPA believes that Georgia has met the statutory requirements for such an extension. EPA's belief is based on its preliminary determination that the state is in compliance of the requirements and commitments associated with the EPA-approved implementation plan, and on the belief that the 4th highest daily 8-hour ozone average concentration for 2009 for the Atlanta Area is below the 1997 8-hour ozone NAAQS as required by the CAA. As provided in 40 CFR 51.907, if EPA finalizes this action, it will extend, by one year, the deadline by which the Atlanta Area must attain the 1997 8-hour ozone NAAQS. It will also extend the timeframe by which EPA must make an attainment determination for the area. EPA notes that this proposed action only relates to the initial one-year extension. As noted in Section 181(a)(5) of the CAA, areas may qualify for up to 2 one-year extensions. If requested at a future date, EPA will make a determination of the appropriateness of a second one-year extension for the Atlanta Area for the 1997 8-hour ozone NAAQS in a separate rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP submissions and requests that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing the state's request for an extension of the 1997 8-hour ozone NAAQS attainment date for the Atlanta Area, EPA's role is to approve the state's request, provided that it meets the criteria of the CAA. Accordingly, this proposed action merely approves a state request for an extension of the 1997 8-hour ozone NAAQS attainment date as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed 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.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 3, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–23317 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 431

[CMS–2325–P]

RIN 0938–AQ46

Medicaid Program; Review and Approval Process for Section 1115 Demonstrations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions of section 10201(i) of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) that set forth transparency and public notice procedures for experimental, pilot, and demonstration projects approved under section 1115 of the Social Security Act relating to Medicaid and the Children's Health Insurance Program (CHIP). This proposed rule would increase the degree to which information about Medicaid and CHIP demonstration applications and approved demonstration projects are publicly available and promote greater transparency in the review and approval of demonstrations. It would also codify existing statutory requirements pertaining to tribal consultation for section 1115 demonstration projects.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 16, 2010.

ADDRESSES: In commenting, please refer to file code CMS–2325–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2325–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the

following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2325–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period and, thus, may not be considered timely.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Steven Rubio, (410) 786–1782, or Yolanda Reese, (410) 786–9898.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Acronyms

To assist the reader, the following is a list of the terms to which we refer by acronym in this proposed rule.

The Act—The Social Security Act
The Affordable Care Act—The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148)
CHIP—The Children's Health Insurance Program
CMS—The Centers for Medicare & Medicaid Services
EQRO—External Quality Review Organization
FFP—Federal Financial Participation
GAO—Government Accountability Office
HHS—The Department of Health and Human Services
MCO—Managed Care Organization
The Recovery Act—The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5)
SMDL—State Medicaid Directors' Letter
Title XIX—Grants to States for Medical Assistance Programs of the Social Security Act.
Title XXI—State Children's Health Insurance Program of the Social Security Act.

I. Background

A. Section 1115 Demonstrations

1. Overview

Section 1115 of the Social Security Act (the Act) allows the Secretary of the Department of Health and Human Services (the Secretary) to waive selected provisions of section 1902 of the Act for experimental, pilot, or demonstration projects (demonstrations), and to provide Federal Financial Participation (FFP) for demonstration costs which would not otherwise be considered as expenditures under the Medicaid State plan, when the Secretary finds that the demonstrations are likely to assist in promoting the objectives of Medicaid. Section 2107(e) of the Act states that the waiver authorities in section 1115 apply to the Children's Health Insurance Program (CHIP) in title XXI of the Act in the same manner as they apply to the Medicaid program in title XIX of the Act.

States have used section 1115 demonstrations for different reasons. Some States have tested new approaches to provide coverage or improve the scope or quality of benefits in ways that would not otherwise be permitted under the statute. For example, some States have used section 1115 demonstrations to expand eligibility to individuals who would not otherwise qualify for benefits, or to establish innovative service delivery systems. Other demonstrations have constrained eligibility or benefits in ways not otherwise permitted by law. For example, some demonstrations have provided for a more limited set of benefits than the statute requires, for a specified population, implemented cost-sharing at levels that exceed statutory requirements, or included enrollment limits. Some demonstrations have involved financing approaches that are not contemplated in title XIX or XXI.

As such, demonstrations can have a significant and varied impact on beneficiaries, providers, as well as States and local governments. They can also influence policy making at the State and Federal level, by introducing new approaches that can be a model for other States and lead to programmatic changes nationwide. In light of the impact demonstration projects can have, the Congress has determined that the process by which States apply for and the Federal Government reviews demonstrations should assure public input. From time to time that process has come under criticism. In recent years, the Congress, the Government Accountability Office (GAO), and the stakeholders representing a range of interests affected by the Medicaid and CHIP programs have raised concerns regarding the need for greater transparency in the submission, review, and approval of demonstration applications.

2. Prior Guidance Related to Public Notice

Over time, efforts were made to assure meaningful public involvement in the development and review of State demonstration projects. In the September 27, 1994 **Federal Register** on (59 FR 49249), the Department of Health and Human Services (HHS) published a notice that provided general principles and guidelines governing demonstration projects and provided for a public notice process that was designed to ensure that interested parties would have an opportunity to provide input into the design and review of a State demonstration application.

The September 27, 1994 **Federal Register** notice listed examples of potential approaches States could use to solicit public comments, such as the State legislative process and hearings

conducted by State commissions, and it established a process for public input at the Federal level, including providing notice to interested parties when the Federal government receives a demonstration request. The September 27, 1994 **Federal Register** notice also established timeframes for the Federal government to receive and review public comments before acting on a State demonstration request.

In 2002, we issued a letter to State Medicaid directors, State Medicaid Director Letter (SMDL) #02–007, to encourage States to facilitate public participation in the development of demonstration applications in an effort to ensure adherence to the public notice procedures outlined in the September 27, 1994 **Federal Register** notice.

The 2002 SMDL (#02–007) did not address the Federal level of review. Over the years some aspects of the Federal demonstration review process described in the September 27, 1994 **Federal Register** notice were abandoned. In 2002, the GAO issued a report entitled "Medicaid and SCHIP—Recent HHS Approvals of Demonstration Waiver Projects Raise Concerns," finding that HHS had not consistently followed its September 27, 1994 **Federal Register** notice process. GAO specifically found that, since 1998, HHS had not complied with the Federal notice procedures. GAO recommended that the HHS Secretary provide for a public process that, at a minimum, included publishing notices of demonstrations in the **Federal Register** and a 30-day comment period.

In a subsequent 2007 report entitled "Medicaid Demonstration Waivers: Lack of Opportunity for Public Input during the Federal Approval Process Still a Concern," the GAO examined demonstration projects in two States and found that HHS did not provide opportunity for public input at the Federal level during the Federal review process. It determined that the States that submitted the demonstration applications made efforts to obtain public input to comply with HHS' September 27, 1994 **Federal Register** notice, but that stakeholders in those States reported lacking access to information during the Federal review process about parts of the demonstration applications that had a significant impact on beneficiaries or having inadequate time to review and comment on the applications. GAO reiterated its longstanding concerns about the lack of public input into section 1115 demonstrations and restated its recommendation for a process that assures public input.

As we were considering potential processes and procedures for this proposed rule, we reviewed these GAO findings, various legislative proposals, and we conducted a listening session with stakeholders and States. In May 2010, we met with more than 20 representatives of stakeholder organizations including organizations advocating on behalf of the elderly, people with disabilities and other low income populations, as well as organizations representing health care providers regarding transparency in the demonstration approval process. We also held a listening session open to officials from all 50 States, the District of Columbia, and U.S. Territories.

The stakeholder representatives generally expressed the need for better opportunities for the public to provide meaningful input into the development of State demonstration applications and the Federal review and approval process. These advocates expressed concern that the policies employed in demonstrations have far-reaching impact, and can happen with little meaningful stakeholder input into policy development at the Federal and State levels unlike the legislative and rulemaking processes, which have established mechanisms that assure some degree of transparency. They also expressed the view that since demonstrations allow States to "not comply" with requirements that the Congress put into law, the need for meaningful public input into these demonstrations is great. States agreed that public input is important although were concerned that any new requirements established under the new law could be administratively burdensome, and potentially duplicative of existing State policies and procedures. Some States reported that their existing public notice requirements and State legislative processes were strong and sufficient to ensure meaningful public input at the State level.

Recently, the Federal government has made a broad commitment to transparency and public input, and this commitment informs the Secretary's approaches to ensuring transparency in this proposed rule. In a January 21, 2009 Memorandum to the Heads of Executive Departments and Agencies, President Obama established the Federal government's commitment to transparency, participation, and collaboration. Noting that public input can promote efficiency, effectiveness, and accountability in government, the President committed Federal agencies to disseminating information quickly and accessibly, and to ensure increased opportunities for the public to participate in policymaking. The Memorandum required each Federal agency to establish an Open Government plan, and on April 7, 2010, HHS announced its plan to achieve transparency, participation, and collaboration. HHS is committed to timely and responsive administration of the Medicaid and CHIP programs and seeks to assure transparency, input, and collaboration, while also being mindful of the need to avoid duplicative processes and unnecessary administrative burdens and delays.

3. Guidance Related to Tribal Consultation

Over time, a different but related set of concerns has emerged about the need to ensure that Indian and Tribal governments be assured input into policies that impact Tribal governments, organizations, and Native Americans. In order to foster greater notice and a meaningful opportunity for input, in 2000, the Administration issued Executive Order 13175 regarding "Consultation and Coordination with Indian and Tribal governments." Executive Order 13175 mandated the establishment of regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications. On November 5, 2009, President Obama issued a Memorandum for the Heads of Executive Departments and Agencies reiterating the importance of Executive Order 13175 and requiring a detailed plan for compliance with its provisions.

In July 2001, we issued a letter to State Medicaid Directors (SMDL #01–024) that required States, to allow federally-recognized Tribes to participate in the planning and development of Medicaid and CHIP demonstration applications and extensions through a consultation process. The guidance required at least 60 days notice to federally-recognized Tribes before submission of a State's intent to submit a demonstration application or the extension of a previously approved section 1915 and/or 1115 waiver.

4. Changes Made by the Recovery Act and the Affordable Care Act

Section 5006 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5, enacted on February 17, 2009), among other protections for Indian beneficiaries in Medicaid and CHIP, required States to seek advice from Indian health programs and urban Indian organizations concerning Medicaid and

CHIP policies before submitting a Medicaid or CHIP State plan amendment, demonstration request or application that would directly affect Indian health programs and Indian beneficiaries. This provision was effective July 1, 2009, and was summarized in a letter to State Medicaid Directors dated January 22, 2010 (SMDL #10–001).

Section 10201(i) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, enacted March 23, 2010) (the Affordable Care Act) amended section 1115 of the Act by adding a new subsection (d) to require the Secretary to issue regulations within 180 days of enactment that would ensure the public has adequate opportunities to provide meaningful input into the development of State demonstration projects, as well as in the Federal review and approval of State demonstration applications and renewals. The Affordable Care Act also requires periodic evaluations and implementation reports to ensure that information on the outcomes of demonstration projects is available to the public.

Specifically, new section 1115(d) of the Act provides that these procedural requirements must include review standards pertaining to the goals of demonstration programs, the impact of the demonstration project on costs and coverage, and the plans of the State to ensure that the demonstration will comply with applicable title XIX and XXI of the Act. The law requires the establishment of a process to provide for public notice and comment on the State level and at the Federal level once an application for a demonstration is received by the Secretary. These public notice and comment processes are meant to ensure a meaningful level of public input. The statute also requires the Secretary to implement reporting requirements for States with approved demonstrations, and to establish a process for the periodic evaluation of demonstration projects. Under section 1115(d)(3) of the Act, the Secretary is required to report annually to the Congress on actions taken with respect to applications for demonstration projects.

In this proposed rule, we seek to implement section 1115(d) of the Act to ensure transparency at each stage of the demonstration development and review process without interfering with the timely review of demonstration proposals. This rule will also codify the requirements of section 5006 of the Recovery Act that apply to demonstrations.

5. Findings Related to Section 1115 Demonstration Evaluations

We recognize the importance of public availability and understanding of information about the impact and operations of health insurance and health insurance programs, including Medicaid and CHIP. Because demonstration projects are approved to pilot or experiment with new approaches, it is particularly important to evaluate such projects and to share lessons learned. Demonstration evaluations can document policies that succeed or fail and the degree to which they do so informs decisions about the demonstration at issue, as well as the policy efforts of other States and at the Federal level. In particular, evaluations of the impact of demonstration program features that depart from the statutory requirements can inform the Secretary's future decisions with regard to new approaches to coverage and care.

More public involvement, understanding, and access to demonstration project evaluations will also provide greater understanding of demonstration effectiveness, and compliance. Public involvement can benefit all aspects of the evaluation process, including the process for submission of evaluation designs, approval of demonstration evaluations, and the submission of evaluation reports. Therefore, we are, as part of this transparency rule, codifying our existing policies to ensure greater transparency, communication, and collaboration in the evaluation aspect of the section 1115 demonstration process.

II. Provisions of the Proposed Rule

This proposed rule would address the Affordable Care Act provisions requiring transparency in the process of developing and approving demonstrations. Consistent with the intention of these provisions, which is to ensure transparency and meaningful public input, we are soliciting public comments on this proposed rule's impact on beneficiaries, providers, and States, and as well as in the administrative processes, the timeframes described within the rule and the projected impact in sound policymaking at the State and Federal levels. At the end of this comment period, we will review the comments and take the comments into consideration before we issue a subsequent final rule. In the processes and timeframes that we propose in this rule, we have tried to ensure that the public has a full opportunity to provide meaningful input into the development and review of section 1115 Medicaid and CHIP demonstrations consistent with the law while not impeding the process of developing, reviewing, approving, and implementing demonstrations. We welcome public comment on the balance this rule strikes between ensuring input and minimizing unnecessary administrative burden or delay, as well as the extent to which the rule ensures meaningful public comment at the State and Federal levels.

We note that the procedures set forth in this proposed rule include procedures for submitting, publishing, and issuing public notices, applications, annual reports and other documents. In many cases, these procedures would allow for electronic documents, either as an alternative or a supplement to a printed document. Electronic documents should comply with all applicable civil rights requirements related to accessibility, including the requirements under section 508 of the Americans with Disabilities Act. Compliance with these requirements is necessary both to ensure accessibility by the public and to ensure accessibility by Federal employees who need to review the documents.

In developing this rule, CMS reviewed prior guidance we issued regarding transparency in the waiver process, including the September 27, 1994 **Federal Register** notice, and legislative proposals, including those that were proposed during the legislative process that resulted in the Affordable Care Act. These past guidance and proposals informed the development of the time requirements relating to the public comment period for new demonstrations and extending demonstrations; notifying organizations of the receipt of demonstration applications; acknowledging, if feasible, comments made; and refraining from approving or disapproving applications until public comments could be considered. In addition, as part of the task of establishing rules for the submission and review of demonstration proposals, we are codifying many of our existing processes to help create a more consistent demonstration submission and review process for States and to clarify for States, the Federal government, and the public when the public notice and input requirements take effect.

A. Section 1115 Demonstrations (Subpart G)

1. Basis and Purpose (§ 431.400)

To incorporate the policies and implement the statutory provisions described above, we propose adding a

new subpart G under 42 CFR part 431 to implement the provisions of section 1115(d) of the Act, as amended by section 10201 of the Affordable Care Act. Subpart G includes guidance related to the development of demonstration applications, public notice for States and the Department, monitoring, compliance, evaluation of demonstration projects, and the submission of reports to the Secretary.

2. Coordination with Section 1332 Waivers (§ 431.402)

Section 1332(a(5) of the Affordable Care Act requires the Secretary to develop a process for coordinating and consolidating the State waiver processes applicable under the provisions of section 1332 of the Affordable Care Act(as set forth in 45 CFR part 155), and the existing waiver processes applicable under titles XIX and XXI of the Social Security Act, and any other Federal law relating to the provision of health care items or services. Section 1332(a)(5) further requires the process developed by the Secretary to permit a State to submit a single application for a waiver under any and all of such provisions. The State waiver application processes applicable under section 1332 of the Affordable Care Act will be published in a separate rulemaking document. We have consulted with the Department in developing the demonstration application processes in this proposed rule and we will work to ensure that our final procedures are coordinated with section 1332 waiver application requirements.

3. Definitions (§ 431.404)

We are proposing to define the following terms as they are used in our current section 1115 demonstration review practices. In new § 431.404, we define the terms "demonstration," "public notice," and "section 1332 waiver" that are used in new subpart G under 42 CFR part 431.

4. State Public Notice Process (§ 431.408)

We recognize that demonstrations can have a significant impact on beneficiaries, providers, and States. Demonstrations can also influence policy making at the State and Federal level, by testing new approaches that can be models for programmatic changes nationwide or in other States. For these reasons, in § 431.408, we propose a process that promotes transparency, facilitates public involvement and input, and encourages sound decision-making as demonstration applications are designed at the State level.

In order to facilitate public involvement in the development of section 1115 demonstration applications, we propose in § 431.408(a)(1) that States issue a public notice with a comment period of at least 30 days prior to the State's submission of a new demonstration application or an application for an extension of an existing demonstration to CMS for review. Because meaningful input requires notice of the nature of the demonstration application or extension, we propose that the notice must include the following:

- A summary program description, including the goals and objectives to be implemented or extended under the demonstration project.
- The proposed health care delivery system and the eligibility requirements, benefit coverage, and cost sharing (for example, premiums, copayments, and deductibles) required of or available to individuals that will be impacted by the demonstration, and how the provisions vary from the State's current program features.
- An estimate of the expected increase or decrease in annual aggregate expenditures by population group impacted by the demonstration.
- An estimate of historic coverage data, as well as coverage projections expected over the term of the demonstration for each category of beneficiary whose health care coverage is impacted by the demonstration.
- The hypothesis and evaluation parameters of the demonstration.
- The locations and Internet address of where copies of the demonstration application will be available for public review and comment.
- Postal and Internet email addresses where written comments may be sent and reviewed by the public, and the timeframe during which comments will be accepted.
- The location, date, and time of at least two public hearings convened by the State to seek public input on the demonstration application.

The September 27, 1994 **Federal Register** notice (59 FR 49249) provided general principles and guidelines governing demonstration projects, as well as a public notice process designed to ensure that interested parties have an opportunity to provide input on State demonstration applications. In proposed § 431.408(a)(2)(i), we have expanded the methods for States to provide public notice that were first outlined in the September 27, 1994 **Federal Register** notice. We propose requiring the State to publish its public notice process, its public input process, planned hearings, and demonstration application(s) either on a main page of the public web site of the State agency responsible for making applications for demonstrations or on a demonstration-specific web page that is linked in a readily identifiable way to the main page of the State agency's web site. Public notice shall also be provided in at least one of the following publications:

- The State's Administrative Record in accordance with the State's Administrative Procedure Act, provided that such notice is provided at least 30 days prior to the submission of the demonstration application to CMS; or
- The newspaper of widest circulation in each city or county with a population of 50,000 or more, provided that such notice is provided at least 30 days prior to the demonstration application's submission to CMS.

If the State utilizes a mechanism, such as an electronic mailing list, to notify interested parties of the demonstration application(s), the State may dispense with the notice procedures in § 431.408(a)(2)(i)(A) and (B).

In § 431.408(a)(3), consistent with the provisions of the Affordable Care Act, we propose that States would hold at least two public hearings regarding the State's demonstration application. These hearings must occur at least 20 days prior to the State's submission of a demonstration application to CMS for review. A State would have broad discretion to select the types of public forums it would rely on, choosing at least two of the following public forums:

- The Medical Care Advisory Committee that operates in accordance with § 431.408; or
- A commission or other similar process, where meetings are open to members of the public; or
- A State legislative process, which would afford an interested party the opportunity to learn about the contents of the demonstration application, and to comment on its contents; or
- Any other similar process for public input that would afford an interested party the opportunity to learn about the contents of the demonstration application, and to comment on its contents.

For the purposes of developing a coordinated process that is consistent with the provisions of section 5006(e) of the Recovery Act regarding tribal consultation at § 431.408(b), we define State consultation activities to include a consultation to solicit advice from the Indian Tribes, Indian health programs, and Urban Indian Organizations prior to the publication and submission of any application, or extension of a demonstration when it has a direct impact on Indians, Indian health

providers or Urban Indian Organizations.

Under § 431.408(b)(1), we propose that States with federally-recognized Indian tribes, Indian health programs, and/or urban Indian organizations, must include with their demonstration applications (for a new or renewed demonstration) evidence to CMS that the tribes and Indian health programs and Urban Indian Organizations in the State were notified in writing of the State's intent to submit a request for a new demonstration or extension, at least 60 days prior to the anticipated submission date of the demonstration application. This 60-day notice is not new and is consistent with previous guidance on this matter.

Under § 431.408(b)(2), we propose that consultation activities will be conducted in a manner consistent with the State approved consultation process outlined in the State's Medicaid State Plan.

Under § 431.408(b)(4), we propose that documentation of the State's consultation activities should be part of the application for any demonstration submitted to CMS for review and consideration, and must include issues raised and the potential resolution of such issues.

We welcome comments on the requirements proposed in this section of the rule. Specifically, we are interested in receiving comments regarding activities that would provide the public opportunities to provide meaningful input into the development of State demonstration applications while ensuring that the demonstration process can move forward in a timely and efficient manner.

5. Application Procedures: Initial Demonstration Applications Content (§ 431.412(a))

In reviewing section 1115 demonstration applications, CMS requests information from States in order to determine the nature, scope, and impact of the demonstration request. In this rule, we propose application components consistent with current practice both for new demonstrations and for the extension of an existing demonstration, in an effort to make the application process consistent and transparent.

Under § 431.412(a), we define when a State request for a new demonstration would be considered complete for the purposes of initiating the Federal review process described below. A request would be complete, for this purpose, when the State has submitted to CMS the following information:

- A demonstration program description, and goals and objectives that will be implemented under the demonstration project.
- The description of the proposed health care delivery system, eligibility requirements, benefit coverage, and cost sharing (for example, premiums, copayments, and deductibles) required of individuals that will be impacted by the demonstration.
- An estimate of the expected increase or decrease in annual aggregate expenditures by population group impacted by the demonstration. If available, include historic data for these populations.
- An estimate of historic coverage and enrollment data (as appropriate) and estimated projections expected over the term of the demonstration for each category of beneficiary whose health care coverage is impacted by the demonstration.
- Other demonstration program features that require the State to not follow the provisions of the Medicaid and CHIP programs.
- The type of waivers and expenditure authorities that the State believes to be necessary to authorize the demonstration.
- The research hypothesis or hypotheses that are related to the demonstration's proposed changes, goals, and objectives, a plan for testing the hypotheses in the context of an evaluation, and, if a quantitative evaluation design is feasible, the identification of appropriate evaluation indicators.
- Written evidence of the State's compliance with the public notice requirements set forth in § 431.408, with a report of key issues raised by the public during the comment period, which shall be no less than 30 days, and how the State took those comments into consideration when developing the demonstration application.

We also propose that after a request for a new demonstration or renewal of existing demonstration is considered complete, CMS may request, or the State may propose application modifications, as well as additional information to aid in the application review. If an application modification substantially changes the original demonstration design, CMS may, at its discretion, direct an additional 30 day public comment period. We also clarify that nothing in this proposed rule precludes a State from submitting to CMS a pre-application concept paper or from conferring with CMS about its intent to seek a demonstration prior to submitting a completed application.

6. Application Procedures: Demonstration Applications (§ 431.412(b))

We propose adding § 431.412(b) to describe the application procedures that States must follow when submitting an application for a new demonstration or a request to extend an existing demonstration under section 1115 of the Act. This provision establishes a process for the State to submit an application, and for CMS to confirm that the application is complete, which in turn initiates the Federal comment and decision-making period. We developed these procedures because they represent a standardized approach that would be helpful to States, stakeholders, and CMS in the review of section 1115 demonstrations. We invite comments on the components of this application process.

Under § 431.412(b)(1), we propose to formally notify the State in writing within 15 days of receipt of a complete application for a new demonstration project or extension of an existing demonstration project. This notice triggers the start of the 30-day Federal public comment period. We chose these timeframes and action steps to effectively communicate to States the current status and sequential steps in the demonstration review process. We clarify that this notice of a "complete" application process is based on a preliminary review for the purpose of beginning the public comment period at the Federal level. It does not preclude CMS requests for additional or supplemental information, that would support or inform a final decision on the application, and it also does not prevent the State from supplying any additional information that it determines would aid CMS' review of its application. The notice simply represents a determination that the application is sufficient for the Federal review to commence.

In order to inform the State and the public of the status of the demonstration or proposed activity, under § 431.412(b)(2), we propose to provide the State a written notice within 15 days of receipt of a demonstration application that CMS determines is incomplete. In such notice, CMS will identify the elements missing from the application.

Under § 431.412(b)(3), we propose to publish on our web site at regular intervals the status of all State submissions, including information received from the State while CMS works with the State to meet the demonstration application process set forth in this section.

7. Application Procedures: Demonstration Extension Request (§ 431.412(c))

Generally, demonstrations may be extended up to 3 years under sections 1115(a), 1115(e), and 1115(f) of the Act. As sections 1115(e) and (f) of the Act provide for a substantially streamlined Federal review process, the timeframes constrain Federal review of the demonstration and consequently the time under which CMS can consider public input. In § 431.412(c), we propose that, at least 30 days prior to a State's submission of a request for review under those sections, the State issue public notice of its intent to seek an extension under those sections and receive public comment on the proposed extension of the demonstration for at least 30 days. In addition, we propose that the State must provide a written summary to CMS of the key issues raised in the public comment period and how the State considered those issues when developing the demonstration extension application.

The application prerequisites for the extension of a demonstration, codify current practice guidelines employed by CMS in the review of an existing section 1115 demonstration, which are consistent with the required timeframes in section 1115(e) and 1115(f) of the Act. In § 431.412(c), we propose that a demonstration extension request will be considered only if it is submitted no later than 12 months prior to the expiration date of the demonstration.

In § 431.412(c), we propose that a demonstration extension request or phase out plan be sent from the Governor of the State to the Secretary of HHS, as required by the statute, to extend a demonstration under sections 1115(e) and (f) of the Act. However, if an extension application includes substantial changes to the existing demonstration, CMS may, at its discretion, treat the application as an application for a new demonstration.

To ensure an appropriate review of request to extend existing demonstrations and to provide information to the public for purposes of public comment, we propose a list of information States should provide CMS to facilitate public comment on and, CMS review of section 1115 demonstration extensions. In § 431.412(c)(2), we propose that a demonstration extension application submitted by the State will be considered complete by CMS when the State provides the following:

- A historical narrative summary of the demonstration project identifying the objectives set forth at the time the demonstration was approved and evidence of how these objectives have or have not been met, as well as future goals of the demonstration.
- If changes are requested, a narrative of the changes being requested along with the objective of the change and the desired outcomes.
- The types of waivers and expenditure authorities that are being requested in the extension period, or a statement that the State is requesting the same waiver and expenditure authorities as those approved in the current demonstration, as applicable.
- Summaries of External Quality Review Organization (EQRO) reports, managed care organization (MCO), and State quality assurance monitoring, and any other documentation of the quality of care provided under the demonstration.
- Financial data demonstrating the historical, and projected expenditures for the requested period of the extension, as well as cumulatively over the lifetime of the demonstration. This includes a financial analysis of changes to the demonstration requested by the State.
- An evaluation report of the demonstration inclusive of evaluation activities and findings to date, plans for evaluation activities during the extension period, and if changes are requested, identification of research hypotheses related to the changes and an evaluation design for addressing the proposed revisions.
- Written evidence of the State's compliance with the public notice process set forth in § 431.408, including the post-award public input process described in § 431.420(c) with a report of key issues raised by the public during the comment period and how the State took those comments into consideration when developing the demonstration extension application.

We clarify that, while a request for an extension of a demonstration may preliminarily be considered "complete," it does not preclude CMS requests for additional or supplemental information, to support or inform a final decision on the application, and it also does not prevent the State from supplying any additional information that it determines would aid CMS' review of its application. If an application modification substantially changes the original demonstration design, CMS may, at its discretion, direct an additional 30-day public comment period.

8. Federal Public Notice and Approval Process (§ 431.416)

We chose the timeframes and action steps outlined in this subpart to effectively communicate to States and concerned stakeholders the current status and sequential steps in the demonstration review process. This approach would standardize and improve transparency in the section 1115 demonstration review process. In addition, by clearly communicating this process, we are striving to minimize confusion around the demonstration review process, satisfy key stakeholders' need for information and improve communication at the Federal level.

In § 431.416(a), we propose that within 15 days of receipt of a complete demonstration application for a new demonstration project or an extension of an existing demonstration project, CMS will send the State a written notice informing the State of the following:

- CMS' receipt of the request.
- The beginning of the 30-day Federal public notice process.

Under § 431.416(b) we propose to solicit public comment for demonstration applications received for at least a 30-day period through a variety of mechanisms, specifically by:

- Publishing demonstration applications and associated concept papers, if any, on the CMS Web site.
- Publishing the written notice of receipt of the State's request for CMS to review and consider the demonstration application.
- Publishing the proposed effective date of the demonstration.
- Publishing where inquiries and comments from the public may be directed to CMS via mail or e-mail.
- Notifying interested parties through an electronic mailing list that CMS will create for this purpose and will be available to all interested parties.
- Additional actions that may be warranted to comply with Federal policies regarding consultation with Indian tribes.

Under § 431.416(b)(2), we propose to create and solicit subscription to an electronic mailing list for the widespread distribution of information to individuals and organizations interested in demonstration applications.

For the purpose of advising interested stakeholders of the status of demonstrations under CMS review, CMS proposes to publish on its website at regular intervals appropriate information, which may include, but is not limited to the following:

- Relevant status update(s).
- A listing of the issues raised through the public notice process.

Under § 431.416(d), we propose to publish all comments electronically. We will review and consider all comments, but will not provide written responses to public comments.

Under § 431.416(e), we propose not to render a final decision on a demonstration application until at least 45 days after notice of receipt of a completed application. This accommodates the 30-day notice period, as well as time to review the comments without unduly prolonging the review period. Some demonstration applications are particularly complex and will require a longer review period. The timeframes here provide for the minimum review period except in the case of emergencies.

Under § 431.416(f), we propose to maintain an administrative record which will generally consist of the following:

- The demonstration application from the State.
- Public comments (including Congressional comments) sent to the CMS and any CMS responses.
- For an approved application, the final special terms and conditions, waivers, expenditure authorities, and award letter sent to the State.
- The State's acceptance letter.

We invite comment on all aspects of the demonstration development and review process, including what elements of the administrative record should be posted after a decision has been made, and how CMS can balance the need for transparency and the need for an expeditious review process.

To ensure that States and the Federal Government are able to respond quickly to emergencies and unanticipated disasters, § 431.416(g) proposes a good cause exception to bypass, in whole or in part, the Federal and State notice and comment processes in order to expedite a decision on a proposed demonstration application or renewal.

For an exception to the normal public notice process to exist, there must be unforeseen circumstances beyond the State's control that makes advance public notice impractical due to unusual circumstances the State could not reasonably foresee including, but not limited to, an emergent occurrence such as fire or earthquake or flood.

The Secretary may grant the State an exception to the normal public notice process or from the timeliness requirement when the State demonstrates all of the following:

- The State acted in good faith.
- The State acted in a diligent, timely, and prudent manner.
- The circumstances constitute an emergency and could not have been reasonably foreseen.
- Delay would undermine or compromise the purpose of the demonstration and be contrary to the interests of the beneficiaries.

9. Monitoring and Compliance (§ 431.420)

As section 1115 demonstrations have a significant impact on beneficiaries, States and the Federal Government, we are proposing processes and methodologies to assure we have adequate and appropriate information regarding the effectiveness of section 1115 demonstrations. Under § 431.420(a), we propose that States must comply with all applicable Federal laws, regulations, policy statements and Departmental guidance unless a law or regulation has specifically been waived or determined not applicable under the demonstration. States must, within the timeframes specified in law, regulation, interpretive policy or guidance, come into compliance with any changes in Federal law, regulation, or interpretive policy affecting State demonstration projects, unless the provision being changed is expressly waived or identified as not applicable. States must comply with the terms and conditions of the agreement between the Secretary and the State to implement a State demonstration project or the demonstration will be suspended or terminated in whole or in part by the Secretary.

Under proposed § 431.420(b), as part of the special terms and conditions of any demonstration project, States will conduct periodic evaluations related to the implementation of the demonstration. CMS would review, and when appropriate investigate, documented complaints that a State is failing to comply with requirements specified in the special terms and conditions and implementing waivers of any approved demonstration.

Another manner in which we propose strengthening our public notice procedures first set forth in the September 27, 1994 **Federal Register** notice is the post-implementation public forums. To assure continued public input after the initial 6 months of the demonstration's implementation, and annually thereafter, the States shall hold a public forum to solicit comments on the progress of the demonstration. The public forum must occur using either:

- The Medical Care Advisory Committee that operates in accordance with § 431.408; or
- A State legislative process, commission or other similar process, where meetings are open to members of the public, and would afford an interested party the opportunity to learn about the demonstration's progress.

Under § 431.420(c), we propose that States will publish the date, time, and location of the public forum in a prominent location on the State's public Web site at least 30 days prior to the date of the planned public forum.

Under § 431.420 (d), we affirm the Secretary's right to suspend or terminate a demonstration, in whole or in part, any time before the date of expiration, whenever it determines that the State has materially failed to comply with the terms of the demonstration project.

When a demonstration is terminated, suspended, or if waivers or expenditure authority are withdrawn, Federal funding is limited to normal closeout costs associated with an orderly termination of the demonstration or expenditure authority as described in Under § 431.420(e).

Under § 431.420(f), should we undertake an independent evaluation of any component of the demonstration, we propose the State must cooperate fully with CMS or the independent evaluator selected by CMS. The State must submit all necessary data and information to CMS or the independent evaluator.

10. Evaluation Requirements (§ 431.424)

Under § 431.424(a), we propose that the Secretary may use a broad range of evaluation strategies developed by States but subject to Secretarial approval in the application of evaluation techniques for measuring the effectiveness and usefulness of demonstration projects as models that help shape health care delivery and policy.

Under proposed § 431.424(b), demonstration evaluations will include the following criteria:

- *Quantitative Research Methods:* Quantitative research methods that involve the systematic empirical investigation of quantitative properties and phenomena and their relationships, are the preferred approach for most demonstrations. CMS will consider alternative evaluation designs when quantitative designs are technically infeasible or not well suited to the change made by the demonstration.
- *Approaches that minimize Beneficiary Impact:* The Secretary is issuing a requirement that the evaluation process must be as un-intrusive as possible to the beneficiaries in terms of implementing and operating the policy approach to be demonstrated,

while ensuring that critical lessons are learned from the demonstration.

Under § 431.424(c), we propose that States submit and receive CMS approval of a design for an evaluation of the demonstration (or extension) and publish to the State's public web site the draft demonstration design. The draft evaluation design must include:

- A discussion of the demonstration hypotheses that are being tested including monitoring and reporting on the progress towards the expected outcomes.
- The data to be utilized and the baseline value for each measure.
- The methods of data collection.
- How the effects of the demonstration will be isolated from those other initiatives occurring in the State.
- A proposed date by which a final report on findings from evaluation activities conducted under the evaluation plan must be submitted to CMS.
- Any other information pertinent to the State's summative or formative research via the demonstration operations.

Under proposed § 431.424(d), in the event the State submits a request to extend the demonstration beyond the current approval period under the authority of sections 1115(a), (e), or (f) of the Act, the State should include an interim evaluation report as part of the State's request for each subsequent renewal.

Under § 431.424(e), we propose that States publish the approved demonstration evaluation design on the State's public Web site.

Under § 431.424(f) regarding Federal evaluations, we propose that States comply with all requirements set forth in this subpart.

Under § 431.424 (g),we propose to post all evaluation materials, including research and data collection, on our Web site for purposes of sharing findings with the public.

11. Reporting Requirements (§ 431.428)

In order for CMS to effectively monitor the implementation of a demonstration, we propose States to submit an annual report, as described in § 431.428(a), documenting the following:

- Any policy or administrative difficulties in the operation of the demonstration.
- The status of the health care delivery system under the demonstration.
- The impact of the demonstration in providing insurance coverage to beneficiaries and uninsured populations.
- Outcomes of care, quality of care, cost of care and access to care for demonstration populations.
- The results of beneficiary satisfaction surveys grievances and appeals.
- The results of any audits or lawsuits that impact the demonstration.
- The financial performance of the demonstration.
- The status of the evaluation and information regarding Progress in achieving demonstration evaluation criteria.
- Any State legislative developments that impact the demonstration.
- The results/impact of any demonstration programmatic area as defined by CMS that is unique to the demonstration design or evaluation hypothesis.
- A summary of the annual post-award public forum, including all public comments received regarding the progress of the demonstration project.

Under § 431.428(b), we propose States to submit a draft annual report to CMS no later than 90 days after the end of each demonstration year. Within 60 days of receipt of comments from CMS, the State will submit a final annual report for the demonstration year to CMS. The draft and final annual reports are to be published on the State's public Web site.

Given the discretionary nature regarding demonstration approval, CMS is committed to relying on annual reports and other evaluations when making decisions on demonstration changes and renewals including information in such reports and whether the State has complied with reporting requirements.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding State Public Notice Process (§ 431.408)

Section § 431.408 provides for a State to provide a public notice and comment period regarding applications for a demonstration project, or an extension of an existing demonstration project the State intends to submit to CMS for review and consideration. Section § 431.408(a)(1) specifies that prior to submitting an application to CMS for a new demonstration project, or an extension of a previously approved demonstration project, the State must provide public notice, and a comment period for at least 30 days. The public notice must address the information requirements listed at § 431.408(a)(1)(i) through (iv).

The burden estimate associated with this requirement is the time and effort necessary to develop and publish notice with a comment period that complies with the aforementioned information requirements. We estimate that, on average, each of the 15 States submitting applications for new demonstration projects, an extension of a previously approved demonstration project will require 40 hours to comply with the requirements in this section. The estimated annual burden associated with this section is 600 hours at a cost of $12,402.00.

Section 431.408(a)(2) provides that States establish and maintain a readily identifiable link to a demonstration web page on the public Web site of the State agency responsible for making applications for demonstrations. The State public notice must appear in a prominent location on the demonstration web page of the State's public web site throughout the entire review process; and the public notice must appear in at least one of the publications listed at § 431.408(a)(2)(i) through (ii).

The burden associated with this is the time and effort necessary to develop a notice and to publish it both on the web site for State agency responsible for submitting demonstration applications and in at least one of the publication listed at § 431.408(a)(2)(i) through (ii). While these requirements are subject to the PRA, we believe we addressed the burden estimates in our discussion of § 431.408(a)(1).

Section § 431.408(a)(3) requires that at least 20 days prior to submitting an

application for new demonstration projects, or an extension of a previously approved demonstration project to CMS for review, the State must have conducted at least two public hearings regarding the State's demonstration application using at least two of the following public forums contained in this section. The burden associated with this is the time and effort necessary for a State to conduct at least two public hearings 20 days prior to submitting an application for a demonstration. While this requirement is subject to the PRA, we believe the associated burden is exempt under 5 CFR 1320.3(h)(4). Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment are not subject to the PRA.

Section 431.408(b) requires States with federally recognized Indian tribes, Indian health programs, Urban Indian Organizations or all three of the aforementioned entities, to consult with the Indian tribes, Indian Health programs and Urban Indian Organizations in the State, before submitting a demonstration application. Section 431.408(b)(2) specifies that consultation activities must be conducted in a manner consistent with the State approved consultation process outlined in the State's Medicaid State Plan. Section 431.408(b)(3) further specifies that the State must submit evidence to CMS that the Indian Tribes, Indian Health programs, and Urban Indian Organizations were notified in writing of the State's intent to submit an application for a new demonstration project, or an extension of an existing demonstration project, at least 60 days prior to the anticipated submission date of the application. Section 431.408(b)(4) explains that documentation of the State's consultation activities must be included in the demonstration application, such as, the date and location of the consultation and must include issues raised and the potential resolution for such issues.

The burden associated with these is both the time and effort necessary for a State to conduct its tribal consultations and the time and effort necessary to notify CMS of the State's compliance with § 431.408(b)(3). We estimate that this requirement applies to 37 States but that no more than, on average, 15 States would be subject to this requirement in a given year. We further estimate that it will take each State a total of 40 hours to both conduct its tribal consultations, notify the Indian Tribes in writing of its intent to submit an application for a new demonstration project, or an extension of an existing demonstration project and to submit the aforementioned evidence to CMS. The estimated annual burden associated with these requirements is 600 hours at a cost of $12,402.00.

B. ICRs Regarding Application Procedures (§ 431.412)

Section 431.412(a) discusses the application process for Medicaid demonstration projects. A State's application for approval of a new demonstration project or an extension of an existing demonstration project must be submitted to CMS as both printed and electronic documents. Section § 431.412(b) further explains that applications for the initial approval of a demonstration will not be considered complete if they do not comply with the requirements contained at § 431.412(b) and § 431.408.

The burden associated with the requirements in § 431.412 is the time and effort necessary for a State to develop and submit a complete initial application for a demonstration. We estimate that we will receive, on average, 5 applications annually. Similarly we estimate that it will take 200 hours for a State to develop and submit a complete demonstration application. The total estimated annual burden associated with the requirements in § 431.412(b) is 1000 hours at a cost of $20,067.00.

Section 431.412(c) specifies that a State must submit a request to extend an existing demonstration under sections 1115(a), (e) and (f) of the Act at least 12 months prior to the expiration date of the demonstration. An extension application, including an extension for the purpose of phasing out a demonstration, must be sent from the Governor of the State to the Secretary. Section 431.412(c)(2) further specifies that an application to extend an existing demonstration will be considered complete when the State provides the required information listed at § 431.412(c)(2)(i) through (vii). The burden associated with the requirements in § 431.412(c) is the time and effort necessary for a State to develop and submit a demonstration extension application. CMS estimates that, on average, 10 States will apply for extensions annually. We further estimate that it will take each State approximately 160 hours to develop and submit a demonstration extension application. The total estimated annual burden is 1600 hours at a cost of $33,072.00.

C. ICRs Regarding Monitoring and Compliance (§ 431.420)

According to Section 431.420(b), States will periodically perform reviews of the implementation of the demonstration. We estimate that it will take each State 40 hours annually to periodically review the demonstration's implementation. We also estimate that, on average, 15 States must comply with this requirement. The total estimated annual burden associated with this requirement is 600 hours at a cost of $12,402.00.

Section 431.420(c) states that at least 6 months after the implementation date of the demonstration and annually thereafter, the State must hold a public forum to solicit comments on the progress of a demonstration project. Section 431.420(c)(1)(i) through (ii) further specifies that the public forum to solicit feedback on the progress of a demonstration project, must occur at a Medical Care Advisory Committee, or a commission, or other similar process, where meetings are open to members of the public, and would afford an interested party the opportunity to learn about and comment on the demonstration's progress. Additionally, as stated in § 431.420(c)(1)(iii), the State must publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum. The burden associated with these provisions includes the time and effort necessary to conduct public meeting and the time and effort necessary for a State to publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum. While these requirements are subject to the PRA, we believe the associated burden is exempt from the PRA. As discussed previously in this proposed rule, facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment are not subject to the PRA. Therefore, the burden associated with the annual public hearing requirement is exempt. Similarly, we believe the time and effort

necessary to a State to publish the date, time, and location of the public forum in a prominent location on the State's public web site is a burden that would be incurred in the course of usual and customary State business practices and is therefore exempt from the PRA under 5 CFR 1320.3(b)(3).

D. ICRs Regarding Evaluation Requirements (§ 431.424)

As required in § 431.424(c)(1), simultaneous to receiving CMS' approval of a new demonstration project, or a extension of a previously existing demonstration project, the State must receive CMS approval of a design for an evaluation of the demonstration project and publish this document to the State's public Web site. The draft evaluation must include information established in § 431.424(c) (2). The burden associated with this requirement is the time and effort necessary to design an evaluation for a new demonstration. We estimate that it will take each State 80 hours to develop an evaluation. Similarly, we estimate that, on average, 15 States must comply with this requirement. We further estimate that the total estimated annual burden associated with this requirement is 1,200 hours at a cost of $24,804.00.

Section 431.424(d) specifies that in the event that the State requests to extend the demonstration beyond the current approval period under the authority of section 1115(a), (e), or (f) of the Act, the State must submit an interim evaluation report as part of the State's request for a subsequent renewal of the demonstration. The burden associated with this is the time and effort necessary for a State to develop and submit an interim evaluation report. We estimate that each State will take 80 hours to comply with this requirement. Similarly, we estimate that, on average, 10 States must comply with this requirement. We further estimate that the total estimated annual burden associated with this requirement is 800 hours at a cost of $16,536.00.

Section 431.424(e) established that States will publish CMS-approved demonstration evaluation designs on their State public Web site. We estimate that it will take 36 hours for each State to comply with this disclosure process. We further estimate that, on average, 15 States must comply with this provision. We further estimate that the total estimated annual burden associated with this requirement is 540 hours at a cost of $11,161.80.

E. ICRs Regarding Reporting Requirements (§ 431.428)

Section 431.428 establishes that States will submit annual reports to CMS documenting the information listed in § 431.428(a) (1) through (11). As part of the submission process, § 431.428(b) requires States to submit draft annual reports to CMS no later than 90 days after the end of each demonstration year. The burden associated with this reporting requirement is the time and effort necessary to submit draft annual reports to CMS. We estimate that, on average, 15 States must comply with this. We estimate that it will take 24 hours for each State to comply with this reporting requirement. We further estimate that the total estimated annual burden associated with this requirement is 360 hours at a cost of $7,441.20.

In § 431.428(b)(1) establishes that within 60 days of receipt of comments from CMS, the State must submit to CMS the final annual report for the demonstration year. While this requirement is subject to the PRA, we believe the associated burden is exempt under 5 CFR 1320.3(h) (9). Facts or opinions obtained or solicited through non-standardized follow-up questions designed to clarify responses to approved collections of information are not subject to the PRA.

Section § 431.428(b)(2) states that the draft and final annual reports must be published on the State's public web site. The burden associated with the time and effort it takes for a State to post the aforementioned information on the State's public Web site. We estimate that, on average, each of the 15 States will require 2 hours to comply with this requirement. The total estimated annual burden associated with this requirement is 30 hours at a cost of $620.10.

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING AND REPORTING BURDEN

Regulation section(s)	OMB control no.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/maintenance costs ($)	Total cost ($)
§ 431.408(a)(1)	0938–New	15	1	40	600	20.67	12,402.00	0	12,402.00
§ 431.408(b)	0938–New	15	1	40	600	20.67	12,402.00	0	12,402.00
§ 431.412(a) and (b)	0938–New	5	1	200	1000	20.67	20,067.00	0	20,067.00
§ 431.412c	0938–New	10	1	160	1600	20.67	33,072.00	0	33,072.00
§ 431.420	0938–New	15	1	40	600	20.67	12,402.00	0	12,402.00
§ 431.424(c)	0938–New	15	1	80	1,200	20.67	24,804.00	0	24,804.00
§ 431.424(d)	0938–New	10	1	80	800	20.67	16,536.00	0	16,536.00
§ 431.424(e)	0938–New	15	1	36	540	20.67	11,161.80	0	11,161.80
§ 431.428(b)	0938–New	15	1	24	360	20.67	7,441.20	0	7,441.20
§ 431.428(b)(2)	0938–New	15	1	2	30	20.67	620.10	0	620.10
Total		130	10		7,330		150,908.10	0	150,908.10

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, [CMS–2325–P];

Fax: (202) 395–6974; or

E-mail: *OIRA_submission@omb.eop.gov*.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the

Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects of $100 million or more in any 1 year. This proposed rule is estimated to have an overall economic impact of $113,726.90 annually. This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis, if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of Core-Based Statistical Area (for Medicaid) and outside of a Metropolitan Statistical Area (for Medicare) and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. Because this rule does not mandate State participation in using section 1115 demonstrations, there is no obligation for the State to make any change to their existing programs. As a result, there is no mandate for the State. Therefore, we estimate this rule would not mandate expenditures in the threshold amount of $135 million in any 1 year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As CMS was considering potential proposals to make in this proposed rule, CMS conducted a listening session in May 2010 with more than 20 representatives of stakeholder organizations and also held a separate listening session open to officials from all 50 States, the District of Columbia and U.S. Territories. The stakeholder representatives expressed concern that the policies employed in demonstrations have far-reaching impact, yet can happen with little meaningful stakeholder input into policy development at the Federal and State levels. They also expressed the view that since demonstrations allow States to "not comply" with requirements that the Congress put into law, the need for meaningful public input into these demonstrations is great. States agreed that public input is important, and while some States expressed concern that new requirements established by CMS could be potentially burdensome, other States reported that their existing public notice requirements and existing State legislative processes were strong and sufficient enough to ensure meaningful public input at the State level. Since this regulation will not impose substantial direct costs on State or local governments, the requirements of Executive Order 13132 are not applicable. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 431

Health care, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services propose to amend 42 CFR chapter IV as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. Subpart G is added to part 431 to read as follows:

Subpart G—Section 1115 Demonstrations

Sec.

Subpart G—Section 1115 Demonstrations

§ 431.400 Basis and purpose.

(a) *Basis.* This subpart implements provisions in section 1115(d) of the Act, which requires all of the following:

(1) The establishment of application requirements for Medicaid and CHIP demonstration projects that provide for:

(i) A process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedure Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance.

(ii) Requirements relating to all of the following:

(A) The goals of the program to be implemented or renewed under the demonstration project.

(B) Expected State and Federal costs and coverage projections of the State demonstration project.

(C) Specific plans of the State to ensure the demonstration project will be in compliance with title XIX or XXI.

(2) A process for public notice and comment after a demonstration application is received by the Secretary that is sufficient to ensure a meaningful level of public input.

(3) A process for the submission of reports to the Secretary by a State relating to the implementation of a demonstration project.

(4) Periodic evaluation of demonstration projects by the Secretary.

(b) *Purpose.* This subpart sets forth a process for application and review of Medicaid and CHIP demonstration

projects that provides for transparency and public participation.

§ 431.402 Coordination with section 1332 waivers.

(a) *States may apply jointly.* States may submit a single application for waivers under section 1332 of the Affordable Care Act and demonstration projects under section 1115 of the Act that involve titles VIII, XIX, and XXI of the Act, provided that such application complies with the procedural requirements for section 1332 waivers, as described at 45 CFR part 155, and the procedural requirements described in this part.

(b) [Reserved]

§ 431.404 Definitions.

For the purposes of this subpart:

Demonstration means any experimental, pilot, or demonstration project which the Secretary approves under the authority of section 1115 of the Act because, in the judgment of the Secretary, it is likely to assist in promoting the statutory objectives of the Medicaid or CHIP program.

Public notice means a notice issued by a government agency or legislative body that contains sufficient detail to notify the public at large of a proposed action, consistent with the provisions of § 431.408.

Section 1332 waiver means a Waiver for State Innovation under section 1332 of the Affordable Care Act.

§ 431.408 State public notice process.

(a) *General.* A State must provide at least a 30 day public notice and comment period regarding applications for a demonstration project, or an extension of an existing demonstration project that the State intends to submit to CMS for review and consideration.

(1) *Public notice and comment period.* Prior to submitting an application to CMS for a new demonstration project or an extension of a previously approved demonstration project, the State must provide at least a 30 day public notice and comment period, and the public notice shall include all of the following information:

(i) A comprehensive description of the demonstration application to be submitted to CMS, including:

(A) The program description, goals, and objectives to be implemented or extended under the demonstration project, including a description of the current or new beneficiaries who will be impacted by the demonstration.

(B) To the extent applicable, the proposed health care delivery system and the eligibility requirements, benefit coverage and cost sharing (premiums, co-payments, and deductibles) required of individuals that will be impacted by the demonstration, and how such provisions vary from the State's current program features.

(C) An estimate of the expected increase or decrease in annual enrollment, and in annual aggregate expenditures, including historic enrollment or budgetary data, if applicable. This includes a financial analysis of changes to the demonstration requested by the State.

(D) The hypothesis and evaluation parameters of the demonstration.

(ii) The locations and Internet address of where copies of the demonstration application are available for public review and comment.

(iii) Postal and Internet e-mail addresses where written comments may be sent and reviewed by the public, and the timeframe during which comments will be accepted.

(iv) The location, date, and time of at least two public hearings convened by the State to seek public input on the demonstration application.

(2) *Statement of public notice and public input procedures.*

(i) The State shall publish its public notice process, public input process, planned hearings, and the demonstration application(s) in a prominent location on either the main page of the public Web site of the State agency responsible for making applications for demonstrations or on a demonstration-specific web page that is linked in a readily identifiable way to the main page of the State agency's Web site. The State must maintain and keep current the public Web site throughout the entire public comment and review process. The State shall also publish the public notice in at least one of the following publications:

(A) The State's administrative record in accordance with the State's Administrative Procedure Act, provided that such notice is provided at least 30 days prior to the submission of the demonstration application to CMS; or

(B) The newspaper of widest circulation in each city or county with a population of 50,000 or more, provided that such notice is provided at least 30 days prior to the submission of the demonstration application to CMS.

(ii) If the State utilizes a mechanism, such as an electronic mailing list, to notify interested parties of the demonstration application(s), the State may dispense with the notice procedures in paragraphs (a)(2)(ii)(A) and (B) of this section.

(3) *Public hearings.* At least 20 days prior to submitting an application for a new demonstration project or extension of an existing demonstration project to CMS for review, the State must have conducted at least two public hearings regarding the State's demonstration application using at least two of the following public forums:

(i) The Medical Care Advisory Committee that operates in accordance with § 431.408; or

(ii) A commission or other similar process, where meetings are open to members of the public; or

(iii) A State legislative process, which would afford an interested party the opportunity to learn about the contents of the demonstration application, and to comment on its contents; or

(iv) Any other similar process for public input that would afford an interested party the opportunity to learn about the contents of the demonstration application, and to comment on its contents.

(b) *Tribal consultation.* A State with federally recognized Indian tribes, Indian health programs, and/or Urban Indian Organizations shall include a process to consult with the Indian tribes, Indian Health programs and Urban Indian Organizations in the State, prior to submission of an application to CMS for a new demonstration project or an extension of a previously approved demonstration project.

(1) The consultation with the federally-recognized Indian tribes, Indian health programs and Urban Indian Organizations must occur 60 days prior to the publication and submission of an application for a new demonstration project or a renewal for a previously approved demonstration project when it has a direct impact on Indians, Indian health providers or Urban Indian Organizations.

(2) The consultation activities must be conducted in a manner consistent with the State approved consultation process outlined in the State's Medicaid State Plan.

(3) The State must include in its application evidence that the Indian Tribes and Indian Health programs and Urban Indian Organizations were notified in writing of the State's intent to submit an application for a new demonstration project or a renewal of a previously approved demonstration project, at least 60 days prior to the anticipated submission date of the application.

(4) Documentation of the State's consultation activities must be included in the demonstration application, such as, the date and location of the consultation and must include issues raised and the potential resolution for such issues.

§ 431.412 Application procedures.

(a) *Initial demonstration applications content.*

(1) Applications for initial approval of a demonstration will not be considered complete unless they comply with the public notice process set forth in § 431.408(a) of this part, and includes the following:

(i) A comprehensive program description of the demonstration, including the goals and objectives to be implemented under the demonstration project.

(ii) A description of the proposed health care delivery system, eligibility requirements, benefit coverage and cost sharing (premiums, co-payments, and deductibles) required of individuals that will be impacted by the demonstration to the extent such provisions would vary from the State's current program features and the requirements of the Act.

(iii) An estimate of the expected increase or decrease in annual enrollment, and in annual aggregate expenditures, including historic enrollment or budgetary data, if applicable.

(iv) Current enrollment data, if applicable, and enrollment projections expected over the term of the demonstration for each category of beneficiary whose health care coverage is impacted by the demonstration.

(v) Other program features that the demonstration would modify in the State's Medicaid and CHIP programs.

(vi) The type of waivers and expenditure authorities that the State believes to be necessary to authorize the demonstration.

(vii) The research hypotheses that are related to the demonstration's proposed changes, goals, and objectives, a plan for testing the hypotheses in the context of an evaluation, and, if a quantitative evaluation design is feasible, the identification of appropriate evaluation indicators.

(viii) Written evidence of the State's compliance with the public notice requirements set forth in § 431.408, with a report of the key issues raised by the public during the comment period, which shall be no less than 30 days, and whether and how the State considered those comments when developing the demonstration application.

(2) CMS may request, or the State may propose application modifications, as well as additional information to aid in the review of the application. If an application modification substantially changes the original demonstration design, CMS may, at its discretion, direct an additional 30-day public comment period.

(b) *Demonstration applications procedures.* A State application for approval of a new demonstration project or an extension of an existing demonstration project must be submitted to CMS as both printed and electronic documents. Electronic documents should comply with all applicable civil rights requirements related to accessibility, including the requirements under Section 508 of the Americans with Disabilities Act.

(1) As per § 431.416(a), within 15 days of receipt of a complete application, CMS will send the State a written notice informing the State of receipt of the submitted application and the start date of the 30-day Federal public notice process set forth in § 431.416. Such notice is provided for purposes of initiating the Federal-level public comment period and does not preclude a determination that, based on further review, further information is required to supplement or support the application, or that the application cannot be approved because a required element is missing or insufficient. It also does not prevent a State from modifying its application or submitting any supplementary information it determines necessary to support CMS' review of its application.

(2) Within 15 days of receipt of a demonstration application that CMS determines is incomplete, CMS will send the State a written notice of the elements missing from the application.

(3) CMS will publish on its Web site at regular intervals the status of all State submissions, including information received from the State while the State works with CMS to meet the demonstration application process set forth in this section.

(c) *Demonstration Extension Request.* A request to extend an existing demonstration under sections 1115(a), (e) and (f) of the Act will be considered only if it is submitted at least 12 months prior to the expiration date of the demonstration. An extension application, including an extension for the purpose of phasing out a demonstration, must be sent from the Governor of the State to the Secretary.

(1) *Changes to existing demonstration.* If an extension application includes substantial changes to the existing demonstration, CMS may, at its discretion, treat the application as an application for a new demonstration.

(2) *Demonstration extension application.* An application to extend an existing demonstration will be considered complete, for purposes of initiating the Federal-level public notice period, when the State provides the following:

(i) A historical narrative summary of the demonstration project, which includes the objectives set forth at the time the demonstration was approved evidence of how these objectives have or have not been met, and the future goals of the program.

(ii) If changes are requested, a narrative of the changes being requested along with the objective of the change and the desired outcomes.

(iii) A list and programmatic description of the waivers and expenditure authorities that are being requested for the extension period, or a statement that the State is requesting the same waiver and expenditure authorities as those approved in the current demonstration.

(iv) Summaries of External Quality Review Organization (EQRO) reports, managed care organization (MCO) and State quality assurance monitoring, and any other documentation of the quality of care provided under the demonstration.

(v) Financial data demonstrating the State's historical and projected expenditures for the requested period of the extension, as well as cumulatively over the lifetime of the demonstration. This includes a financial analysis of changes to the demonstration requested by the State.

(vi) An evaluation report of the demonstration, inclusive of evaluation activities and findings to date, plans for evaluation activities during the extension period, and if changes are requested, identification of research hypotheses related to the changes and an evaluation design for addressing the proposed revisions.

(vii) Written evidence of the State's compliance with the public notice process set forth in § 431.408, including the post-award public input process described in § 431.420(c) of this part, with a report of the key issues raised by the public during the comment period and whether the State considered the comments when developing the demonstration extension application.

(3) CMS may request, or the State may propose application modifications as well as additional information to aid in the review of an application to extend a demonstration. If an application modification substantially changes the original demonstration design, CMS may, at its discretion, direct an additional 30 day public comment period.

(d) *Approvals.* Approval of a new demonstration or a demonstration extension will generally be prospective only and Federal Financial Participation (FFP) will not be available for changes

to the demonstration that have not been approved by CMS.

§ 431.416 Federal public notice and approval process.

(a) *General.* Within 15 days of receipt of a complete application from the State for a new demonstration project or an extension of a previously approved demonstration project, CMS will send the State a written notice informing the State of receipt of the demonstration application, the start dates of the 30-day Federal public notice process, and the end date of the 45-day minimum Federal decision-making period.

(b) *Public comment period.* Upon notifying a State of a completed application, CMS will solicit public comment regarding such demonstration application for 30 days by doing the following:

(1) Publishing the following on the CMS Web site:

(i) The written notice of CMS receipt of the State's complete demonstration application, if any.

(ii) Demonstration applications, including supporting information submitted by the State as part of the complete application, and associated concept papers, as applicable.

(iii) The proposed effective date of the demonstration.

(iv) Addresses to which inquiries and comments from the public may be directed to CMS by mail or e-mail.

(2) Notifying interested parties through an electronic mailing list that CMS will create for this purpose.

(c) *Public disclosure.* CMS will publish on its Web site, at regular intervals, appropriate information, which may include, but is not limited to the following:

(1) Relevant status update(s);

(2) A listing of the issues raised through the public notice process.

(d) *Publishing of comments.* CMS will publish all comments electronically. CMS will review and consider all such comments, but will not provide written responses to public comments.

(e) *Approval of a demonstration application.* CMS will not render a final decision on a demonstration application until at least 45 days after notice of receipt of a completed application, in order to receive and consider public comments. However, CMS may expedite this process under the exception to the normal public notice process provisions in Section § 431.416(g).

(f) *Administrative record.* CMS will maintain an administrative record that may include, but is not limited to the following:

(1) The demonstration application from the State.

(2) Public comments sent to the CMS and any CMS responses.

(3) If an application is approved, the final special terms and conditions, waivers, expenditure authorities, and award letter sent to the State.

(4) The State acceptance letter.

(g) *Exception to the normal public notice process.* CMS may exercise its discretionary authority to bypass, in whole or in part, the Federal and State public notice procedures in order to expedite a decision on a proposed demonstration or demonstration renewal that addresses a natural, social, economic or similar disaster.

(1) The Secretary may exempt a State from the normal public notice process or the required time constraints imposed in this section or paragraph (a) of § 431.408 when the State demonstrates to CMS there is the existence of unforeseen circumstances that warrant an exception to the normal public notice process. The State is expected to discharge its basic responsibilities in submitting demonstration applications to the Secretary as required in § 431.412 of this subpart. Such applications will be posted on the CMS Web site.

(2) An exception from the normal public notice process exists when the Secretary finds that there are unforeseen circumstances beyond the State's control that makes full compliance with the public notice and comment provision impractical, including, but not limited to, an emergent occurrence such as fire or earthquake or flood.

(3) A State must establish (or meet) all of the following criteria to obtain an exception from the normal public notice process or the timeliness requirement set forth in § 431.408(a) of this subpart:

(i) The State acted in good faith.

(ii) The State acted in a diligent, timely, and prudent manner.

(iii) The circumstances constitute an emergency and could not have been reasonably foreseen.

(iv) Delay would undermine or compromise the purpose of the demonstration and be contrary to the interests of beneficiaries.

§ 431.420 Monitoring and compliance.

(a) *General.* (1) States must comply with all applicable Federal laws, regulations, interpretive policy statements and interpretive guidance unless expressly waived by the demonstration. States must, within the timeframes specified in law, regulation, policy or guidance, come into compliance with any changes in Federal law, regulation, or policy affecting State demonstration projects, unless the provision being changed is expressly waived or identified as not applicable.

(2) States must comply with the terms and conditions of the agreement between the Secretary and the State to implement a State demonstration project or the demonstration will be suspended or terminated, in whole or in part, by the Secretary.

(b) *Implementation reviews.* (1) The terms and conditions will provide that the State will perform periodic reviews of the implementation of the demonstration.

(2) CMS will review documented complaints that a State is failing to comply with requirements specified in the special terms and conditions and implementing waivers of any approved demonstration.

(c) *Post award.* Within at least 6 months after the implementation date of the demonstration and annually thereafter, the State must hold a public forum to solicit comments on the progress of a demonstration project. The State must hold the public forum in such time as to include a summary of the forum in its annual report to CMS.

(1) The public forum to solicit feedback on the progress of a demonstration project must occur using one of the following:

(i) A Medical Care Advisory Committee that operates in accordance with § 431.408.

(ii) A commission or other similar process, where meetings are open to members of the public, and would afford an interested party the opportunity to learn about the demonstration's progress.

(iii) The State must publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum.

(2) [Reserved]

(d) *Terminations and suspensions.* The Secretary reserves the right to suspend or terminate a demonstration in whole or in part, any time before the date of expiration, whenever it determines that the State has materially failed to comply with the terms of the demonstration project.

(e) *Closeout costs.* When a demonstration is terminated, suspended, or if waivers or expenditure authority are withdrawn, Federal funding is limited to normal closeout costs associated with an orderly termination of the demonstration or expenditure authority, including service costs during any approved transition period, and administrative costs of disenrolling participants.

(f) *Federal evaluators.* (1) The State must fully cooperate with CMS or an

independent evaluator selected by CMS to undertake an independent evaluation of any component of the demonstration.

(2) The State must submit all requested data and information to CMS or the independent evaluator.

§ 431.424 Evaluation requirements.

(a) *General.* States are permitted and encouraged to use a range of appropriate evaluation strategies (including true experimental, scientific, and qualitative designs) in the application of evaluation techniques with CMS' approval.

(b) *Demonstration evaluations.* Demonstration evaluations will include the following:

(1) *Quantitative research methods.* (i) These methods involve the empirical investigation of the impact of key programmatic features of the demonstration.

(ii) CMS will consider alternative evaluation designs when quantitative designs are technically infeasible or not well suited to the change made by the demonstration.

(2) *Approaches that minimize beneficiary impact.* The evaluation process must minimize burden on beneficiaries in terms of implementing and operating the policy approach to be demonstrated while ensuring the impact of the demonstration is measured.

(c) *Evaluation design plan.* (1) The State will submit and receive CMS approval of a design for an evaluation of the demonstration project and publish this document to the State's public Web site.

(2) The draft demonstration evaluation design must include all of the following:

(i) A discussion of the demonstration hypotheses that are being tested including monitoring and reporting on the progress towards the expected outcomes.

(ii) The data that will be utilized and the baseline value for each measure.

(iii) The methods of data collection.

(iv) How the effects of the demonstration will be isolated from those other changes occurring in the State at the same time through the use of comparison or control groups to identify the impact of significant aspects of the demonstration.

(v) A proposed date by which a final report on findings from evaluation activities conducted under the evaluation plan must be submitted to CMS.

(vi) Any other information pertinent to the State's research on the policy operations of the demonstration operations.

(d) *Evaluations for demonstration extensions.* In the event that the State requests to extend the demonstration beyond the current approval period under the authority of section 1115(a), (e), or (f) of the Act, the State must submit an interim evaluation report as part of the State's request for a subsequent renewal of the demonstration. State evaluations must be published on the state's public Web site.

(e) *Approved evaluation designs.* The State must publish the CMS-approved demonstration evaluation design on the State's public Web site.

(f) *Federal evaluations.* The State must comply with all requirements set forth in this subpart.

(g) *Federal public notice.* CMS will post all evaluation materials, including research and data collection, on its Web site for purposes of sharing findings with the public.

§ 431.428 Reporting requirements.

(a) *Annual reports.* The State must submit an annual report to CMS documenting all of the following:

(1) Any policy or administrative difficulties in the operation of the demonstration.

(2) The status of the health care delivery system under the demonstration.

(3) The impact of the demonstration in providing insurance coverage to beneficiaries and uninsured populations.

(4) Outcomes of care, quality of care, cost of care and access to care for demonstration populations.

(5) The results of beneficiary satisfaction surveys grievances and appeals.

(6) The results of any audits or lawsuits that impact the demonstration.

(7) The financial performance of the demonstration.

(8) The status of the evaluation and information regarding progress in achieving demonstration evaluation criteria.

(9) Any State legislative developments that impact the demonstration.

(10) The results/impact of any demonstration programmatic area defined by CMS that is unique to the demonstration design or evaluation hypothesis.

(11) A summary of the annual post-award public forum, including all public comments received regarding the progress of the demonstration project.

(b) *Submitting and publishing annual reports.* States must submit a draft annual report to CMS no later than 90 days after the end of each demonstration year.

(1) Within 60 days of receipt of comments from CMS, the State must submit to CMS the final annual report for the demonstration year.

(2) The draft and final annual reports are to be published on the State's public Web site.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: August 16, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 9, 2010.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2010–23357 Filed 9–16–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Material Inspection and Receiving Report (DFARS Case 2009–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is issuing a proposed rule to update Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report, to incorporate procedures for using the electronic Wide Area Workflow Receiving Report required for use in most contracts in lieu of the DD Form 250, Material Inspection and Receiving Report, which is now used mostly on an exception basis.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 16, 2010, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at *http://www.regulations.gov.* As an alternative, respondents may e-mail comments to *dfars@osd.mil.* Please cite DFARS Case 2009–D023 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Attn: Ms. Mary Overstreet, 3060 Defense Pentagon, Room 3B855, Washington, DC

20301–3060. Facsimile: 703–602–0350. Please cite DFARS Case 2009–D023.

Interested parties may view public comments on the Internet at *http://www.regulations.gov*. Comments received generally will be posted without change including any personal information provided.

To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311.

SUPPLEMENTARY INFORMATION:

A. Background

This case was initiated due to a response by the Director, Defense Procurement and Acquisition Policy (DPAP), to a DoD Inspector General Report entitled "Accuracy of Mechanization of Administration Services Accounts Payable Information," dated August 14, 2008. In particular, DPAP concurred with a recommendation in the report which stated that DFARS Appendix F should be updated to address changes brought on by deployment of Wide Area Workflow (WAWF), Item Unique Identification, and Radio Frequency Identification.

The proposed rule provides new coverage on the use, preparation, and distribution of the electronic WAWF receiving report which is the primary method for documenting acceptance and distribution of shipments. The rule also addresses WAWF capability to provide the following:

—Item Unique Identification (IUID). When the clause at DFARS 252.211–7003, Item Identification and Valuation, is used in the contract and requires reporting of IUID data, WAWF captures the IUID data and forwards the data to the IUID registry after acceptance. WAWF may be used to report Unique Item Identifiers (UIIs) at the line item level and also UIIs embedded at the line item level.

—Radio Frequency Identification (RFID). When the clause at DFARS 252.211–7006, Radio Frequency Identification, is used in the contract, WAWF will capture the RFID information and forward the data to the receiving location. Using WAWF is the only way a contractor can comply with the clause to furnish RFID data via an Advance Shipping Notice.

Insertion of the new WAWF coverage necessitates relocating and renumbering existing coverage for use, preparation, and distribution of the DD Form 250 Material Inspection and Receiving Report, and the DD Form 250–1 Tanker/Barge Material Inspection and Receiving Report.

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. The proposed rule provides guidance on the preparation and use of the electronic WAWF Receiving Report which is now required for use in most contracts. Additionally, the rule addresses WAWF capability and instructions to comply with reporting requirements for IUID and RFID data submissions.

DoD has prepared an Initial Regulatory Flexibility Analysis which is summarized as follows. The objective of the rule is to facilitate maximum use of WAWF by providing detailed guidance. DFARS Subpart 232.70, Electronic Submission and Processing of Payment Requests and Receiving Reports, prescribes policies for submitting and processing payment requests in electronic form to comply with 10 U.S.C. 2227, Electronic Submission and Processing of Claims for Contract Payments. WAWF is the DoD system for contractors to submit payment and receiving reports in electronic format.

The proposed rule affects all DoD contractors who are not exempt from using WAWF, however, the exact number of small entities is unknown. Exempt classes of contracts are those that are listed under the seven categories of contracts at DFARS 232.7002, Policy.

Recordkeeping required is limited to that required to properly invoice and record shipping and receiving information under Government contracts. Preparation of these records requires clerical and analytic skills to create the documents and input them into the electronic WAWF system.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule that would meet the requirements of 10 U.S.C. 2227, Electronic Submission and Processing of Claims for Contract Payments, and minimize any significant economic impact of the rule on small entities. Any impact on small business is expected to be beneficial from providing detailed preparation and distribution guidance for use of WAWF.

DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D023) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because information collection requirements in the proposed rule at DFARS Appendix F are currently approved under Office of Management and Budget Control Number 0704–0248. The current approval took into consideration use of the automated WAWF system so inclusion of the WAWF guidance into Appendix F adds no new information collection requirements.

List of Subjects in 48 CFR Appendix F to Chapter 2

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR appendix F to chapter 2 as follows:

Appendix F to Chapter 2—Material Inspection and Receiving Report

1. The authority citation for 48 CFR appendix F to chapter 2 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 1—INTRODUCTION

2. Revise section F–101 to read as follows:

F–101 General

(a) This appendix contains procedures and instructions for the use, preparation, and distribution of the Wide Area WorkFlow Receiving Report (WAWF RR) in Wide Area Workflow (WAWF), the DD Form 250, Material Inspection and Receiving Report (MIRR) and (DD Form 250 series equivalents) and commercial shipping/packing lists used to document Government contract quality assurance.

(b) The electronic WAWF RR is the primary method for documenting acceptance and distribution of shipments. The paper DD Form 250 MIRR is mostly used on an exception basis.

3. Revise section F–102 to read as follows:

F–102 Applicability

(a) DFARS 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports, requires payment requests and receiving reports using WAWF in most cases.

(b) The provisions of this appendix also apply to supplies or services acquired by DoD when the clause at 252.246–7000, Material Inspection and Receiving Report, is included in the contract.

(c) When DoD provides quality assurance or acceptance services for non-DoD activities, use the instructions in this appendix, unless otherwise specified in the contract.

4. Amend section F–103 by revising paragraphs (a) introductory text, (a)(6), (b), and (c), and adding new paragraph (e) to read as follows:

F–103 Use

(a) The WAWF RR and the DD Form 250 MIRR are multipurpose reports used—

* * * * *

(6) As a contractor invoice.

(i) WAWF provides an option for creating a combined invoice and WAWF RR through use of the invoice and receiving report combo option; and

(ii) The DD Form 250 MIRR may also be used as an invoice (see F–406(b)); and

* * * * *

(b) Do not use the WAWF RR or the DD Form 250 MIRR for shipments—

(1) By subcontractors—Unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory.—However, WAWF may be used for transfer of Government property using the property transfer function.

(c) The contractor prepares the WAWF RR or the DD Form 250 MIRR, except for entries that an authorized Government representative is required to complete. When using a paper DD Form 250 MIRR, the contractor shall furnish sufficient copies of the completed form, as directed by the Government representative.

* * * * *

(e) In addition to the above uses, the WAWF RR provides additional functionality, not provided by the paper DD Form 250 MIRR, that complies with the following requirements:

(1) Item Unique Identification (IUID), when the clause at 252.211–7003, Item Identification and Valuation is used in the contract, reporting of IUID data is required. WAWF captures the IUID data and forwards the data to the IUID registry after acceptance. WAWF may be used to report Unique Item Identifiers (UIIs) at the line item level and also UIIs embedded at the line item level.

(2) Radio Frequency Identification (RFID), when the clause at 252.211–7006, Radio Frequency Identification, is used in the contract, WAWF will capture the RFID information and forward the data to the receiving location. Using WAWF is the only way a contractor can comply with the clause to furnish RFID data via an Advance Shipping Notice (ASN).

5. Amend section F–104 by revising paragraph (a) and the heading of paragraph (b) to read as follows:

F–104 Application

(a) WAWF RR and DD Form 250 MIRR

(1) Use the WAWF RR or DD Form 250 MIRR for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the WAWF RR or DD Form 250 MIRR for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, that indicate no DD Form 250 MIRR is required.

(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one WAWF RR or DD Form 250 MIRR to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate WAWF RR or DD Form 250 MIRR for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one federal supply class (FSC) or material management code (MMC), prepare a separate WAWF RR or DD Form 250 MIRR for items of each of the FSCs or MMCs in the shipment. However, the cognizant Government representative may authorize a single WAWF RR or DD Form 250 MIRR, listing each of the FSCs or MMCs included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) *Consolidation of Petroleum Shipments on a Single WAWF RR or DD Form 250 MIRR.*

(i) *Contiguous United States.* (A) Contractors may consolidate multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, on one WAWF RR or DD Form 250 MIRR. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 MIRR. Include a shipping document (commercial or Government) with each individual load showing as a minimum—

(*1*) The shipper;

(*2*) Shipping point;

(*3*) Consignee;

(*4*) Contract and line item number;

(*5*) Product identification;

(*6*) Gross gallons (bulk only);

(*7*) Loading temperature (bulk only);

(*8*) American Petroleum Institute gravity (bulk only);

(*9*) Identification of carrier's equipment;

(*10*) Serial number of all seals applied; and

(*11*) Signature of supplier's representative.

(B) When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 MIRR forwarded by the contractor (reference F–401, Table 1) before signing Block 21b.

(ii) *Overseas.* The same criteria as for contiguous United States applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each WAWF RR or DD Form 250 MIRR if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) *Consolidation of Coal Shipments on a Single WAWF RR or DD 250 MIRR.*

(i) Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one WAWF RR or DD 250 MIRR. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 MIRR and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(A) The shipper;

(B) The name or names;

(C) Location and shipping point of the mine or mines from which the coal originates;

(D) The contract number;

(E) The exact size of the coal shipped; and

(F) A certified weighmaster's certification of weight for the truckload.

(ii) Include a waybill with each rail shipment showing the identical

information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 MIRR and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 MIRR.

(b) DD Form 250–1 Tanker/Barge MIRR

* * * * *

PART 3—PREPARATION OF THE WIDE AREA WORKFLOW RECEIVING REPORT (WAWF RR)

6. Revise section F–301 to read as follows:

F–301 Preparation Instructions

(a) General

(1) Preparation instructions and training for the WAWF RR are available at *http://wawftraining.com*. The instructions on preparing a WAWF RR are part of the contractor training section.

(2) Prime contractors may direct subcontractors to prepare and submit documents in WAWF by giving their subcontractors access to WAWF via Commercial and Government Entity (CAGE) code extension.

(3) If the contract is in Electronic Document Access, DoD's contract repository, then the WAWF system will automatically populate the Issued By, Admin By, and Pay Office Department of Defense Activity Address (DoDAAC) codes.

(i) When source acceptance is required, WAWF will populate the Inspect By with the Admin By DoDAAC code. The contractor will need to change this DoDAAC if Government Source Inspection is performed at other than the Admin By.

(ii) Any fields that have been pre-filled may be changed.

(iii) WAWF will also verify that CAGE codes are valid and active in the CCR (Central Contractor Registration) and that DoDAACs, and Military Assistance Program Address Codes (MAPACs) are valid in the DAAS (Defense Automatic Addressing System).

(4) WAWF will populate the address information for CAGE codes, DODAACs and MAPACs from CCR and DAAS. These are the official DoD sites for address information. Any fields that have been pre-filled may be changed or additional information added.

(5) Do not include classified information in WAWF.

(b) Completion Instructions

(1) CONTRACT NO./DELIVERY ORDER NO.

(i) Enter the 13-position alpha-numeric basic Procurement Instrument Identification Number (PIIN) of the contract. When applicable, enter the four-position alpha-numeric call/order serial number that is supplementary to the 13-position basic PIIN. This number is also referred to as the Supplementary Procurement Instrument Identification Number (SPIIN). Use SPIINs for (also see Subpart 204.70)—

(A) Delivery orders under indefinite-delivery type contracts;

(B) Orders under basic ordering agreements; and

(C) Calls under blanket purchase agreements.

(ii) Except as indicated in paragraph (b)(1)(iii) of this section, do not enter supplementary numbers used in conjunction with basic PIINs to identify—

(A) Modifications of contracts and agreements;

(B) Modifications to calls or orders; or

(C) Document numbers representing contracts written between contractors.

(iii) When shipping instructions are furnished and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation/Modification of Contract), enter a comment in the Misc. Info Tab to this effect.

(iv) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number in the contract number field and enter the DoD contract number in the delivery order field.

(2) SHIPMENT NO.

(i) The shipment number has a three-position alpha character prefix and a four-position numeric or alpha-numeric serial number.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each "Shipped From" address. The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one "Shipped From" address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number from each "Shipped From" address, or shipping location within the "Shipped From" address. Consecutively number all subsequent shipments with the identical shipment number prefix. While shipments should be created sequentially, they may be released and accepted out of sequence.

(*1*) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three-position numeric serial number. Use the following alpha-numeric sequence:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

(*2*) When this series is completely used, the shipment number prefix will have to be changed. WAWF will not allow duplicate shipment numbers to be created against a contract or delivery order.

(ii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a "Z." Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to–

(A) Direct the subcontractor making the final shipment to end that shipment number with a "Z"; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the WAWF RR (see F–304) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(iii) Contractors follow the procedures in F–305 to use commercial invoices.

(3) DATE SHIPPED. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of Contract Quality Assurance (CQA) and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" in the "Estim." Block after the date. Do not delay submission of the WAWF RR for lack of entry of the actual shipping date. Correction of the WAWF RR is not required to show the actual shipping date. Once the document is submitted the shipment date cannot be changed.

(4) B/L TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after "B/L"; (WAWF provides the capability to separately and correctly identify the Government Bill of Lading (GBL) from a Commercial Bill of Lading (CBL). An authorized user will select whether the entered bill of lading number is either a GBL number or a CBL number).

(ii) The transportation control number (TCN) must be a 17 alpha/numeric digit min/max field and WAWF provides the capability to enter two (2) secondary transportation tracking numbers.

(5) LINE HAUL MODE. Select the Line Haul Mode of Shipment code from a drop down menu in WAWF.

(6) INSPECTION AND ACCEPTANCE POINT. Enter an "S" for Origin or "D" for Destination. In addition to "S" and "D" WAWF allows acceptance at "Other". In WAWF, destination acceptance is performed by the "Ship to" DODAAC organization and "Other" permits the acceptance of destination documents at a location other than the Ship to. The goods or services will be shipped to one location and the paperwork will be routed to another location for the actual acceptance.

(7) PRIME CONTRACTOR/CODE. The prime CAGE code to which the contract was awarded.

(8) ADMINISTERED BY/CODE. Enter the Contract Administration Office (CAO) DoDAAC code cited in the contract.

(9) SHIPPED FROM/CODE

(i) Enter the CAGE or DoDAAC code of the "Shipped From" location. If same as the prime CAGE code, leave blank.

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code of the location at which the services were performed. If same as the prime CAGE code, leave blank.

(10) FOB. Enter an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

(11) PAYMENT WILL BE MADE BY/CODE. Enter the payment office DoDAAC code cited in the contract.

(12) SHIPPED TO/CODE. Enter the DoDAAC, MAPAC, or CAGE code from the contract or shipping instructions.

(13) MARKED FOR/CODE. Enter the code from the contract or shipping instructions. WAWF will only accept valid DoDAAC, MAPAC, or CAGE codes. Contractors should use the WAWF Mark for Rep and Mark for Secondary fields for textual marking information specified in the contract.

(14) ITEM NO. Enter the item number used in the contract. Use a valid four or six digit line item number under the Uniform Contract Line Item Numbering System (see 204.71). Line item numbers with six digits with numbers in the final two positions are not deliverable or billable.

(15) STOCK/PART NUMBER/DESCRIPTION.

(i) Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. If the contract contains NSNs as well as other identification (*e.g.* part numbers) the contractor should place the NSN information in the Stock Part Number field and the remaining numbers in the line item description field.

(B) In the description field, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) The Military Standard Requisitioning and Issue Procedures (MILSTRIP) numbers must be placed on the MILSTRIP Tab, not in the line item description field.

(ii) For service line items, select "SV" for "SERVICE" in the type field followed by as short a description as is possible in no more than 20 additional characters in the description field. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. The "Ship To" Code and the Unit will have to be filled out. The "Shipped To" Code is the destination Service Acceptor Code for WAWF. If source inspected and accepted enter the service performance location as the Ship To Code.

(iii) For all contracts administered by the Defense Contract Management Agency, with the exception of fast pay procedures, enter the gross weight of the shipment.

(iv) In the description field enter the following as appropriate:

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (*e.g.,* 17X4911–14003–104).

(C) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T."

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(F) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, *e.g.,* "AERNO 60–6354."

(G) For items shipped with missing components, enter and complete the following:

"Item(s) shipped short of the following component(s):
NSN or comparable identification
Quantity_____Estimated Value_____ Authority

(H) When shipment is made of components which were short on a prior shipment, enter and complete the following:

"These components were listed as shortages on shipment number_____, date shipped _____."

(I) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

"Return to_____, Quantity _____, Item _____, Ownership (Government/contractor)."

(J) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(K) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(L) (*1*) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results."

(*2*) The contracting officer will advise—

(*i*) The consignee of the results (approval/disapproval); and

(*ii*) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(M) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(N) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. _____, Contract Modification; No. _____, dated _____.

(16) QUANTITY SHIPPED/RECEIVED.

(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity in the description field.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall choose the Ship Advice Code "Z". Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect to direct the subcontractor making the final shipment to choose the Ship Advice Code "Z";

(iii) When the Government is performing destination acceptance, the acceptor should enter actual quantity received in apparent good condition in the "Qty. Accepted" field of the Acceptor Line Item Tab.

(17) UNIT OF MEASURE. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure in the description field. Authorized abbreviations are in the WAWF Unit of Measure Table Link. For example, LB for pound, SH for sheet.

(18) UNIT PRICE. The contractor may, at its option, enter unit prices on all WAWF RR copies, except as a minimum:

(i) The contractor shall enter unit prices for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter "Estimated Unit Price" in the description field. However, if the contract has Item Unique Identification (IUID) requirements and the receiving report is being processed in WAWF, the unit price represents the acquisition cost that will be passed to the IUID registry. Therefore, the Unit Price is required (see the clause at 252.211–7003, Item Identification and Valuation). When delivering GFP via WAWF to another contractor, WAWF will initiate a property transfer if the contractor who is initiating the WAWF RR is also registered as a contractor property shipper in WAWF and the contractor receiving the property is also a contractor property receiver in WAWF.

(ii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value as "GFP UNIT VALUE" in the description field.

(19) AMOUNT. WAWF will calculate and populate the amount by multiplying the unit price times the quantity.

(20) CONTRACT QUALITY ASSURANCE (CQA).

(i) The words "conform to contract" contained in the text above the signature block in the WAWF RR Header Tab relate to quality and to the quantity of the items on the report. Enter notes taking exception in the Misc. Info Tab comment field or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under an alternative release procedure, the contractor will "execute" the alternative release procedure in WAWF by including the appropriate indicator in the electronic transaction rather than through inclusion or attachment of the text of the certificate. The alternative release procedure only substitutes for source inspection; Government acceptance must still be indicated by a Government official's signature on the WAWF RR.

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractors will "execute" a Certificate in WAWF by including the appropriate indicator in the electronic transaction rather than through inclusion or attachment of the text of the certificate. Government acceptance must still be indicated by a Government official's signature on the WAWF RR.

(iv) *ORIGIN.*

(A) The authorized Government representative must—

(*1*) Place an "X" in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance.

(*2*) Sign and date;

(*3*) Enter printed name, title, e-mail address, and commercial telephone number.

(B) When fast pay procedures apply, the contractor or subcontractor shall select "FAST PAY" when creating the WAWF RR. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (b)(20)(iv)(A) of this section.

(v) *DESTINATION.*

When CQA and acceptance or acceptance is at destination, the authorized Government representative must—

(A) Place an "X" in the appropriate box(es);

(B) Sign and date; and

(C) Enter printed name, title, e-mail address, and commercial telephone number.

(21) CONTRACTOR USE ONLY. Self explanatory.

7. Revise section F–303 to read as follows:

F–303 Consolidated Shipments

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the WAWF RR at the time of CQA or acceptance prior to the time of actual shipment.

8. Remove section F–304.

9. Redesignate section F–305 as section F–304 and revise it to read as follows:

F–304 Correction Instructions

Functionality for correcting a WAWF RR is being developed. Preparation instructions and training for corrections will be available at *http://wawftraining.com* once the functionality is deployed. The instructions will be part of the contractor training.

10. Redesignate section F–306 as section F–305 and revise it to read as follows:

F–305 Invoice Instructions

Contractors shall submit payment requests and receiving reports in electronic form, unless an exception in 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the WAWF electronic form (see paragraph (b) of the clause at 252.232–7003) fulfills the requirement for a DD Form 250 MIRR.

11. Redesignate section F–307 as section F–306 and revise it to read as follows:

F–306 Packing List Instructions

Contractors may also use a WAWF RR as a packing list. WAWF provides options to print the WAWF RR. These printed WAWF RRs may also be used if a signed copy is required.

(a) WAWF provides a print capability for its WAWF RR. The printed WAWF RR can be identified by its distinctive format and by the text "Please look in WAWF for signed copy" underneath the "RECEIVING REPORT" title at the top of each printed page. This printed copy may be used as a packing list. If needed, the signature can be verified by reviewing the signed WAWF RR in WAWF.

(b) Also, the contractor can print a WAWF RR only after a signature is applied by the Government Inspector or Acceptor in WAWF. Copies printed will

be annotated with "\\ original signed in WAWF\\" in lieu of the inspector/acceptor's signature.

12. Redesignate section F–308 as section F–307 and revise it to read as follows:

F–307 Receiving Instructions

If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see F–301(b)(20)(v) for instructions.

13. In Appendix F to chapter 2, redesignate Parts 4 through 7 and the sections within those parts as follows:

Old part or section	New part or section
Part 4	Part 5.
Section F–401	Section F–502.
Part 5	Part 6.
Section F–501	Section F–601.
Part 6	Part 7.
Section F–601	Section F–701.
Part 7	Part 8.
Section F–701	Section F–801.
Section F–702	Section F–802.

14. Add part 4 to read as follows:

PART 4–PREPARATION OF THE DD FORM 250 MIRR AND DD FORM 250c MIRR CONTINUATION SHEET

F–401 Preparation instructions.
F–402 Mode/method of shipment codes.
F–403 Consolidated shipments.
F–404 Multiple consignee instructions.
F–405 Correction instructions.
F–406 Invoice instructions.
F–407 Packing list instructions.
F–408 Receiving instructions.

PART 4–PREPARATION OF THE DD FORM 250 MIRR AND DD FORM 250c MIRR CONTINUATION SHEET

F–401 Preparation instructions

(a) General

(1) Dates must use nine spaces consisting of the four digits of the year, three-position alphabetic month abbreviation, and two digits for the day. For example, 2000AUG07, 2000SEP24.

(2) Addresses must consist of the name, street address/P.O. box, city, state, and ZIP code.

(3) Enter to the right of and on the same line as the word "Code" in Blocks 9 through 12 and in Block 14—

(i) The Commercial and Government Entity Handbook (H4/H8) code;

(ii) The DoDAAC as it appears in the DoD Activity Address Directory (DoDAAD), DoD 4000.25–6–M; or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

(4) Enter the DoDAAC, CAGE (H4/H8), or MAPAD code in Block 13.

(5) The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250 MIRR.

(6) Enter overflow data from the DD Form 250 MIRR in Block 16 or in the body of the DD Form 250c with an appropriate cross-reference. Do not number or distribute additional DD Form 250c sheets solely for continuation of Block 23 data as part of the DD Form 250 MIRR.

(7) Do not include classified information in the DD Form 250 MIRR. DD Form 250 MIRRs must not be classified.

(b) Completion Instructions

(1) Block 1—PROCUREMENT INSTRUMENT IDENTIFICATION (CONTRACT) NO.

See F–301(b)(1) CONTRACT NO./DELIVERY ORDER NO.

(2) Block 2—SHIPMENT NO.

See F—301(b)(2), SHIPMENT NO. When the series is completely used, start over with 0001.

(3) Block 3–DATE SHIPPED. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Do not delay distribution of the DD Form 250 MIRR for the lack of entry of the actual shipping date. Reissuance of the DD Form 250 MIRR is not required to show the actual shipping date.

(4) Block 4—B/L Transportation Control Number TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after "B/L;"

(ii) The transportation control number after "TCN" (when a TCN is assigned for each line item on the DD Form 250 MIRR under Block 16 instructions, insert "See Block 16"); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see F–302).

(5) Block 5–DISCOUNT TERMS.

(i) The contractor may enter the discount in terms of percentages on all copies of the DD Form 250 MIRR.

(ii) Use the procedures in F–306 when the DD Form 250 MIRR is used as an invoice.

(6) Block 6–INVOICE NO./DATE.

(i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the DD Form 250 MIRR. When the date is estimated, enter an "E" after the date. Do not correct DD Form 250 MIRRs other than invoice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in F–306 when the DD Form 250 MIRR is used as an invoice.

(7) Block 7–PAGE/OF. Consecutively number the pages of the DD Form 250 MIRR. On each page enter the total number of pages of the DD Form 250 MIRR.

(8) Block 8–ACCEPTANCE POINT. Enter an "S" for Origin or "D" for destination.

(9) Block 9–PRIME CONTRACTOR/CODE. Enter the CAGE code and address.

(10) Block 10–ADMINISTERED BY/CODE. Enter the DoDAAC code and address of the contract administration office (CAO) cited in the contract.

(11) Block 11–SHIPPED FROM/CODE/FOB.

(i) Enter the DoDAAC code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 MIRR covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(iii) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

(12) Block 12–PAYMENT WILL BE MADE BY/CODE. Enter the DoDAAC code and address of the payment office cited in the contract.

(13) Block 13–SHIPPED TO/CODE. Enter the DoDAAC code and address from the contract or shipping instructions.

(14) Block 14–MARKED FOR/CODE. Enter the DoDAAC code and address from the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

(15) Block 15–ITEM NO. Enter the item number used in the contract. This should be a four or six digit number.

(i) Use item numbers under the Uniform Contract Line Item Numbering System (see 204.71).

(ii) Position the item numbers as follows—

(A) For item numbers with four or less digits, enter the number immediately to the left of the vertical dashed line and prefix them with zeros, to achieve four digits.

(B) For item numbers with six digits, with alpha digits in the final two positions, enter the last two digits to the right of the vertical dashed line.

(C) For item numbers with six digits, with numbers in the final two positions, enter the first four digits immediately to the left of the vertical dashed line. Do not use the last two digits.

(iii) Line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16–STOCK/PART NO./ DESCRIPTION.

(i) Use single or double spacing between line items when there are less than four line items. Use double spacing when there are four or more line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer's name or Federal supply code (as published in Cataloging Handbook H4–1), and the part number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/ material control code. The contractor may use the following technique in the case of equal kind supply items. The first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: The make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) On the next printing lines enter—

(*1*) The Military Interdepartmental Purchase Request (MIPR) number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract; or

(*2*) Shipping instructions followed on the same line (when more than one requisition is entered) by the unit for payment and the quantity shipped against each requisition.

Example:

V04696–185–750XY19059A—EA 5
N0018801776038XY3211BA—EA 200
AT650803050051AAT6391J—EA 1000

(D) When a TCN is assigned for each line item, enter on the next line the transportation control number prefixed by "TCN."

(ii) For service line items, enter the word "SERVICE" followed by as short a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13, and 14 when there is no shipment of material.

(iii) For all contracts administered by the Defense Contract Management Agency, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. _____
State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the DD Form 250 MIRR, enter them only once after the last line item entry. Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (*e.g.*, 17X4911–14003–104).

(C) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T."

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See F–301, Block 17, for replacement indicators).

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, *e.g.*, "AERNO 60–6354."

(H) For items shipped with missing components, enter and complete the following:

"Item(s) shipped short of the following component(s):
NSN or comparable identification _____,
Quantity _____, Estimated Value _____,
Authority

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

"These components were listed as shortageson shipment number _____, date shipped _____"

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

"Return to_____,
Quantity _____, Item _____, Ownership (Government/contractor)."

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

Note: Acceptance and payment are contingent upon receipt of approved test/ evaluation results."

The contracting officer will advise—

(*1*) The consignee of the results (approval/disapproval); and

(*2*) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 MIRR required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline-type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(P) When the initial unit incorporating an approved value

engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. _____, Contract Modification No. _____, dated _____

(17) Block 17—QUANTITY SHIPPED/RECEIVED.

(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to enter a "Z" below the quantity; or

(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 [MIRR] (see F–305) covering the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. Do not use the "Z" on deliveries which equal or exceed the contract line item quantity.

(iii) For replacement shipments, enter "A" below the last digit of the quantity, to designate first replacement, "B" for second replacement, etc. Do not use the final shipment indicator "Z" on underrun deliveries when a final line item shipment is replaced.

17.
QUANTITY
SHIP/REC'D
1000
(10)
Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 MIRR stating the reason for the difference.

(18) Block 18–UNIT. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18.
UNIT
LB
(SH)

(19) Block 19–UNIT PRICE. The contractor may, at its option, enter unit prices on all DD Form 250 MIRR copies, except as a minimum:

(i) The contractor shall enter unit prices on all DD Form 250 MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

(ii) Use the procedures in F–306 when the DD Form 250 MIRR is used as an invoice.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(iv) Price all copies of DD Forms 250 MIRR for FMS shipments with actual prices, if available. If actual price are not available, use estimated prices. When the price is estimated, enter an "E" after the price.

(20) Block 20–AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21–CONTRACT QUALITY ASSURANCE (CQA).

(i) The words "conform to contract" contained in the printed statements in Blocks 21a and 21b relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 MIRR copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250 MIRR) is performed by the Defense Contract Management Agency (DCMA).

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter in capital letters "CERTIFICATE OF CONFORMANCE" in Block 21a on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor-signed certificate on the top copy of the DD Form 250 MIRR copies distributed to the payment office or attach or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250 MIRR) is performed by DCMA. In addition, attach a copy of the signed certificate to, or enter on, copies of the DD Form 250 MIRR sent with shipment.

(iv) *ORIGIN.*

(A) The authorized Government representative must—

(*1*) Place an "X" in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance; When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of the statement and an explanatory note in Block 16;

(*2*) Sign and date;

(*3*) Enter the typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(B) When alternative release procedures apply—

(*1*) The contractor or subcontractor shall complete the entries required under paragraph (b)(21)(ii) of this section and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed CQA/acceptance statement.

(*2*) When acceptance is at origin and contract administration is performed by an office other than DCMA, the contractor shall furnish the four payment office copies of the DD Form 250 MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(*3*) When acceptance is at origin and contract administration is performed by DCMA, furnish the contract administration office copy of the DD Form 250 MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(C) When fast pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed CQA/acceptance statement. When CQA is required, the authorized Government representative shall execute the block as required by F–301(b)(20)(iv)(A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall enter in capital letters "CERTIFICATE OF CONFORMANCE" as required by paragraph (b)(21)(iii) of this section.

(*1*) For contracts administered by an office other than DCMA, furnish the four payment office copies of the DD Form 250 MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(*2*) For contracts administered by DCMA, furnish the contract administration office copy of the DD Form 250 MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(*3*) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

(v) *DESTINATION.*

(A) When acceptance at origin is indicated in Block 21a, make no entries in Block 21b.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative must—

(*1*) Place an "X" in the appropriate box(es);

(*2*) Sign and date; and

(*3*) Enter typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(C) When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21a and acceptance is at destination, the authorized Government representative must complete the entries required by F–301(b)(20)(ii).

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within four work days (five days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 250 MIRR to the contract administration office cited in Block 10 for implementing contract closeout procedures.

(E) When "FAST PAY" is entered in Block 21a, make no entries in this block.

(22) Block 22–RECEIVER'S USE. The authorized representative of the receiving activity (Government or contractor) must use this block to show receipt, quantity, and condition. The authorized representative must–

(i) Enter the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block;

(ii) Sign; and

(iii) Enter typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(23) Block 23—CONTRACTOR USE ONLY. Self explanatory.

F–402 Mode/Method of Shipment Codes

Use the mode/method of shipment codes at F–302.

F–403 Consolidated Shipments

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the DD Forms 250 MIRR at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

F–404 Multiple Consignee Instructions

The contractor may prepare one DD Form 250 MIRR when the identical line item(s) of a contract are to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the DD Form 250 MIRR using the procedures in this appendix with the following changes—

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter "See Attached Distribution List."

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Line item number(s);

(3) Quantity;

(4) MIPR number(s), preceded by "MIPR," or the MILSTRIP requisition number, and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, B/L number, TCN, and mode of shipment code.

(e) The contractor may omit those distribution list pages of the DD Form 250c that are not applicable to the consignee. Provide a complete DD Form 250 MIRR for all other distribution.

F–405 Correction Instructions

Make a new revised DD Form 250 MIRR or correct the original when, because of errors or omissions, it is necessary to correct the DD Form 250 MIRR after distribution has been made. Use data identical to that of the original DD Form 250 MIRR. Do not correct DD Form 250 MIRRs for Blocks 19 and 20 entries. Make the corrections as follows—

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block. For example—

2.	SHIPMENT NO. (AAA0001) See Block 16	17.	QUANTITY SHIP/REC'D 19 (17)

16. STOCK/PART NO./DESCRIPTION

CORRECTIONS:

Refer Block 2: Change shipment No. AAA0001 to AAA0010 on all pages of the DD Form 250 MRR.

Refer Blocks 15, 16, 17, and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(b) When corrections have been made to entries for line items (Block 15) or quantity (Block 17), enter the words "CORRECTIONS HAVE BEEN VERIFIED" on page 1. The authorized Government representative will date

and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the DD Form 250 MIRR requiring correction with the words "CORRECTED COPY." Avoid obliterating any other entries. Where corrections are made only on continuation sheets, also mark page number 1 with the words "CORRECTED COPY."

(d) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete DD Form 250 MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

F–406 Invoice Instructions

(a) Contractors shall submit payment requests and receiving reports in electronic form, unless an exception in 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the WAWF electronic form (see paragraph (b) of the clause at 252.232–7003) fulfills the requirement for a DD Form 250 MIRR.

(b) If the contracting officer authorizes the contractor to submit an invoice in paper form, the Government encourages, but does not require, the contractor to use the DD Form 250 MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related DD Form 250 MIRR shipment number(s) on the form. If using the DD Form 250 MIRR as an invoice, prepare the DD Form 250 MIRR and forward the required number of copies to the payment office as follows:

(1) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(2) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE," for all invoice submissions; and three copies: "INVOICE COPY," when the payment office requires four copies. Questions regarding the appropriate number of copies (*i.e.*, one or four) should be directed to the applicable payment office.

(3) Forward the appropriate number of copies to the payment office (Block 12 address); except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(4) Separate the copies of the DD Form 250 MIRR used as an invoice from the copies of the DD Form 250 MIRR used as a receiving report.

F–407 Packing List Instructions.

Contractors may use copies of the DD Form 250 MIRR as a packing list. The packing list copies are in addition to the copies of the DD Form 250 MIRR required for standard distribution (see F–401). Mark them "PACKING LIST."

F–408 Receiving Instructions

When the DD Form 250 MIRR is used for receiving purposes, local directives shall prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see F–301(b)(20)(v) for instructions.

15. Add new section F–501 to newly designated part 5; revise newly designated section F–502, including Table 1; and in the heading above Table 2 remove "Material Inspection and Receiving Report" and add in its place "DD Form 250 Material Inspection and Receiving Report" as follows:

PART 5—DISTRIBUTION OF WIDE AREA WORKFLOW RECEIVING REPORT (WAWF RR), DD FORM 250 MIRR AND DD FORM 250c

F–501 Distribution of WAWF RR

Use of the WAWF electronic form satisfies the distribution requirements of this section, except for the copies required to accompany shipment.

F–502 Distribution of DD FORM 250 MIRR AND DD FORM 250c

(a) The contractor is responsible for distributing the DD Form 250 MIRR, including mailing and payment of postage.

(b) Contractors shall distribute DD Form 250 MIRRs using the instructions in Tables 1 and 2 of this section.

(c) Contractors shall distribute DD Form 250 MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 MIRR (Block 21a) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(3) Shipment when CQA and acceptance are to be performed at destination.

(e) Do not send the consignee copies (via mail) on overseas shipments to port of embarkation. Send them to consignee at APO/FPO address.

(f) Copies of the DD Form 250 MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

DD 250 FORM MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 1—STANDARD DISTRIBUTION

With Shipment*	2
Consignee (via mail)	1
(For Navy procurement, include unit price)	
(For foreign military sales, consignee copies are not required)	
Contract Administration Office	1
(Forward direct to address in Block 10 except when addressee is a Defense Contract Management Agency (DCMA) office and a certificate of conformance or the alternate release procedures (see F–401, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)	
Purchasing Office	1
Payment Office**	2
(Forward direct to address in Block 12 except—	
(i) When address in Block 10 is a DCMA office and payment office in Block 12 is the Defense Finance and Accounting Service, Columbus Center, do not make distribution to the Block 12 addressee;	
(ii) When address in Block 12 is the Defense Finance and Accounting Service, Columbus Center/Albuquerque Office (DFAS–CO/ALQ), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice;	
(iii) When acceptance is at destination and a Navy finance office will make payment, forward to destination; and	
(iv) When a certificate of conformance or the alternative release procedures (see F–401, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.	

TABLE 1—STANDARD DISTRIBUTION—Continued

ADP Point for CAO (applicable to Air Force only)	1
(When DFAS–CO/ALQ is the payment office in Block 12, send one copy to DFAS–CO/ALQ immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DFAS–CO/ALQ.)	
CAO of Contractor Receiving GFP	1
(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59–H).)	

*Two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF RR) shall be distributed with the shipment. Attach as follows:

Type of Shipment	Location
Carload or truckload	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload	Affix to container number one or container truckload bearing lowest number.
Mail, including parcel post	Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements	Forward with consignee copies.

**Payment by Defense Finance and Accounting Service, Columbus Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office. For contracts administered by an office other than Defense Contract Management Agency, furnish four copies of the DD Form 250 MIRR to the payment office.

* * * * *

16. Revise the heading of newly designated Part 6 to read as follows:

PART 6—PREPARATION OF THE DD FORM 250–1 TANKER/BARGE MATERIAL INSPECTION AND RECEIVING REPORT

* * * * *

17. Revise newly designated Part 8 to read as follows:

PART 8—DISTRIBUTION OF THE DD FORM 250–1

F–801 Distribution

Follow the procedures at PGI F 801 for distribution of DD Form 250–1.

F–802 Corrected DD Form 250–1

Follow the procedures at PGI F–802 when corrections to DD Form 250–1 are needed.

[FR Doc. 2010–22878 Filed 9–16–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket ID PHMSA–2007–27954]

RIN 2137–AE64

Pipeline Safety: Control Room Management/Human Factors

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA published the Control Room Management/Human Factors final rule in the **Federal Register** on December 3, 2009, which became effective on February 1, 2010. The final rule established an 18-month program development deadline of August 1, 2011, and a subsequent 18-month program implementation deadline of February 1, 2013. This proposed rule proposes to expedite the program implementation deadline to August 1, 2011, for most of the requirements, except for certain provisions regarding adequate information and alarm management, which would have a program implementation deadline of August 1, 2012.

DATES: Anyone interested in filing written comments on this proposed rule must do so by November 16, 2010. PHMSA will consider late comments filed so far as practical.

ADDRESSES: Comments should reference Docket No. PHMSA–2007–27954 and may be submitted in the following ways:

- *E–Gov Web site: http://www.regulations.gov.* This web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Management System: U.S. DOT, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the Docket No. PHMSA–2007–27954 at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.regulations.gov*, including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact Byron Coy at 609–989–2180 or by e-mail at *Byron.Coy@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

There are roughly 170,000 miles of hazardous liquid pipelines, 295,000 miles of gas transmission pipelines, and 1.9 million miles of gas distribution pipelines in the United States. These pipelines transport about 66 percent of the United States domestic energy supply. Hazardous liquid pipelines carry crude oil to refineries and refined products to locations where these products are consumed. Hazardous liquid pipelines also transport highly volatile liquids, other hazardous liquids such as anhydrous ammonia, and carbon dioxide. Gas transmission pipelines typically carry natural gas over long distances from gas gathering, supply, or import facilities to localities where it is used to heat homes, generate

electricity, and fuel industry. Gas distribution pipelines take natural gas from transmission pipelines and distribute it to residential, commercial, and industrial customers. PHMSA's goal is to protect the general public and the environment by providing the most effective pipeline safety regulations and enforcement programs.

To fulfill certain mandates in the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (Pub. L. 109–468), and to address several recommendations of the National Transportation Safety Board, PHMSA published on December 3, 2009, a final rule in the **Federal Register** (74 FR 63310) titled: "Pipeline Safety: Control Room Management/Human Factors." The final rule amended the Federal pipeline safety regulations to address human factors and other aspects of control room management for certain pipelines where controllers use supervisory control and data acquisition (SCADA) systems. Under the final rule, pipeline operators must implement methods to reduce the risk associated with controller fatigue. In addition, certain operators must define the roles and responsibilities of controllers and provide controllers with the necessary information, training, and processes to fulfill these responsibilities. Affected operators must also manage alarms, assure control room considerations are taken into account when changing pipeline equipment or configurations, and review reportable incidents or accidents to determine whether control room actions contributed to the event. The final rule established a program development deadline of August 1, 2011, and a program implementation deadline of February 1, 2013, for all substantive provisions in the rule.

Justification

PHMSA periodically reviews its pipeline safety regulations to protect people and the environment from the risks inherent in transportation of hazardous materials. Pipeline control rooms and controllers covered by the control room management rule are critical to the safe operation of pipeline systems. Control rooms and controllers facilitate and enable normal operations, and provide for prompt detection and appropriate response to abnormal conditions and to emergencies that may arise. The control room is the central location where controllers and computers receive data from field sensors. Commands from the control room can also be transmitted back to remotely controlled equipment as well as field personnel who may receive information from the control room necessary for operations and maintenance activities being conducted in the field.

After evaluating the substantive provisions in the control room management rule, as set forth in more detail below, including the fact that most of the effort to comply with many of the provisions will have already been completed by the August 1, 2011, deadline, PHMSA believes that the program implementation deadlines should be expedited to realize the safety benefit to the public, property, and the environment sooner. Where PHMSA believes there is a need for additional program implementation time, the agency proposes to moderately shorten the time provided in the current rule by only six months. For these reasons, we do not believe expediting the implementation deadlines for the selected paragraphs will have significant impact to pipeline operators.

PHMSA proposes to amend the implementation deadlines in 49 CFR 192.631 and 195.446 as follows:

(a) General—This paragraph establishes the scope of the rule and would be amended to reflect the revised implementation deadlines set forth below.

(b) Roles and Responsibilities—This paragraph requires operators to define the roles and responsibilities of a controller during normal, abnormal, and emergency operating conditions. Because most, if not all, of the effort to define controllers' roles and responsibilities will be performed during the development stage and completed under the current rule by August 1, 2011, PHMSA believes the program implementation deadline should be expedited to coincide with the program development deadline.

(c) Provide Adequate Information—This paragraph requires operators to provide their controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operators have defined. Paragraphs (c)(1) through (c)(4) may require certain physical changes and testing to an operator's SCADA system, backup system, and communications. PHMSA believes the program implementation deadline for paragraphs (c)(1) through (c)(4) should be expedited by six months to August 1, 2012, to realize the safety benefit to the public, property, and the environment sooner, with minimal impact on regulated entities.

Paragraph (c)(5) requires the establishment of procedures for when a different controller assumes responsibility, including the content of information to be exchanged. Since this section is tied to shift change, and because most, if not all, of the work to comply with this requirement will be performed during the development stage and completed under the current rule by August 1, 2011, PHMSA believes the program implementation deadline for paragraph (c)(5) should be expedited to coincide with the program development deadline consistent with paragraph (d) for fatigue.

(d) Fatigue Mitigation—This paragraph requires operators to implement fatigue mitigation methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined. Since most, if not all, of the work to comply with this requirement will be performed during the development stage and completed under the current rule by August 1, 2011, PHMSA believes the program implementation deadline for this paragraph should be expedited to coincide with the program development deadline.

(e) Alarm Management—This paragraph requires operators that use a SCADA system to have a written alarm management plan to provide for effective controller response to alarms. Some provisions in this paragraph may require physical changes to SCADA systems. PHMSA believes the program implementation deadline for this paragraph should be expedited by six months to August 1, 2012, to realize the safety benefit to the public, property, and the environment sooner, with minimal impact on regulated entities.

(f) Change Management—This paragraph requires operators to assure that changes that could affect control room operations are coordinated with the control room personnel. Since most, if not all, of the work to comply with this requirement will be performed during the development stage and completed under the current rule by August 1, 2011, PHMSA believes the program implementation deadline for this paragraph should be expedited to coincide with the program development deadline.

(g) Operating Experience—This paragraph requires operators to assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures. Since most, if not all, of the work to comply with this requirement will be performed during the development stage and completed under the current rule by August 1, 2011, PHMSA believes the program implementation deadline for this

paragraph should be expedited to coincide with the program development deadline.

(h) Training—This paragraph requires operators to establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. Since most, if not all, of the work to comply with this requirement will be performed during the development stage and completed under the current rule by August 1, 2011, PHMSA believes the program implementation deadline for this paragraph should be expedited to coincide with the program development deadline.

(i) Compliance Validation—This paragraph requires operators to submit their procedures, upon request, to PHMSA or, in the case of an intrastate pipeline facility regulated by a state, to the appropriate state agency. This requirement is self-executing and would not be amended.

(j) Compliance and Deviation—This paragraph requires operators to maintain, for review during inspection, records that demonstrate compliance with the requirements of this section, and documentation to demonstrate that any deviation from the procedures required by this section was necessary for the safe operation of a pipeline facility. This requirement is self-executing and would not be amended.

Based on the above justification, PHMSA proposes to amend the control room management rule to require that operators develop and implement all paragraphs by August 1, 2011, with the exception of paragraphs (c)(1) through (c)(4) and (e), which we propose to require development by August 1, 2011, and implementation by August 1, 2012.

Regulatory Analyses and Notices

Privacy Act Statement

Anyone may search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted 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).

Executive Order 12866 and DOT Policies and Procedures

PHMSA considers this proposed rule a non-significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). The proposed rule is also non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26 1979).

The final rule's regulatory analysis did not consider specific costs for the program implementation deadlines because the costs associated with the rule were determined to be the first year program implementation costs, and were not dependent on the implementation deadline. PHMSA believes that the 18 months provided for program development is sufficient for pipeline operators to both develop and implement certain provisions of the rule. Where PHMSA believes there is a need for additional program implementation time, we propose to moderately shorten that time by only six months. Therefore, PHMSA does not believe there is additional cost for this proposed rule beyond what has already been evaluated in the original control room management final rule. The final rule's regulatory analysis estimated first year average cost to be $14.4 million for hazardous liquid pipeline operators and $28.6 million for gas pipeline operators. The final rule estimated the quantifiable present value of the costs and benefits to be about $6 million over a ten year period using a discount rate of seven percent after all of the requirements are implemented. The final rule also found the regulatory costs not to exceed an annual effect of more than $100 million on the national economy, which is not an economically significant regulatory action within the meaning of Executive Order 12866.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. While PHMSA does not collect information on the number of employees or revenues of pipeline operators, we do continuously seek information on the number of small pipeline operators to more fully determine any impacts our proposed regulations may have on small entities. The final rule requires most small firms only to comply with certain requirements mandated by law, namely fatigue mitigation (including training), and recordkeeping for compliance purposes. Therefore, based on our findings in the final rule, we do not believe this proposed rule would have a significant economic impact on small entities.

Executive Order 13175

PHMSA has analyzed this rulemaking according to Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rule would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

The proposed rule does not require any additional paperwork burden on hazardous liquid and gas pipeline operators under the Paperwork Reduction Act of 1995.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector.

National Environmental Policy Act

PHMSA has examined the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and believes that expediting the program implementation deadlines may provide beneficial impacts on the quality of the environment. If pipeline operators comply with the technical elements of the proposed rule within a shorter time, environmental benefits would be realized sooner and may reduce the number and severity of pipeline releases. PHMSA has concluded this proposed rule would not add any significant negative or beneficial impacts to the quality of the human environment under the National Environmental Policy Act.

Executive Order 13132

PHMSA has analyzed the proposed rule according to Executive Order 13132 ("Federalism"). The proposal does not have a substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. The proposed rule does not impose substantial direct compliance costs on state and local governments. This proposed rule would not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

Transporting gas and hazardous liquids impacts the nation's available energy supply. However, this proposed

rule is not a "significant energy action" under Executive Order 13211 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs has not identified this proposal as a significant energy action.

List of Subjects

49 CFR Part 192

Incorporation by reference, Gas, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons provided in the preamble, PHMSA proposes to amend 49 CFR parts 192 and 195 as follows:

PART 192—TRANSPORTATION OF NATURAL GAS AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, and 60137; and 49 CFR 1.53.

2. Amend § 192.631 by revising the last sentence in paragraph (a)(2) to read as follows:

§ 192.631 Control room management.

(a) * * *

(2) * * * An operator must develop and implement the procedures no later than August 1, 2011, except the procedures required by paragraphs (c)(1) through (c)(4) and (e) of this section must be developed no later than August 1, 2011, and implemented no later than August 1, 2012.

* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

3. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118, and 60137; and 49 CFR 1.53.

4. Amend § 195.446 by revising the last sentence in paragraph (a) to read as follows:

§ 195.446 Control room management.

(a) * * * An operator must develop and implement the procedures no later than August 1, 2011, except the procedures required by paragraphs (c)(1) through (c)(4) and (e) of this section must be developed no later than August 1, 2011, and implemented no later than August 1, 2012.

* * * * *

Issued in Washington, DC on September 10, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–23227 Filed 9–16–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

[Docket No. FWS–R9–FHC–2009–0093; 94140–1342–0000–N5]

RIN 1018–AX05

Injurious Wildlife Species; Review of Information Concerning a Petition To List All Live Amphibians in Trade as Injurious Unless Free of Batrachochytrium dendrobatidis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of inquiry.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reviewing a petition to list, under the Lacey Act, all live amphibians or their eggs in trade as injurious unless certified as free of *Batrachochytrium dendrobatidis* (chytrid fungus). The importation and introduction of live amphibians infected with chytrid fungus into the natural ecosystems of the United States may pose a threat to interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States. An injurious wildlife listing would prohibit the importation of live amphibians or their eggs infected with chytrid fungus into, or transportation between, States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means, without a permit. We may issue permits for scientific, medical, educational, or zoological purposes. This document seeks information from the public to aid in determining if a proposed rule is warranted.

DATES: We will consider information received or postmarked on or before December 16, 2010.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R9–FHC–2009–0093.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R9–FHC–2009–0093, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Susan Jewell, Branch of Aquatic Invasive Species, U.S. Fish and Wildlife Service, MS 770, 4401 N. Fairfax Drive, Arlington, VA 22203; telephone 703–358–2416. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: On September 9, 2009, Department of the Interior Secretary Ken Salazar received a petition from the Defenders of Wildlife requesting that live amphibians or their eggs in trade be considered for inclusion in the injurious wildlife regulations (50 CFR part 16) under the Lacey Act (18 U.S.C. 42) unless they are free of *Batrachochytrium dendrobatidis* (chytrid fungus). The Defenders of Wildlife is concerned that unregulated trade—primarily for pet use and as live animals for consumption as frog legs—continues to threaten the survival of many amphibian species, including domestic and foreign species listed by the Service under the Endangered Species Act of 1973 as amended (ESA; 16 U.S.C. 1531 *et seq.*), candidate species, and other species.

Specifically, the petition to Secretary Salazar proposes the following revision to the Service regulations at 50 CFR 16.14.

Importation of live amphibians or their eggs. All live amphibians and their eggs are prohibited entry into the United States, or to be exported from the United States, or transported in interstate commerce, for any purposes, except in compliance with this section. Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, species of live amphibians or their eggs may be imported, transported, and possessed in captivity only if the shipment complies with a certification and handling system that meets or exceeds recommendations of the World Organization for Animal Health in its Aquatic Animal Health Code on Batrachochytrium dendrobatidis. No such live amphibians or any progeny or eggs thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency. All live amphibians and their eggs are prohibited from interstate commerce in the United States and from export out of the United States unless in a shipment accompanied by a written declaration, in such form as the Director of the Fish and Wildlife Service shall provide, which

indicates the shipment meets or exceeds the recommendations of the World Organization for Animal Health in its Aquatic Animal Health Code on Batrachochytrium dendrobatidis.

We are seeking information on the importation and transportation of live amphibians or their eggs and chytrid fungus (also known as chytridiomycosis) for possible addition to the injurious wildlife list under the Lacey Act.

The regulations contained in 50 CFR part 16 implement the Lacey Act. Under the terms of the injurious wildlife provisions of the Lacey Act, the Secretary of the Interior is authorized to prohibit the importation and interstate transportation of species designated by the Secretary as injurious. Injurious wildlife are those species, offspring, and eggs that are injurious or potentially injurious to wildlife or wildlife resources, to human beings, or to the interests of forestry, horticulture, or agriculture of the United States. Wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles are the only organisms that can be added to the injurious wildlife list. The lists of injurious wildlife are provided at 50 CFR 16.11–16.15. If the process initiated by this notice results in the addition of a species to the list of injurious wildlife contained in 50 CFR part 16, their importation into or transportation between States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States would be prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use.

Public Comments

This notice of inquiry requests biological, economic, or other data regarding the addition of live amphibians as injurious unless free of *Batrachochytrium dendrobatidis* (chytrid fungus) to the list of injurious wildlife. This information, along with other sources of data, will be used to determine if live amphibians or their eggs that are infected with *Batrachochytrium dendrobatidis* are a threat, or potential threat, to those interests of the United States delineated above, and thus warrant addition to the list of injurious wildlife in 50 CFR 16.14.

You may submit your information and materials concerning this notice of inquiry by one of the methods listed in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov*, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this notice of inquiry, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Room 770, 4401 North Fairfax Drive, Arlington, VA 22203.

We are soliciting information and supporting data from the public to gain substantive information, and we specifically seek information on the following questions regarding the importation of live amphibians and their eggs infected with *Batrachochytrium dendrobatidis* (chytrid fungus):

(1) What Federal, State, or tribal regulations exist to prevent the spread of chytrid fungus?

(2) Are there any known mechanisms in the United States to test for, control, or regulate movement or interstate transport of chytrid fungus?

(3) How many businesses import live amphibians or their eggs into the United States?

(4) How many businesses sell live amphibians or their eggs for interstate commerce?

(5) What are the annual sales of these imported live amphibians and their eggs?

(6) What species of amphibians, fish, or other class of animal have been affected by chytrid fungus in the United States and how were they infected?

(7) What are the current and potential effects to species listed as threatened or endangered under the ESA that are contaminated with chytrid fungus?

(8) What are the potential costs of recovering threatened or endangered species affected by chytrid fungus?

(9) What is the likelihood that wild amphibians would be affected by the importation of live amphibians or their eggs that harbor chytrid fungus?

(10) What would it cost to eradicate chytrid fungus?

(11) Are there any potential benefits to allowing the chytrid fungus pathogen to be imported?

(12) What is the potential for the industries that conduct trade in amphibians to self-police through voluntary best practices; for example, how successful is the "Bd-Free 'Phibs Campaign" sponsored by the Pet Industry Joint Advisory Council?

(13) What peer-reviewed methods for detecting chytrid fungus have been published?

(14) Are there any other comments or information regarding the listing of live amphibians as injurious unless free of chytrid fungus?

Dated: September 10, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–23039 Filed 9–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100830407–0410–02]

RIN 0648–XY51

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast. This HG is proposed according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast. The proposed total HG for the 2010–2011 fishing year is 11,000 metric tons (mt) and is proposed to be divided into a directed fishery HG of 8,000 mt and an incidental fishery of 3,000 mt.

DATES: Comments must be received by October 18, 2010.

ADDRESSES: You may submit comments on this proposed rule identified by 0648–XY51 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

• Fax: (562)980–4047, Att: Amber Morris

Instructions: 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 report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2009–2010 Fishing Year* may be obtained from the Southwest Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Amber Morris, Southwest Region, NMFS, (562) 980–3231.

SUPPLEMENTARY INFORMATION: The CPS FMP, which is implemented by regulation at 50 CFR part 660, subpart I, divides management unit species into two categories: actively managed and monitored. The HGs for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates.

The biomass and harvest specifications for each actively managed species within the CPS FMP are reviewed every year by the Pacific Fishery Management Council (Council) at their public meetings. The Scientific and Statistical Committee's (SSC) CPS Subcommittee, the Coastal Pelagic Species Management Team (Team) and the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) review and discuss the biomass, the acceptable biological catch (ABC) and the status of the fisheries and present their comments to the Council. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NOAA's National Marine Fisheries Service (NMFS). A rule implementing the annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season.

A full assessment for Pacific mackerel was conducted and then reviewed by a Stock Assessment Review (STAR) Panel in May 2009. This assessment estimated the biomass of Pacific Mackerel to be 282,049 metric tons (mt). Based on this estimated biomass, the harvest control rule in the CPS FMP produced an ABC of 55,408 mt. The Council depended on the 2009 full assessment and 2009 landings to make management decisions for the 2010 fishing season. Based on this information, the Council recommended an ABC of 55,408 mt (calculated from the 2009 biomass estimate of 282,049 mt) and an overall HG for the July 1, 2010, through June 30, 2011, fishing season of 11,000 mt with 8,000 mt allocated to a directed fishery and 3,000 mt set aside for incidental landings in other CPS fisheries should the 8,000 mt directed fishery HG be attained. These proposed harvest levels are nearly identical to those implemented in 2009, for which the HG was 10,000 mt with 8,000 mt for the directed fishery and 2,000 mt for the incidental landings. The proposed 1,000 mt increase in the set aside for incidental landings this season was in response to comments by industry that Pacific mackerel availability to the fleet may be increasing and that fishing opportunities for other CPS could be forgone if the mackerel season closed early.

The Council also recommended the following specifications for the 2010–2011 management of Pacific mackerel: First, NMFS will close the directed fishery if the 8,000 mt directed fishery HG is attained, and second, a 45–percent incidental catch allowance will be established for landing Pacific mackerel with other CPS (in other words, no more than 45% by weight of the CPS landed per trip may be Pacific mackerel) with the exception that up to 1 mt of Pacific mackerel could be landed per trip without landing any other CPS.

NMFS proposes to set the overall HG for the Pacific mackerel 2010–2011 fishing season at 11,000 mt with 8,000 mt allocated to a directed fishery and 3,000 mt set aside for incidental landings in other CPS fisheries should the 8,000 mt directed fishery HG be attained. If 8,000 mt are landed the directed fishery for Pacific mackerel will close and a 45–percent by weight incidental trip allowance for landing Pacific mackerel with other CPS will be implemented, with the exception that 1 mt may be landed per trip without any other CPS.

Information on the fishery and the stock assessment can be found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2009–10 Fishing Year* (see **ADDRESSES**).

The harvest control rule formula in the FMP uses the following factors to determine the ABC:

1. *Biomass.* The estimated stock biomass of Pacific mackerel age one and above

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Distribution.* The portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established this at 30 percent.

Classification

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

These proposed specifications are exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as explained below:

The purpose of this proposed rule is to implement the 2010–2011 HG for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific mackerel fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the ABC, from which the HG is then derived.

Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast which primarily includes the fisheries for Pacific sardine, northern anchovy, jack mackerel and market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39° N. latitude; Point Arena, California) of the fishery. Sixty-two vessels are currently permitted in the Federal CPS limited entry fishery off California. All of these vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of $4.0 million. This proposed rule has an equal effect on all of these small entities. Therefore, there would be no disporportionate impacts on large and small business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average.

Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

During the 2008/2009 fishing year approximately 4,000 mt of Pacific mackerel were landed with an estimated ex-vessel value of $780,000 and during the 2009/2010 fishing year approximately 3,190 mt of Pacific mackerel were landed with an estimated ex-vessel value of $622,230. The proposed HG for the 2010/2011 Pacific mackerel fishing season (July 1, 2009 through June 30, 2010) is 11,000 mt. If the fleet were to take the entire 2010/2011 HG, and assuming no change in the coastwide average ex-vessel price per mt of approximately $200, the potential revenue to the fleet would be approximately $2 million.

The amount of Pacific mackerel caught each year depends greatly on market forces within the fishery, as well as the other CPS fisheries, and on the regional availability of the species to the fleet and the fleets' ability to easily find schools relatively close to port. If there is no change in market conditions (i.e., an increase demand for Pacific mackerel product), it is not likely that the full HG will be taken during the 2010–2011 fishing year, in which case profits will be lower than if the entire HG were taken. Additionally, the potential lack of regional availability of the resource to the fleet can cause a reduction in the amount of Pacific mackerel that is harvested, in turn, potentially reducing the total revenue to the fleet.

The annual average U.S. Pacific mackerel harvest from 2001 to 2009 is 4,886 mt with average annual ex-vessel revenue of $861,775. Based on this catch and revenue history for Pacific mackerel over the nine years, NMFS does not anticipate a drop in profitability based on this rule as the 2010/2011 available harvest (11,000 mt) is twice the average catch during that time.

In addition, the revenue derived from harvesting Pacific mackerel is only one factor determining the overall revenue of the CPS fleet and therefore the economic impact to the fleet from the proposed action cannot be viewed in isolation. CPS vessels typically harvest a number of other species, including Pacific sardine, market squid, northern anchovy, and tuna, with the focus on Pacific sardine, which had an estimated ex-vessel of $12.5 million in 2009 and market squid which had an estimated ex-vessel of $56 million in 2009. Therefore, Pacific mackerel is only a small component of this multi-species CPS fishery.

Based on the disproportionality and profitability analysis above, this rule if adopted, will not have a significant economic impact on a substantial number of these small entities.

As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

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

Dated: September 13, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2010–23254 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 180
Friday, September 17, 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

Rural Utilities Service

Central Electric Power Cooperative, Inc.: Notice of Intent To Hold a Public Scoping Meeting and Prepare an Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to Hold a Public Scoping Meeting and Prepare an Environmental Impact Statement.

SUMMARY: The Rural Utilities Service (RUS) intends to hold a public scoping meeting and prepare an Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1508), RUS's Environmental and Policies and Procedures (7 CFR part 1794), and the U.S. Forest Service (USFS)'s National Environmental Policy Act Procedures (36 CFR part 220) in connection with potential impacts related to a proposal by Central Electric Power Cooperative, Inc., (Central Electric) of Columbia, South Carolina. The proposal consists of constructing a 115 kilovolt (kV) transmission line through portions of Berkeley, Charleston, and/or Georgetown Counties, South Carolina, to the proposed McClellanville substation. Central Electric is requesting that RUS provide financial assistance for the proposal and may request that the USFS issue a special use permit for the proposal. RUS is the lead agency conducting the EIS, and the USFS will be acting as a cooperating agency.

DATES: RUS and the USFS will conduct a public scoping meeting in an open-house format with a formal presentation. The meeting will be held on Wednesday, September 29, 2010, from 5 to 9 p.m. at St. James-Santee Elementary School, 8900 U.S. 17, North Charleston, South Carolina 29405. The formal presentation will be made at 6 p.m. and 8 p.m. The presentation will provide an overview of the Federal actions being considered by RUS and the USFS (i.e., consideration of financial assistance and permit issuance), an overview of NEPA and the EIS-process, and the purpose/need and alternatives considered in the development of the proposal. Comments regarding the proposal may be submitted in writing at the public scoping meeting or in writing by October 29, 2010, to the RUS address provided in this Notice.

ADDRESSES: To send comments or for further information, please contact Ms. Lauren McGee, Environmental Scientist, USDA Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Room 2244–S, Washington, DC 20250–1571, telephone: (202) 720–1482, fax: (202) 690–0649, or e-mail: *lauren.mcgee@wdc.udsa.gov.*

An updated Alternatives Evaluation Study (AES) and Macro-Corridor Study (MCS) was prepared for the proposal by Central Electric and Mangi Environmental Group, Inc. The AES and MCS discuss the purpose/need for the proposal and the alternatives considered in the proposal's development. The AES and MCS (both dated September 2010) are available for public review at the RUS address provided in this Notice, at the following RUS Web site: *http://www.usda.gov/rus/water/ees/eis.htm,* and at the following repositories:

Berkeley County Library—Moncks Corner (Main), 1003 Hwy 52, Moncks Corner, South Carolina 29461; telephone: (843) 719–4223.

Charleston County Main Library, 68 Calhoun Street, Charleston, South Carolina 29401; telephone: (843) 805–6930.

Georgetown Library (Headquarters), 405 Cleland Street, Georgetown, South Carolina 29440; telephone: (843) 545–3300.

McClellanville Library, 222 Baker Street, McClellanville, South Carolina 29458; telephone: (843) 887–3699.

U.S. Forest Service, Wambaw Office, McClellanville, South Carolina 29458; telephone: (843) 887–3257.

Sewee Visitor & Environmental Education Center, 5821 Highway 17 North, Awendaw, South Carolina 29429; telephone: (843) 928–3368.

SUPPLEMENTARY INFORMATION: Central Electric proposes to construct a 115–kV transmission line to Berkeley Electric Cooperative's proposed McClellanville substation. The proposal would provide long-term, reliable electric service to the McClellanville community and surrounding areas. It would also reduce the number and length of extended outages in this service area and reduce the number of momentary interruptions or blinks. The transmission line may originate from one of the following points: Belle Isle (Georgetown County), Winyah/Britton Neck (Georgetown County), Jamestown (Berkeley County), Honey Hill (Berkeley County), and/or Charity (Charleston County). With this Notice, government agencies, organizations, and the public are invited to provide input in the development of the EIS for the proposal.

Scoping was previously conducted for the proposal during December 2005—January 2006. At that time, a Notice of Intent (NOI) to prepare an Environmental Assessment and hold a public scoping meeting was published in the **Federal Register** on November 29, 2005 (Vol. 70, No. 228, 71462). A public scoping meeting was held on December 14, 2005, at the McClellanville Government Services Building. The public was notified of the meeting via letter to landowners and interested parties; public service announcements on radio stations in Charleston and Georgetown, South Carolina; and announcements published in the *Georgetown Times and Charleston Post & Courier.* Approximately 150–200 people attended the public meeting. A scoping report, which summarizes comments received from agencies and the public, is available for public review at the RUS Web site listed in this Notice. Based on comments received from agencies and the public, RUS decided that an EIS should be prepared for the proposal. In addition, RUS determined that a new macro-corridor alternative should be considered (Winyah/Britton Neck via private forestlands). Development of this new alternative and the refinement of the other macro-corridor alternatives were based on information acquired from agencies and the public during the December 2005–January 2006 scoping period. RUS is holding a second scoping meeting to inform agencies and the public of these changes to the scope of the proposal and to gather more input for use in the development of the EIS.

Among the alternatives that RUS will address in the EIS is the "No Action" alternative, under which the proposal would not be undertaken. In the EIS, the effects of the proposal will be compared to the existing conditions in the proposal area. Alternative transmission line corridors will be refined as part of the EIS scoping process and will be addressed in the EIS. Public health and safety, environmental impacts, and engineering aspects of the proposal will be considered in the EIS.

RUS is the lead Federal agency, as defined at 40 CFR 1501.5, for preparation of the EIS. The USFS is a cooperating agency. With this Notice, federally recognized Native American Tribes and Federal agencies with jurisdiction or special expertise are invited to be cooperating agencies. Such tribes or agencies may make a request to RUS to be a cooperating agency by contacting the RUS contact provided in this Notice. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR 1501.6(b).

As part of its broad environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act (Section 106) and its implementing regulation, "Protection of Historic Properties" (36 CFR part 800). Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in response to scoping will inform RUS decision-making in Section 106 review. Any party wishing to participate more directly with RUS as a "consulting party" in Section 106 review may submit a written request to the RUS contact provided in this Notice.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of the draft EIS. The draft EIS will be available for review and comment for 45 days. A final EIS that considers all comments received will subsequently be prepared. The final EIS will be available for review for 30 days. Following the 30-day review period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the draft EIS, the final EIS, and the ROD will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant executive orders and Federal, state, and local environmental laws and regulations in addition to the completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures, 7 CFR part 1794, as amended.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA, Rural Utilities Service.

[FR Doc. 2010–22964 Filed 9–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to PlantHaven, Inc. of Santa Barbara, California, an exclusive license to the variety of hibiscus described in U.S. Plant Patent Application Serial No. 12/454,676, "Sahara Sunset," filed on May 21, 2009.

DATES: Comments must be received on or before October 18, 2010.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this variety as PlantHaven, Inc. of Santa Barbara, California has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2010–23187 Filed 9–16–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet in Downieville, California. 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 discuss projects submitted for funding and the expenditure of Title II funds benefiting National Forest System lands in Sierra County.

DATES: The meeting will be held Wednesday, October 6, 2010 at 10 a.m.

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

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St, Nevada City, CA, 95959, (530) 478–6205, e-mail: *awestling@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and Introductions; (2) Review of RAC Operating Guidelines; (3) Discussion of Proposed Projects; (4) Vote on Proposed Projects; and (5) Comments from the Public. The meeting is open to the public and the public will have an opportunity to comment at the meeting.

Dated: September 7, 2010.

Judie L. Tartaglia,

Deputy Forest Supervisor.

[FR Doc. 2010–22875 Filed 9–16–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0058]

Notice of Decision To Issue Permits for the Importation of Sweet Limes From Mexico Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of sweet limes from Mexico. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of sweet limes from Mexico.

EFFECTIVE DATE: September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spreading within the United States. Under that process, APHIS may publish a notice in the **Federal Register** announcing the availability of a pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the risk-mitigation measures identified in the pest risk analysis if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice[1] in the **Federal Register** on June 10, 2010 (75 FR 32900-32901, Docket No. APHIS-2010-0058), in which we announced the availability, for review and comment, of a pest risk analysis evaluating the risks associated with the importation into the continental United States of sweet limes from Mexico. We solicited comments on the notice for 60 days ending on August 9, 2010. We received one comment by that date, from a State agricultural agency. The commenter concurred with the findings of our pest risk analysis.

Therefore, in accordance with the regulations in § 319.56-4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of sweet limes from Mexico provided that:

- The sweet limes may be imported into the United States in commercial consignments only.
- The sweet limes must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 150 Gy.
- Each shipment of sweet limes must be inspected by the Mexican national plant protection organization and accompanied by a phytosanitary certificate attesting that the fruit received the required irradiation treatment and bearing an additional declaration that states that the fruit was inspected in the packinghouse and found free of *Brevipalpus californicus*, *B. phoenicus*, *Diaphorina citri*, and *Coniothecium scabrum*.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at (*http://www.aphis.usda.gov/favir*)). In addition to these specific measures, sweet limes from Mexico will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 13th day of September 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–23238 Filed 9–16–10; 11:25 am]

BILLING CODE 3410–34–S

[1] To view the notice, the pest risk analysis, and the comment we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0058*).

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Precanvass Operation for the 2012 Economic Census Commodity Flow Survey.

OMB Control Number: 0607–0921.

Form Number(s): CFS–0001(2012).

Type of Request: Reinstatement, with change of an expired collection.

Burden Hours: 8,333.

Number of Respondents: 100,000.

Average Hours per Response: 5 minutes.

Needs and Uses: The U.S. Census Bureau plans to conduct the 2012 Commodity Flow Survey (CFS) as a part of the quinquennial Economic Census. In advance of the 2012 CFS, we will conduct a Precanvass (Advance Mailing), which is the subject of this request. The information collected in the 2012 CFS Precanvass will be used to improve the 2012 CFS universe and sampling quality and efficiency, and provide contact information for the selected establishments, reducing the cost and improving the timeliness of data collection for the 2012 CFS.

The CFS, a component of the Economic Census, is the only comprehensive source of multi-modal, system-wide data on the volume and pattern of goods movement in the United States. The CFS is conducted in partnership with the Bureau of Transportation Statistics (BTS), Research and Innovative Technologies (RITA), U.S. Department of Transportation. The 2012 CFS will be the subject of a separate Office of Management and Budget (OMB) clearance submission in the Spring of 2011.

The 2012 CFS Precanvass will be mailed to auxiliary establishments, and establishments expected to be selected with certainty in the 2012 CFS. It will also include selected small establishments from industries with a high incidence of non-shipping locations.

All information collected in the Precanvass will be used internally to improve the 2012 CFS universe and mail-out processing. Each establishment in the Precanvass is asked to verify shipping activity for that particular physical location. The Precanvass

sample is heavily weighted with industries that contain a significant percentage of non-shipping establishments. The identification and elimination of the non-shippers will produce a more efficient 2012 CFS sample. Each confirmed shipper is asked to indicate its level of shipping activity. The value of shipments measure is used in the stratification and allocation for CFS sampling. Each shipper is asked to verify address and contact information, allowing us to update our mailing records for the 2012 CFS. Because the CFS requests a sample of outbound shipments and their characteristics, the questionnaire must be completed by someone with access to the establishment's transportation records, unlike many other economic surveys which are directed to accounting departments. By ensuring the direct delivery of the 2012 CFS questionnaire to the correct contact, we will be able to improve the quality and level of response in the CFS.

Affected Public: Businesses or other for-profit.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., sections 131,193, and 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer, either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: September 14, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–23278 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–844, A–570–952]

Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Notice of amended antidumping duty orders.

FOR FURTHER INFORMATION CONTACT: Holly Phelps (Taiwan), AD/CVD Operations, Office 2, or Karine Gziryan (PRC), AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0656 and (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2010, the Department published in the **Federal Register** the antidumping duty orders on narrow woven ribbons with woven selvedge (narrow woven ribbons) from Taiwan and the People's Republic of China (PRC). *See Narrow Woven Ribbons with Woven Selvedge from Taiwan and the People's Republic of China: Antidumping Duty Orders*, 75 FR 53632 (September 1, 2010) (*Antidumping Duty Orders*).

During the investigation involving narrow woven ribbons from Taiwan, we determined that a certain Taiwan unaffiliated supplier was not a producer of subject merchandise. *See Notice of Final Determination of Sales at Less than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*Taiwan Final Determination*). The name of this supplier was disclosed as Hong Sin Co., Ltd. (Hong Sin) by respondent Dear Year Brothers Manufacturing Co., Ltd. (Dear Year), and as Hon Xin Co., Ltd. (Hon Xin) by respondent Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd. (collectively, Shienq Huong). *See* the respondents' submissions dated August 24, 2010. Information on the record of this investigation establishes that Hong Sin and Hon Xin both refer to the same Taiwan company.

In the *Taiwan Final Determination*, we excluded certain producer/exporter combinations from any order resulting from the investigation because these unaffiliated suppliers had margins of zero in the less-than-fair-value investigation. However, because Hong Sin and Hon Xin both refer to the same unaffiliated supplier and we determined that this company was not a producer of subject merchandise, neither Hong Sin nor Hon Xin should have been excluded from the antidumping duty order on narrow woven ribbons from Taiwan. Yet, Hon Xin was inadvertently included as part of a Shienq Huong producer/exporter combination excluded from the antidumping duty order. *See Antidumping Duty Orders*, 75 FR at 53633. We are amending the antidumping duty order to accurately reflect our final determination by removing Hon Xin Co., Ltd./Shienq Huong from the list of producer/exporter combinations excluded from the order.

In addition, the *Antidumping Duty Orders* stated that, for the PRC separate rate respondents, the Department will instruct U.S. Customs and Border Protection (CBP) to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the determined margin. However, we will be instructing CBP to only require a cash deposit, not the posting of a bond.

Finally, in the *Antidumping Duty Orders*, the Department stated that it will instruct CBP to terminate the suspension of liquidation for entries of narrow woven ribbons from Taiwan and the PRC entered or withdrawn from warehouse, for consumption prior to August 25, 2010. *See Antidumping Duty Orders*, 75 FR at 53634. However, the International Trade Commission's (ITC) final determination was published on September 1, 2010. *See Narrow Woven Ribbons With Woven Selvedge From China and Taiwan*, 75 FR 53711 (September 1, 2010). Therefore, pursuant to section 736(b)(2) of the Tariff Act of 1930, as amended (the Act), the Department will instruct CBP to terminate the suspension of liquidation for entries of narrow woven ribbons from Taiwan and the PRC entered or withdrawn from warehouse, for consumption prior to September 1, 2010, and refund any cash deposits made and release any bonds posted between the publication of the Department's preliminary determinations on February 18, 2010, and the publication of the ITC's final determination.

Scope of the Orders

The scope of the orders covers narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters,

composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the orders may:

- Also include natural or other non-man-made fibers;
- Be of any color, style, pattern, or weave construction, including but not limited to single-faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- Have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- Have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- Have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- Have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- Have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- Consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an "ornamental trimming;"
- Be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- Be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the orders include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of these antidumping duty orders.

Excluded from the scope of the orders are the following:

(1) Formed bows composed of narrow woven ribbons with woven selvedge;

(2) "Pull-bows" (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) Narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) Narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) Narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) Narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) Cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) Narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) Narrow woven ribbons constructed from pile fabrics (*i.e.*, fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) Narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) Narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket;

(12) Narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) Narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to these orders is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by these orders is dispositive.

Amended Antidumping Duty Orders

On August 25, 2010, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that an industry in the United States is threatened with material injury within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of less-than-fair-value imports of narrow woven ribbons from Taiwan and the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of narrow woven ribbons from Taiwan and the PRC, except for imports of narrow woven ribbons from those combinations of producers and exporters identified below:[1]

[1] We note that Shienq Huong has not disclosed for the public record the name of a certain unaffiliated supplier. Therefore, upon public disclosure of this information to the Department, we will notify CBP that Shienq Huong's exports of merchandise produced by this unaffiliated

Continued

Exporter	Producer
Taiwan	
Dear Year Brothers Manufacturing Co., Ltd	Dear Year Brothers Manufacturing Co., Ltd.
Dear Year Brothers Manufacturing Co., Ltd	Fool Shing Enterprise Co., Ltd.
Dear Year Brothers Manufacturing Co., Ltd	Hong Tai Enterprise.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Shienq Huong Enterprise Co., Ltd./ Hsien Chan Enterprise Co., Ltd./ Novelty Handicrafts Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Boa Shun Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Chi Hua Textile Corporate Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Chieng Xin Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Ching Yu Weaving String Corp.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Done Hong Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Guang Xing Zhi Zao Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Hang-Liang Company.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Hong-Tai Company.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Hua Yi Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Hung Cheng Enterprises Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Hung Ching Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	I Lai Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Ji Cheng Industry.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Le Quan Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Lei Di Si Corporation Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Oun Mao Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Shang Yan Gong Ye She.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Sung-Chu Industry (a/k/a Qiao Zhi Industry).
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Wei Xin Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Xin Jia Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Yi Chang Corp.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Yi Cheng Gong Ye She.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Yi Long Enterprise Co., Ltd.
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd	Zheng Chi Chi Corp.
PRC	
Yama Ribbons and Bows Co., Ltd	Yama Ribbons and Bows Co., Ltd.

For all other manufacturers/exporters, pursuant to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination, given that that determination is based on the threat of material injury, other than threat of material injury described in section 736(b)(1) of the Act. Section 736(b)(1) of the Act states that, '{i}f the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(2) would have led to a finding of material injury, then entries of the subject merchandise. the liquidation of which has been suspended under section 733(d)(2). shall be subject to the imposition of antidumping duties under section 731." In addition, section 736(b)(2) of the Act requires CBP to release any bond or other security and refund any cash deposit made of estimated antidumping duties posted since the Department's preliminary antidumping duty determinations (*i.e.*, February 18, 2010). *See Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7236 (February 18, 2010); and *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7244 (February 18, 2010).

Because the ITC's final determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determinations, section 736(b)(2) of the Act is applicable. According to section 736(b)(2) of the Act, where the ITC finds threat of material injury, duties shall only be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination. In addition, section 736(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated antidumping duties posted since the preliminary antidumping determinations and prior to the ITC's notice of final determination.

Therefore, on or after the date of publication of the ITC's notice of final determination in the **Federal Register**, except for imports of narrow woven ribbons from those combinations of producers and exporters identified above, CBP will require a cash deposit equal to the estimated dumping margins listed below, pursuant to section 736(a)(3) of the Act, at the same time that importers would normally deposit

company have a less-than-fair-value investigation margin of zero and thus are excluded from any order resulting from this investigation. Until and unless such public disclosure is made, we will notify CBP that all entries of merchandise produced by Shienq Huong's undisclosed unaffiliated supplier will be subject to the "all others" rate established in this proceeding. *See Taiwan Final Determination*, 75 FR at 41807.

estimated duties on this merchandise. The "All Others" rate for Taiwan applies to all Taiwan producers or exporters not specifically listed and not specifically excluded. The PRC-wide rate applies to all PRC exporters of subject merchandise not specifically listed and not specifically excluded. The Department will also instruct CBP to terminate the suspension of liquidation for entries of narrow woven ribbons from Taiwan and the PRC entered or withdrawn from warehouse, for consumption prior to September 1, 2010, and refund any cash deposits made and release any bonds posted between the publication of the Department's preliminary determinations on February 18, 2010, and the publication of the ITC's final determination.

Final Determination Margins

The margins and cash deposit rates are as follows:

Exporter or producer	Margin (percent)
Taiwan	
Roung Shu Industry Corporation	4.37
All Others	4.37

Exporter	Producer	Margin (percent)
PRC		
Beauty Horn Investment Limited	Tianjin Sun Ribbon Co., Ltd	123.83
Fujian Rongshu Industry Co., Ltd	Fujian Rongshu Industry Co., Ltd	123.83
Guangzhou Complacent Weaving Co., Ltd	Guangzhou Complacent Weaving Co., Ltd	123.83
Ningbo MH Industry Co., Ltd	Hangzhou City Linghu Jiacheng Silk Ribbon Co., Ltd	123.83
Ningbo V.K. Industry & Trading Co., Ltd	Ningbo Yinzhou Jinfeng Knitting Factory	123.83
Stribbons (Guangzhou) Ltd	Stribbons (Guangzhou) Ltd	123.83
Stribbons (Guangzhou) Ltd	Stribbons (Nanyang) MNC Ltd.	123.83
Sun Rich (Asia) Limited	Dongguan Yi Sheng Decoration Co., Ltd	123.83
Tianjin Sun Ribbon Co., Ltd	Tianjin Sun Ribbon Co., Ltd	123.83
Weifang Dongfang Ribbon Weaving Co., Ltd	Weifang Dongfang Ribbon Weaving Co., Ltd	123.83
Weifang Yu Yuan Textile Co., Ltd	Weifang Yu Yuan Textile Co., Ltd	123.83
Xiamen Yi He Textile Co., Ltd	Xiamen Yi He Textile Co., Ltd	123.83
Yangzhou Bestpak Gifts & Crafts Co., Ltd	Yangzhou Bestpak Gifts & Crafts Co., Ltd	123.83
PRC-wide entity[2]		247.65

[2] Ningbo Jintian Import & Export Co., Ltd. is included in the PRC-wide entity.

For the PRC separate rate respondents, we will instruct CBP to require an antidumping duty cash deposit for each entry equal to the margin indicated above, adjusted for the export subsidy rate determined in the countervailing duty final determination (*i.e.*, International Market Development Fund Grants for Small and Medium Enterprises). *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808, 41812 (July 19, 2010). *See also Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 41801 (July 19, 2010), and accompanying Issues and Decision Memorandum at section I.D. The adjusted cash deposit rate for the separate rate respondents (as listed above in the "Final Determination Margins" section, above) is 123.44 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

This notice constitutes the amended antidumping duty orders with respect to narrow woven ribbons from Taiwan and the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These amended orders are issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: September 10, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–23350 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2010]

Foreign-Trade Zone 104—Savannah, GA Application for Manufacturing Authority Mitsubishi Power Systems Americas, Inc. (Power Generation Turbine Components) Pooler, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Savannah Airport Commission, grantee of FTZ 104, requesting manufacturing authority on behalf of Mitsubishi Power Systems Americas, Inc. (MPSA), located in Pooler, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 13, 2010.

The MPSA facility ("Savannah Machinery Works", 119 acres/239,000 sq. ft.) is located at 1000 Pine Meadow Drive within the Pooler Megasite (proposed Site 12 under pending FTZ 104 ASF/Reorganization, Docket 51–2010 [75 FR 53637, 9–1–2010]) in Pooler (Chatham County), Georgia. The facility (approximately 500 employees), currently under construction, will be used to manufacture and repair large gas and steam power generation turbine components (combustor baskets, transition pieces; up to 1,500 units of each per year) for export and the domestic market. Activity would involve receiving foreign-origin, semi-finished nickel alloy sheets, bars, castings and forgings (HTSUS Subheadings 7506.20, 7508.90; duty rate: 3.0%; representing about 36% of total material value) that would be machined, welded, balanced and thermal coated to produce finished gas turbine combustor baskets and transition pieces. Some 70 percent of the finished combustor baskets and transition pieces will be exported. The proposed activity under FTZ procedures would also involve service maintenance and repair (*e.g.*, dis/assembly.

inspection, cleaning, upgrading, welding, and balancing) of customer-owned gas and steam turbine components (rotors, valves, blades, gears, couplings, airfoils, hubs and stationaries) and generators. Foreign-origin turbines and generators would also be distributed from the MPSA facility. The application indicates that large gas and steam turbines will be manufactured at the facility in the future, but MPSA is not seeking authority to produce these products under FTZ procedures at this time.

FTZ procedures could exempt MPSA from customs duty payments on foreign materials and components used in export production. On its domestic shipments, MPSA would be able to choose the duty rate that applies to finished gas turbine combustor baskets and transition pieces (2.4%) for the foreign nickel alloy inputs noted above. MPSA would also be exempt from duty payments on any foreign-origin nickel alloy that becomes scrap or waste during manufacturing. Duties also could possibly be deferred or reduced on foreign status production equipment. Customs duties could be reduced on foreign-origin turbines (6.7%) that may be withdrawn from the zone with generators for customs entry as complete generating sets (2.5%). FTZ procedures would further allow MPSA to realize logistical benefits through the use of weekly customs entry procedures. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is November 16, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 1, 2010.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: September 13, 2010.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2010–23355 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Argonne National Laboratory, et al.; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC.

Comments: None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 10–052. *Applicant:* Argonne National Laboratory, University of Chicago Argonne, Lemont, IL 60439. *Instrument:* Pilatus 2M Pixel Detector System. *Manufacturer:* Dectris Ltd., Switzerland. *Intended Use: See notice* at 75 FR 51239, August 19, 2010. *Reasons:* The instrument will be used to obtain fine structural information for materials during chemical reactions, such as catalysis. The instrument has gatable data processing as well as high time resolution and high spatial resolution, which makes the instrument unique. Other unique features include direct detection of x-rays in single-photon-counting mode, a radiation-tolerant design, a high dynamic range, a short readout time, high frame rates, high counting rates, and shutterless operation.

Docket Number: 10–053. *Applicant:* Argonne National Laboratory, University of Chicago Argonne, Lemont, IL 60439. *Instrument:* UHV Low-Temperature Atomic Force Microscope System for Application in High Magnetic Fields. *Manufacturer:* Omicron Nanotechnology, Germany. *Intended Use: See notice* at 75 FR 51239, August 19, 2010. *Reasons:* The instrument will be used to study atomic scale electrical and magnetic properties of electrically conduction as well as insulation nanostructures prepared by in situ deposition onto clean surfaces. In-situ capacities allow the preparation of clean and well-defined nanostructures on pristine surfaces which would contaminate otherwise. Unique features of this instrument include the capability of applying large magnetic fields (>3 Tesla), which is necessary to allow the clear separation of structural, electronic, and magnetic signals of nanostructures and the evaluation of the properties to be studied in these experiments. The instrument also has in-situ preparation capability and the ability to operate in low temperatures. Further, the instrument is capable of performing imaging in two main modes of operation, *i.e.*, scanning tunneling microscopy and atomic force microscopy.

Dated: September 10, 2010.

Gregory W. Campbell,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–23347 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY97

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for three new scientific research permits.

SUMMARY: Notice is hereby given that NMFS has received three scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on October 18, 2010.

ADDRESSES: Written comments on the applications should be sent to the

Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *nmfs.nwr.apps@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above, or online at *apps.nmfs.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Puget Sound (PS).

Steelhead (*O. mykiss*): threatened PS, threatened middle Columbia River (MCR).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 15549

The Columbia River Inter-Tribal Fish Commission (CRITFC) is seeking a five-year permit to expand on and extend work previously conducted under Permit 1532. They wish to take juvenile steelhead during the course of research designed to determine the fishes' freshwater movements and how those movements are affected by the area's substantially altered hydrograph. They would also collect baseline information on stock status. The research would take place in Satus, Ahtanum, Naches, and Toppenish Creeks, Washington.

The fish would be captured using screw traps and backpack electrofishing equipment. They would then be anesthetized and measured. Some would be tissue-sampled and some would receive passive integrated transponder (PIT) tags. The information gathered would be used to determine the fishes' movements and abundance and monitor the ongoing status of the various MCR steelhead populations in the Yakima River subbasin. The research would benefit the fish by helping managers determine the effectiveness of current recovery measures and design new ones where needed. The CRITFC does not plan to kill any of the fish being captured, but a few may die as an unintentional result of the research

Permit 15582

The City of Bothell (COB) in northwestern Washington State is seeking a new 5–year permit to take juvenile PS Chinook and steelhead while conducting research designed to provide information on the condition of fish populations in the waters around the city. The purpose of the research is to provide information that will help the COB prioritize and direct habitat restoration actions. The information gathered by this research would benefit the fish by helping the COB (a) protect important salmonid habitat and (b) measure its compliance with their Federal National Pollutant Discharge Elimination System permit and the Clean Water Act. The COB is seeking to capture fish (using backpack electrofishing equipment), anesthetize them, measure them, allow them to recover from the anesthesia, and release them. No listed fish are expected to die during these activities.

Permit 15695

The Western Washington University (WWU) is seeking a new 3–year permit to take juvenile PS Chinook and steelhead while conducting research designed to (1) investigate the effects of hypoxia (decreased levels of oxygen in water) on fish abundance and distribution; (2) determine spatial and temporal variations in hypoxia in the Nooksack River basin; and (3) investigate the dominant mechanisms causing hypoxia in northwestern streams. The research is designed to provide information about the life history and habitat requirements for suckers and threatened salmonids and thus would benefit listed fish by enhancing the effectiveness of watershed management and conservation policies. The WWU is seeking to capture fish (using minnow traps), identify and enumerate them, and release them. No listed fish are expected to die during these activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: September 13, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–23269 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1707]

Expansion of Foreign-Trade Zone 157, Casper, WY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Casper/Natrona County International Airport, grantee of Foreign-Trade Zone 157, submitted an application to the Board for authority to expand FTZ 157 to include a site in Casper, Wyoming, within the Casper Customs and Border Protection port of entry (FTZ Docket 23–2010, filed March 29, 2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 17125–17126, 04/05/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 157 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 3rd day of September 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–23300 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2008–2009 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–8173 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2010, the Department of Commerce ("Department") published its preliminary results of review of the antidumping order on chlorinated isocyanurates from the People's Republic of China ("PRC").[1] This review covers the period June 1, 2008, through May 31, 2009. The final results of review are currently due no later than September 11, 2010.

Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. Completion of the final results of this review within the 120-day period is not practicable because the Department needs additional time to analyze and address complicated surrogate value issues, including the most appropriate methodology for valuing labor, for the final results. Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final results of the administrative review by 30 days in accordance with section 751(a)(3)(A) of the Act. Therefore, the final results will be due Monday, October 11, 2010, which is 150 days from publication of the preliminary results. However, October 11, 2010, falls on a federal holiday, and it is the Department's long-standing practice to issue a determination on the next business day when the statutory deadline falls on a federal holiday.[2] Accordingly, the deadline for completion of the preliminary results of the review is now no later than October 12, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: September 10, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–23345 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 27302 (May 14, 2010) (*"Preliminary Results"*).

[2] *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the preliminary results of the administrative review of certain frozen warmwater shrimp from the People's Republic of China ("PRC"). The review covers the period February 1, 2009, through January 31, 2010.

DATES: *Effective Date:* September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2593.

Background

On April 9, 2010, the Department published in the **Federal Register** a notice of initiation of the administrative reviews of the antidumping duty orders on certain frozen shrimp from the Socialist Republic of Vietnam and the PRC. *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China*, 75 FR 18154 (April 9, 2010). The preliminary results of the reviews are currently due no later than October 31, 2010.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of the administrative review on certain frozen warmwater shrimp from the PRC within the original time limit because the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires, and to evaluate surrogate value submissions for purposes of these preliminary results.

Therefore, the Department is extending the time limit for completion of the preliminary results of the administrative review by 120 days. The preliminary results will now be due no later than February 28, 2011. The final results continue to be due 120 days after

the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: September 10, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–23346 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 13, 2010, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. The review covers two manufacturers/exporters, PSC VSMPO–AVISMA Corporation (AVISMA) and Solikamsk Magnesium Works (SMW). The period of review (POR) is April 1, 2008, through March 31, 2009.

Based on our analysis of the comments received we have made no changes in the margin for AVISMA. Therefore, the final results do not differ from the preliminary results. The final margin for AVISMA is listed below in the section entitled "Final Results of the Review."

DATES: *Effective Date:* September 17, 2010.

FOR FURTHER INFORMATION: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. See *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922 (May 13, 2010) (*Preliminary Results*).

We invited interested parties to comment on the *Preliminary Results*. At the request of certain parties, we held a public hearing, with a closed session, on July 28, 2010. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the order includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an "ASTM Specification for Magnesium Alloy."

The scope of the order excludes: (1) magnesium that is in liquid or molten form and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[1]

The merchandise subject to the order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

SMW

As we stated in the *Preliminary Results* regarding no-shipment rescissions, our practice since implementation of the 1997 regulations concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of data from U.S. Customs and Border Protection (CBP) that there were no shipments of subject merchandise during the POR. See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27393 (May 19, 1997), and *Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 53161, 53162 (September 7, 2005), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 95 (January 3, 2006). As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. See *Antidumping and*

[1] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from the People's Republic of China, Israel, and the Russian Federation. See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001), *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001), and *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*).

Based on SMW's assertion of no shipments and confirmation of that claim by examination of CBP data, we continue to determine that SMW had no sales to the United States during the POR. See *Preliminary Results*, 75 FR at 26923.

As we stated in the *Preliminary Results*, because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by SMW and exported by other parties at the all-others rate. In addition, we continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to SMW and issue appropriate instructions to CBP based on the final results of the review. See the "Assessment Rates" section of this notice below.

We did not receive any comments from interested parties on our change in practice with regard to no-shipment rescissions.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by AVISMA with regard to its sales in the United States and in the home market.

We used standard verification procedures including examination of relevant accounting and production records and original source documents provided by AVISMA. See U.S. Sales Verification Report entitled "Verification of the Sales Response of PSC VSMPO–AVISMA Corporation in the Antidumping Review of Magnesium Metal from the Russian Federation" dated May 7, 2010, and Comparison-Market Verification Report entitled "Verification of the Sales Response of the PSC VSMPO–AVISMA Corporation in the Antidumping Duty Review of Magnesium Metal from the Russian Federation" dated June 21, 2010.

Analysis of the Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review of the order on magnesium metal from the Russian Federation are addressed in the "Issues and Decision Memorandum" from Susan H. Kuhbach, Acting Deputy Assistant Secretary, to Paul Piquado, Acting Deputy Assistant Secretary for Import Administration, dated September 10, 2010 (Decision Memo), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the Central Records Unit, main Department of Commerce building, Room 1117, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of the Review

As a result of our review, we determine that the following weighted-average dumping margins on magnesium metal from the Russian Federation exist for the period April 1, 2008, through March 31, 2009:

Manufacturer/exporter	Margin (percent)
PSC VSMPO–AVISMA Corporation	0.00
Solikamsk Magnesium Works	*

* No shipments or sales subject to this review. The firm has an individual rate from the last segment of the proceeding in which the firm had shipments or sales.

Assessment Rates

We will instruct CBP to apply a dumping margin of zero percent to all entries of subject merchandise during the POR that were produced and exported by AVISMA and imported by AVISMA's U.S. affiliate.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Assessment of Antidumping Duties*. This clarification will apply to entries of subject merchandise during the POR produced by AVISMA or SMW for which AVISMA or SMW did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of merchandise produced by AVISMA or SMW at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

We intend to issue liquidation instructions to CBP 15 days after the publication of these final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, consistent with section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for AVISMA will be zero percent; (2) for previously reviewed or investigated companies other than AVISMA, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the all-others rate established in the LTFV investigation, which is 21.01 percent. See *Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation*, 70 FR 19930 (April 15, 2005). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping 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 order (APO) of their

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 10, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix

1. Bill-and-Hold U.S. Sales
2. Constructed Export-Price Offset
3. Affiliation
4. Chlorine Gas Co-Product

[FR Doc. 2010–23354 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ12

Fisheries of the South Atlantic and Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); assessment webinar 7 for SEDAR 22 yellowedge grouper and tilefish; Public Meeting

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

ACTION: Notice of SEDAR 22 Gulf of Mexico yellowedge grouper and tilefish assessment webinar 7.

SUMMARY: The SEDAR 22 assessments of the Gulf of Mexico stocks of yellowedge grouper and tilefish will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The fifth SEDAR 22 Assessment Process webinar will be held on Monday, October 4, 2010 from 12 p.m. to approximately 3 p.m. (EDT). The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer at SEDAR (See **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

A listening station will be available at the Gulf of Mexico Fishery Management Council office located at 2203 N Lois Avenue, Suite 1100, Tampa, FL 33607. Those interested in participating via the listening station should contact Julie A. Neer at SEDAR (See **FOR FURTHER INFORMATON CONTACT**) at least 1 day prior to the webinar.

FOR FURTHER INFORMATION CONTACT: Julie A Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 22 Assessment webinar VII:

Using datasets recommended from the Data Workshop, participants will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: September 14, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–23290 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1705]

Grant of Authority for Subzone Status Michelin North America, Inc. (Tire Distribution and Wheel Assembly) Baltimore, MD

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment* * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or

adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Baltimore, grantee of Foreign-Trade Zone 74, has made application to the Board for authority to establish a special-purpose subzone at the warehouse/distribution and wheel assembly facility of Michelin North America, Inc., located in Elkton, MD. (FTZ Docket 55–2009, filed 12/03/2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 65515, 12/10/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restriction listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to tire and tire accessories warehousing and distribution and wheel assembly at the facility of Michelin North America, Inc., located in Elkton, Maryland (Subzone 74B), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following condition:

Tires subject to temporary Section 421 duties shall be admitted in privileged foreign status (19 CFR Sec. 146.41) or domestic (duty paid) status (19 CFR Sec. 146.43).

Signed at Washington, DC, this 3rd day of September 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2010–23305 Filed 9–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1706]

Grant of Authority for Subzone Status; Luigi Bormioli Corporation (Distribution of Glassware), Barnwell, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facility of Luigi Bormioli Corporation, located in Barnwell, South Carolina, (FTZ Docket 10–2010, filed 2/16/2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 8651–8652, 2/25/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to glass tableware and fragrance container warehousing and distribution at the facility of Luigi Bormioli Corporation, located in Barnwell, South Carolina (Subzone 21E), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC this 3rd day of September 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–23303 Filed 9–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of Order, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 29, 2010, the Department of Commerce ("Department") received a request from H.J. Heinz Company ("Heinz"), an importer of subject merchandise, for a changed circumstances review and a request to revoke, in part, the countervailing duty order on certain pasta from Italy with respect to gluten-free pasta. Based on sufficient evidence submitted by Heinz, and in accordance with sections 751(b)(1) and (d)(1) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.216, the Department has determined that changed circumstances sufficient to warrant a review exist. Interested parties are invited to submit comments, as provided below.

DATES: *Effective Date:* September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at (202) 482–1503 or Mahnaz Khan at (202) 482–0914; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On July 24, 1996, the Department published in the **Federal Register** the countervailing duty order on pasta from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38543 (July 24, 1996). On July 29, 2010, the Department received a request on behalf of Heinz, an importer of subject merchandise, for a changed circumstances review to revoke, in part, the countervailing duty order on certain

pasta from Italy with respect to gluten-free pasta.

Scope of the Order

Imports covered by the 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 the scope of the order 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 the 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, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from the order. *See* Memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit ("CRU") in Room 1117 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale are also excluded from the order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled "Recognition of Instituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy" which is on file in the Department's CRU.

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 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.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling finding that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping ("AD") and CVD orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the AD and CVD orders. *See* Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is on file in the CRU.

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the AD and CVD orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the AD and CVD orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is on file in the CRU.

(4) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the AD and CVD orders on pasta from Italy pursuant to section 781(a) of the Act, and 19 CFR 351.225(b). *See Certain Pasta From Italy: Notice of Initiation of Anti-Circumvention Inquiry on the Antidumping and Countervailing Duty Orders,* 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding in the anti-circumvention inquiry. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 54888 (September 19, 2003).

Initiation of Changed Circumstances Review, and Consideration of Revocation of Order, in Part

Pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an AD or CVD order which shows changed circumstances sufficient to warrant a review of the order. On July 29, 2010, Heinz cited in its request that subsequent administrative reviews of certain pasta from Italy indicate that the petitioners had focused on pasta made from durum wheat, semolina and wheat grain, rather than gluten-free pasta which is manufactured with corn, rice and other gluten free flour as its primary ingredients.[1] Moreover, Heinz's request also states that the petitioners have previously indicated that they have no interest in including gluten-free pasta in the scope of the AD order because gluten-free pasta appeals to a niche consumer segment with limited commercial interest. Based on sufficient evidence provided by Heinz, and in accordance with sections 751(b)(1) and (d)(1) of the Act, and 19 CFR 351.216, the Department has determined that changed circumstances sufficient to warrant a review exist. Therefore, the Department is initiating a changed circumstances review of certain pasta from Italy to determine whether partial revocation of the countervailing duty order is warranted with respect to gluten-free pasta. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part.

Public Comment

Interested parties are invited to comment on the notice of initiation of changed circumstance review and consideration of revocation of order, in part. Written comments may be submitted no later than 14 days after the date of publication of this initiation. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 20 days after the date of publication of this initiation. The Department will issue the final results of this changed circumstances review, which will include its analysis of any written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to the outcome of the

[1] The petitioners are New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company. In addition, *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).

review. *See* 19 CFR 351.216(e) and 19 CFR 351.221.

This initiation of review and notice are in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: September 13, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–23352 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on December 7, 2010. The Board of Overseers is composed of 12 members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Report from the Judges' Panel, Baldrige Program (BNQP) Update, Baldrige Fellows Program Status Report, Baldrige Program Changes in 2011, and Recommendations for the NIST Director.

DATES: The meeting will convene December 7, 2010, at 8:30 a.m. and adjourn at 3 p.m. on December 7, 2010.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Diane Harrison no later than Monday, December 6, 2010, and she will provide you with instructions for admittance. Non-U.S. citizens must also submit their passport number, country of citizenship, title, employer/sponsor, address and telephone. Ms. Harrison's e-mail address is *diane.harrison@nist.gov* and her phone number is (301) 975–2361.

Dated: September 8, 2010.

Harry S. Hertz,

Director, Baldrige National Quality Program.

[FR Doc. 2010–23341 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ10

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Scientific and Statistical Committee (SSC) will hold a webinar.

DATES: The meeting will be held on Friday, October 1, 2010, from 2 p.m. to 4 p.m.

ADDRESSES: The webinar will be held at Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to give the public the opportunity to comment on actions taken by the SSC at its meeting on September 21–22, 2010 to be held in Baltimore, MD. The agenda for the September 21–22, 2010 SSC meeting included the following topics: (1) new SSC member orientation, (2) review stock assessment information and specify overfishing level and acceptable biological catch for spiny dogfish for fishing years 2011–15; review and comment on proposed quota specifications and management measures for spiny dogfish for fishing years 2011–15, (3) progress report o Management Strategy Evaluation study; (4) review and comment on Council five year research plan, (5) discussed results of August 12–13, 2010 ACL Workshop and planned follow-up joint workshop with NEFSC and New England Fishery Management Council's SSC, (6) developed recommendations for stock assessment schedule, (7) set 2011 SSC schedule, (8) discussed development of Industry Advisory Panel Reports. and (9) discussed formation of SSC Ecosystem Subcommittee and development of ecosystem terms of reference for the Council.

Details about participation in the Webinar will be posted on the Council's website which can be accessed at www.mafmc.org. Members of the public may also access the webinar at the Council offices located at 800 North State Street, Suite 201, Dover, DE.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office. (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 14, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–23204 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Internet Protocol Version 6 (IPv6) Workshop: The Impact of the Uptake and Deployment of IPv6 Addresses for Industry, the U.S. Government, and the Internet Economy

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Telecommunications and Information Administration (NTIA), on behalf of the U.S. Department of Commerce (Department), will hold a workshop on

September 28, 2010, on the importance of the adoption and deployment of Internet Protocol version six (IPv6) addresses for industry, the U.S. Government, and the Internet economy.

DATES: The workshop will be held on September 28, 2010, from 9 a.m. to 12:30 p.m., Eastern Daylight Time. Registration will start at 8:30 a.m.

ADDRESSES: The workshop will be held in the First Amendment Lounge of the National Press Club, 519 14th Street, NW., 13th Floor, Washington, DC. All of the major entrances to the National Press Club building are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: For further information regarding the workshop, contact Jane Coffin by e-mail at *jcoffin@ntia.doc.gov* or by phone at (202) 482–1087 or Manu Bhardwaj by e-mail at *mbhardwaj@ntia.doc.gov* or by phone at (202) 482–4985.

SUPPLEMENTARY INFORMATION: Recognizing the vital importance of the Internet to U.S. innovation, prosperity, education, and political and cultural life, NTIA has made it a top priority to ensure that the Internet remains open for innovation. For example, NTIA is part of a Department-wide Internet Policy Task Force which is identifying leading public policy and operational challenges in the Internet environment. NTIA, working with other U.S. Government agencies, is evaluating the adoption and deployment of Internet Protocol version six (IPv6) addresses for industry and government. A workshop will be held to discuss industry and U.S. Government perspectives. Speakers, panelists, and participants are likely to focus on what is being done to encourage utilization of these resources and to facilitate further public discussion on Internet Protocol version four (IPv4) address resource depletion, and the adoption and deployment of IPv6 addresses.

The agenda for the public workshop will be posted at least one week prior to the workshop on NTIA's Web site at *http://www.ntia.doc.gov*.

Aneesh Chopra, Chief Technology Officer of the United States, will moderate a panel of industry experts. Vivek Kundra, Chief Information Officer of the United States, will moderate a discussion among Federal agency representatives. NTIA Deputy Assistant Secretary, Anna M. Gomez, will deliver opening remarks, and NTIA Administrator and Assistant Secretary, Lawrence E. Strickling, will deliver closing remarks.

The workshop will be open to members of the public on a first-come, first-served basis. To pre-register for the meeting, please send a request by e-mail to Yvonne Neal-Barfield, *y-nealbarfield@ntia.doc.gov*, indicating your name and e-mail address.

The workshop will be accessible physically to people with disabilities. Individuals requiring accommodation services, such as sign-language interpretation or other ancillary aids, should communicate their needs by e-mail to Yvonne Neal-Barfield, *y-nealbarfield@ntia.doc.gov*, at least five (5) days prior to the workshop.

Attendees should arrive at least one-half hour prior to the start of the workshop and must present a valid passport or other photo identification upon arrival. Members of the public will have an opportunity to ask questions at the meeting.

Dated: September 13, 2010.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2010–23192 Filed 9–16–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2010]

Termination of Review of Sourcing Change, Foreign-Trade Subzone 61H, Baxter Healthcare of Puerto Rico, (Inhalation Anesthetics Manufacturing), Guayama, PR

Notice is hereby given of termination of a sourcing change review related to certain chemical ingredients at the manufacturing facility of Baxter Healthcare of Puerto Rico located in Guayama, Puerto Rico (75 FR 40795–40796, 7/14/2010). The termination is based on an analysis of the record and resulting determination that no further action is warranted.

Dated: September 3, 2010.

Andrew McGilvray,

Executive Secretary.

BILLING CODE 3510–DS–P

[FR Doc. 2010–23308 Filed 9–16–10; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion From the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by the nonprofit agencies employing persons who are blind or have other severe disabilities and to delete a product previously furnished by such agency.

DATES: Comments must be received on or before: October 18, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or *e-mail: CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from the nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for

production by the nonprofit agencies listed:

Products

Undershirt, Midweight Cold Weather, Gen III

NSN: 8415–01–538–8598—Size S
NSN: 8415–01–538–8614—Size M–R
NSN: 8415–01–538–8621—Size L
NSN: 8415–01–538–8701—Size L–L
NSN: 8415–01–538–8705—Size XL
NSN: 8415–01–538–8711—Size XL–L
NSN: 8415–01–546–0124—Size XS–S
NSN: 8415–01–546–0128—Size XS–R
NSN: 8415–01–546–0160—Size S–S
NSN: 8415–01–546–0166—Size S–L
NSN: 8415–01–546–0305—Size M–L
NSN: 8415–01–546–0362—Size XL–XL
NSN: 8415–01–546–0369—Size XXL–R
NSN: 8415–01–546–0370—Size XXL–L
NSN: 8415–01–546–0374—Size XXL–XL
NPAs: Bestwork Industries for the Blind, Inc., Runnemede, NJ, Westmoreland County Blind Association, Greensburg, PA.

Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA.

Coverage: C–List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

NSN: 7510–01–510–4857—Looseleaf Binder, 3-Ring, Black 1/2".

NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX.

Contracting Activity: GSA/Federal Acquisition Service, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–23272 Filed 9–16–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds a product and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* October 18, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or *e-mail: CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 7/16/2010 (75 FR 41451) and 7/23/2010 (75 FR 43153–43155), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide a product and a service and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. The action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and service are added to the Procurement List:

Product

NSN: MR 414—Glove, Latex, Pink.
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Service

Service Type/Location: Contact Center Service, Office of the Comptroller of the Currency, Washington, DC.
NPA: Peckham Vocational Industries, Inc., Lansing, MI.
Contracting Activity: Dept. of the Treasury, Office of the Comptroller of the Currency, Washington, DC.

Deletions

On 6/25/2010 (75 FR 36363–36371); 7/9/2010 (75 FR 39497–39499); and 7/16/2010 (75 FR 41451), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN: 7510–01–484–0011—Paper Holder & Micro Note Holder.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: GSA/Federal Acquisition Service, New York, NY.
NSN: 8415–00–205–3895—Apron, Construction Workers.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contracting Activity: GSA/Federal Acquisition Service, Fort Worth, TX.

Services

Service Type/Location: Facilities Maintenance, NASA Dryden Flight Research Center, Edwards, CA.
NPA: PRIDE Industries, Roseville, CA.
Contracting Activity: National Aeronautics and Space Administration, NASA Headquarters, Washington, DC.
Service Type/Location: Janitorial/Custodial Service, Maritime Administration: Crossways Commerce Center, 1545 Crossways Boulevard, Chesapeake, VA.
NPA: Portco, Inc., Portsmouth, VA.
Contracting Activity: GSA/PBS/R03 Richmond FO, Richmond, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–23273 Filed 9–16–10; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee

AGENCY: Commodity Futures Trading Commission ("CFTC").

ACTION: Notice of meeting of Global Markets Advisory Committee.

SUMMARY: The Global Markets Advisory Committee will hold a public meeting on October 5, 2010, from 1 p.m. to 5 p.m., at the CFTC's Washington, DC headquarters.

DATES: The meeting will be held on October 5, 2010 from 1 p.m. to 5 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by October 4, 2010.

ADDRESSES: The meeting will take place in the first floor hearing room at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Written statements should be submitted to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention Office of the Secretary. Please use the title "Global Markets Advisory Committee" in any written statement you may submit. Any statements submitted in connection with the committee meeting will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Michael Otten, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5388.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include discussion of:

Ongoing and anticipated IOSCO projects
Relevant Dodd/Frank rulemakings
Foreign Board of Trade (FBOT) rulemaking
European Commission Proposal/comparison to Dodd/Frank

The meeting will be webcast on the CFTC's Web site, *http://www.cftc.gov*. Members of the public also can listen to the meeting by telephone. The public access call-in numbers will be announced at a later date.

Authority: 5 U.S.C. app. 2 § 10(a)(2).

By the Commodity Futures Trading Commission.

Dated: September 14, 2010.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–23307 Filed 9–16–10; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Petition of the National Futures Association, Pursuant to Rule 13.2, to the U.S. Commodity Futures Trading Commission To Amend of the Rule 4.5

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Petition and Request for Comment.

SUMMARY: The National Futures Association ("NFA") has petitioned the Commodity Futures Trading Commission ("Commission" or "CFTC") to amend a rule that excludes certain otherwise regulated persons from the definition of the term "commodity pool operator" ("CPO") with respect to certain qualifying entities. The rule presently requires any person desiring to claim the exclusion to file a notice of eligibility with NFA, which must identify the qualifying entity to be operated pursuant to the exclusion.

NFA requests the Commission amend its rule to limit the scope of the exclusion for registered investment companies ("RICs"). Specifically, NFA has requested that any RIC include in its notice of eligibility a representation that the RIC's qualifying entity (1) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes, (2) will not have the initial margin and premiums required to establish any commodity futures or commodity options not used for bona fide hedging purposes exceeding five percent (5%) of the liquidation value of the qualifying entity's portfolio, and (3) will not be marketed to the public as a commodity pool or as a vehicle for investment in commodity futures or commodity options.

The Commission seeks comment on NFA's petition and any related questions. Copies of the petition are available for inspection at the Office of the Secretariat, by mail at the address listed below, by telephoning (202) 418–5100, or on the Commission's Web site (*http://www.cftc.gov*).

DATES: Comments must be received on or before October 18, 2010. Comments must be in English or, if not, accompanied by an English translation.

ADDRESSES: Comments should be sent to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *NFAamendrule4.5@cftc.gov*. Reference should be made to "National Futures Association Petition to Amend Commission Rule 4.5." Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following the comment submission instructions. Comments will be published on the Commission's Web site.

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Telephone: (202) 418–5463, E-mail: *kwalek@cftc.gov* or Daniel S. Konar II, Attorney-Advisor, Telephone: (202) 418–5405, E-mail: *dkonar@cftc.gov*, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

In 1985, the Commission adopted Rule 4.5, which provides an exclusion from the definition of "CPO" for certain otherwise regulated persons that operated certain qualifying entities.[1] At the time of its adoption, any person seeking to claim the exclusion was required to file with the Commission a notice of eligibility that contained a representation that

> * * * such person will operate the qualifying entity specified therein in a manner such that the qualifying entity: (i) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1) [subject to certain provisions] * * * (ii) Will not enter into commodity futures and commodity options contracts for which the aggregate initial margin and premiums exceed 5 percent of the fair market value of the entity's assets, after taking into account unrealized profits and unrealized losses on any such contracts * * * and (iii) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures or commodity options markets.[2]

In 2003, the Commission amended Rule 4.5 by deleting the bona fide hedging requirement, the limitation on aggregate initial margin, and the prohibition on marketing.[3] In proposing these amendments to Rule 4.5, the Commission explained that its decision to delete the hedging requirement and the limitation on aggregate initial margin was driven by the fact that persons and qualifying entities that are otherwise regulated "may not need to be subject to any commodity interest trading criteria to qualify for the exclusion afforded by Rule 4.5."[4] The Commission further explained when adopting the final amendments that its decision to delete the prohibition on marketing was driven by comments claiming that "the 'otherwise regulated' nature of the qualifying entities * * * would provide adequate customer protection, and, further, that compliance with the subjective nature of the marketing restriction could give rise to the possibility of unequal enforcement where commodity interest trading was restricted."[5]

Rule 4.5 currently requires only that notices of eligibility include representations that

> * * * the qualifying entity: (i) Will disclose in writing to each participant, whether existing or prospective, that the qualifying entity is operated be a person who has claimed an exclusion from the definition of the term 'commodity pool operator' under the [Commodity Exchange] Act, and therefore, who is not subject to registration or regulation as a pool operator under the [Commodity Exchange] Act * * * and (ii) Will submit to special calls as the Commission may require.[6]

II. NFA's Petition

By letter dated August 18, 2010 ("Petition"), NFA, a registered futures association, petitioned the Commission under Rule 13.2[7] to amend Rule 4.5. Specifically, NFA requested that, in addition to the two current representations required in a person's notice of eligibility, Rule 4.5 should require the following representation:

> (iii) Furthermore, if the person claiming the exclusion is an investment company registered as such under the Investment Company Act of 1940, then the notice of eligibility must also contain representations that such person will operate the qualifying entity as described in [Rule] 4.5(b)(1) in a manner such that the qualifying entity: (a) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of [Rule] 1.3(z)(1); *Provided however,* That in addition, with respect to positions in commodity futures or commodity option contracts that may be held by a qualifying entity only which do not come within the meaning and intent of [Rule] 1.3(z)(1), a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; and, *Provided further,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in [Rule] 190.01(x) may be excluded in computing such [five] percent; (b) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures or commodity options markets.

III. Request for Comments

The Commission requests public comment on any aspect of the Petition that commenters believe may raise issues under the Commodity Exchange Act or Commission regulations.

* * * * *

Issued in Washington, DC, on September 13, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–23310 Filed 9–16–10; 8:45 am]

BILLING CODE 6351–01–P

[1] 50 FR 15868–01 (April 23, 1985).

[2] *Id.* at 15883.

[3] 68 FR 47221–01, 47223 (Aug. 8, 2003).

[4] 68 FR 12622–02, 12626 (March 17, 2003).

[5] 68 FR 47223.

[6] 17 CFR 4.5(c)(2).

[7] 17 CFR 13.2 (enumerating the process by which the Commission may be petitioned for the issuance, amendment or repeal of a rule).

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0046]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Consumer Focus Groups

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing that a proposed collection of information has been submitted to the Office of Management and Budget ("OMB") for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 18, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 3041–0136 and identified by Docket No. CPSC–2010–0046. In addition, written comments also should be submitted in *http://www.regulations.gov* under Docket No. CPSC–2010–0046, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7671, *lglatz@cpsc.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the CPSC has submitted the following proposed collection of information to OMB for review and clearance:

Consumer Focus Groups—(OMB Control Number 3041–0136–Extension).

The Commission is authorized, under section 5(a) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2054(a), to collect information, conduct research, and perform studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

To better identify and evaluate the risks of product-related incidents, the Commission staff invites and obtains direct feedback from consumers on issues related to product safety such as recall effectiveness, product use, and perceptions regarding safety issues. Through participation in certain focus groups, consumers answer questions and provide information regarding their actual experiences, opinions and/or perceptions on the use or pattern of use of a specific product or type of product, including recalled products. The information collected from the Consumer Focus Groups will help inform the Commission's evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information also may assist the Commission's efforts to support voluntary standards activities and help identify areas regarding consumer safety issues that need additional research. In addition, the information will assist with forming new ways of providing user friendly data to consumers through CPSC's Web site and information and education campaigns.

If this information is not collected, the Commission may not have available certain useful information regarding consumer experiences, opinions, and perceptions related to specific product use in its ongoing efforts to improve the safety of consumer products and safety information on behalf of consumers. Currently, the Commission staff relies on its expert judgment about consumer behavior, perceptions, and similar information related to consumer products and product use. Not conducting the information collection activity, therefore, could reduce the quality of assessments currently completed by Commission staff. The information collection activity would likely provide the Commission staff with information that would focus the staff's assessments, or could provide insight into consumer perceptions and usage patterns that could not be anticipated by Commission staff.

In the **Federal Register** of June 7, 2010 (75 FR 32161), the CPSC published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows. We anticipate that, over the three year period of this request, we will conduct 40 focus groups and 20 one-on-one interviews for a variety of projects. The total hours of burden to the respondents are: (4 hours per person × 400 participants) + (30 minutes per person × 20 participants) = 1,610 hours (537 hours budgeted per year for three years). The total annual cost is: 1,610 × $29.40 (U.S. Department of Labor, Employer costs for Employee Compensation, September 2009) = $47,334 ($15,778 budgeted per year for three years).

The estimated annual cost of the information collection requirements to the Federal government is approximately $140,000 per year for three years. Salary and benefits costs for government personnel assigned to this study are estimated at $127,573 based on 9 months of staff time at an average level of GS–14 step 5 (($119,238 ÷ .701) ÷ 12 months) × 21 months), using a 70.1 percent ratio of wages and salary to total compensation from Table 1 of the December 2009 Employer Costs for Employee Compensation, published by the Bureau of Labor Statistics. This sum also includes travel costs expended for meeting with contractors ($40,000, estimated at $1,000 per focus group), and contracts for conducting focus groups and/or one-on-one interviews ($250,000, estimated at $5,000 per focus group and $2,500 per one-on-one interview).

Dated: September 14, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–23280 Filed 9–16–10; 8:45 am]

BILLING CODE 6355–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Senior Executive Service Performance Review Board

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Defense Nuclear Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: *Effective Date:* September 17, 2010.

ADDRESS: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Deborah Biscieglia by telephone at (202) 694–7041 or by e-mail at *debbieb@dnfsb.gov*.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314 (c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The PRB shall review and evaluate the initial summary rating of the senior executive's performance, the executive's response, and the higher level official's comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

The DNFSB is a small, independent Federal agency; therefore, the members of the DNFSB SES Performance Review Board listed in this notice are drawn from the SES ranks of other agencies. The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board:

Christopher E. Aiello, Director of Human Resources, Federal Deposit Insurance Corporation

David M. Capozzi, Director of Technical and Information Services, United States Access Board

DeDe Greene, Executive Officer, Civil Rights Division, Department of Justice

Christopher W. Warner, General Counsel, U.S. Chemical Safety and Hazard Investigation Board

Dated: September 10, 2010.

Brian Grosner,

Chairman, Executive Resources Board.

[FR Doc. 2010–23180 Filed 9–16–10; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Independent Panel To Review the Judge Advocate Requirements of the Department of the Navy

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meetings.

SUMMARY: The Independent Panel to Review the Judge Advocate

Requirements of the Department of the Navy (DoN) (hereinafter referred to as the Panel) will hold two open meetings on two separate dates. The Panel will meet in order to hear testimony from civilian and military witnesses and to conduct deliberations concerning the judge advocate requirements of the DoN. These sessions will be open to the public, subject to the availability of space. In keeping with the spirit of the Federal Advisory Committee Act (FACA), the Panel welcomes written comments concerning its work from the public at any time. Interested citizens are encouraged to attend the sessions.

DATES: The meetings will be held on Wednesday, October 6, 2010, from 8 a.m. to 5:30 p.m., and on Wednesday, October 13, 2010, from 8 a.m. to 5:30 p.m.

ADDRESSES: Both meetings will be held at the Residence Inn Arlington Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning these meetings or wishing to submit written comments may contact: Mr. Frank A. Putzu, Designated Federal Official, Department of the Navy, Office of the General Counsel, Naval Sea Systems Command, Office of Counsel, 1333 Isaac Hull Avenue, SE., Washington Navy Yard, Building 197, Room 4W–3153, Washington, DC 20376, via telephone: 202–781–3097; Fax: 202–781–4628; or e-mail: *frank.putzu@navy.mil*.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 506 of Public Law 111–84, FACA of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50, this is a public meeting and interested citizens are encouraged to attend the sessions.

Interested persons may submit a written statement for consideration by the Panel at any time prior to October 1, 2010, for the meeting on October 6, 2010, and prior to October 8, 2010, for the meeting on October 13, 2010.

Dated: September 10, 2010.

D.J. Werner,

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

[FR Doc. 2010–23209 Filed 9–16–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A.

Dates:

Applications Available: September 17, 2010.

Deadline for Transmittal of Applications: November 2, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program provides opportunities to doctoral candidates to engage in full-time dissertation research abroad in modern foreign languages and area studies. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States.

Priorities: This notice contains one absolute priority, and two competitive preference priorities, which are explained in the following paragraphs. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and the competitive preference priorities are from the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: For FY 2011, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, Central and Eastern Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on the following countries are not eligible: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom, Vatican City.

Within this absolute priority, we give competitive preference to applications that address the following priorities.

For FY 2011, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) and 34 CFR 662.21(d)(2)(iv), we award an additional five (5) points to an application for each competitive preference priority it meets (up to 10 additional points).

These priorities are:

Competitive Preference Priority 1: A research project that focuses on any of the seventy-eight (78) languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs):

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 2: Research projects that are proposed by applicants using advanced language proficiency in one of the 78 languages selected from the U.S. Department of Education's list of LCTLs, which are also listed in competitive preference priority 1, in their research and focus on one of the following fields or topics: Environmental Science, Economics, Public Health, Education, or Political Science.

Note: An applicant will receive an additional five points for each competitive preference priority the applicant meets in his or her application (up to 10 points).

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 662.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries. As part of its FY 2011 budget request, the Administration proposed to continue to allow funds to be used to support the applications of individuals who plan both to utilize their language skills in world areas vital to the United States national security and to apply their language skills and knowledge of these countries in the fields of government, international development, and the professions. Therefore, students planning to apply their language skills in such fields are eligible to apply for this program, in addition to those planning teaching careers. However, authority to use funds in this manner depends on final Congressional action. Applicants will be given an opportunity to amend their applications if such authority is not provided.

Estimated Available Funds: The Administration has requested $15,576,000 for the International Education and Foreign Language Studies Overseas Programs, of which we propose to allocate $5,800,000 for new awards for this program for FY 2011. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $15,000—$60,000.

Estimated Average Size of Fellowship Awards: $40,000.

Estimated Number of Fellowship Awards: 150.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2011. Students may request funding for a period of no less than six months and no more than twelve months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs). As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and student applicants can obtain an application package via the Internet at *http://e-grants.ed.gov/egWelcome.asp* or by contacting Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or by e-mail: *carla.white@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms the applicant must submit, are in the application package for this program.

Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than two pages, using the following standards:

- A "page" is 8.5″ x 1″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, student applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). Student applicants may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10 page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. The page limits do not apply to the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; and the assurances and certification. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a student applicant's application if the application exceeds the page limits.

3. *Submission Dates and Times:*

Applications Available: September 17, 2010.

Deadline for Transmittal of Applications: November 2, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application site (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the **APPLICABLE REGULATIONS** section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application. You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can

obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, CFDA number 84.022A, must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and the student applicant will be entering data online that will be saved into a database. Neither the IHE nor the student applicant may e-mail an electronic copy of a grant application to us.

Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major steps are as follows: (1) IHEs must e-mail the following information to *ddra@ed.gov:* name of university, and full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than two weeks prior to the closing date, in order to facilitate timely submission of their applications; (2) Students must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual students must complete and submit reference forms for the students and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual student applications, reference forms, and other required forms, using e-Application.

• The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the student applicant not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• Student applicants will not receive additional point value because the student submits his or her application in electronic format, nor will we penalize the IHE or student applicant if the applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents electronically, including the Application for Federal Assistance (SF 424), the Supplement to the SF 424, and all necessary assurances and certifications. Both IHEs and student applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or a student applicant uploads a file type other than the three file types specified in this paragraph or submits a password protected file, we will not review that material.

• Student transcripts must be submitted electronically through the e-Application system.

• Both the IHE's and the student applicant's electronic applications must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual student applicant electronically submits his or her application to the student's IHE, the student will receive an automatic acknowledgment. In addition, the applicant IHE's project director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award Number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must follow these steps:

(1) Print SF 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on the SF 424 and other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because e-Application is unavailable, we will grant the IHE an extension of one business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an

electronic application for this competition; and

(2)(a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see section VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through e-Application because—

- The IHE or a student applicant does not have access to the Internet; or
- The IHE or a student applicant does not have the capacity to upload large documents to e-Application;

and

- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevents the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Amy Wilson, U.S. Department of Education, 1990 K Street, NW., Room 6082, Washington, DC 20006–8521. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

The IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. **Note for Mail or Hand Delivery of Paper Applications:** If an IHE mails or hand delivers its application to the Department—

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, and suffix letter, if any, of the competition under which the IHE is submitting its application; and

(2) The Application Control Center will mail a notification of receipt of the IHE's grant application. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2011, student applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in discrete world area-based panels will review the student applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 662.21 and are listed in the following paragraphs. The maximum score for all of the criteria, including the competitive preference priorities, is 110 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (15 points);

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points);

(3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points);

(4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points);

(5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries (5 points); and

(6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field (10 points).

Qualifications of the applicant (40 points): The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of the applicant's graduate academic record (10 points);

(2) The extent to which the applicant's academic record demonstrates strength in area studies relevant to the proposed project (10 points);

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a student application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notice (GAN). We may notify the IHE informally, also.

If a student application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of the binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the International Resource Information System (IRIS) electronic reporting system to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the objective for the Fulbright-Hays DDRA Fellowship Program is to provide grants to colleges and universities to fund individual doctoral students to conduct research in other countries in modern foreign languages and area studies for periods of 6 to 12 months.

The Department will use the following DDRA measures to evaluate its success in meeting this objective:

Performance Measure 1: The average language competency score of Fulbright-Hays DDRA Fellowship recipients at the end of their period of research minus their average score at the beginning of the period.

Performance Measure 2: Percentage of Fulbright-Hays DDRA projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

Efficiency measure: Cost per grantee increasing language competency by at least one level in at least one area.

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for institutions and fellows may be viewed at: *http://iris.ed.gov/iris/pdfs/DDRA_director.pdf. http://iris.ed.gov/iris/pdfs/DDRA_fellows.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Amy Wilson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6082, Washington, DC 20006–8521. Telephone: (202) 502–7700 or by e-mail: *amy.wilson@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 14, 2010.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–23314 Filed 9–16–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Inviting Publishers To Submit Tests for a Determination of Suitability for Use in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education

ACTION: Notice inviting publishers to submit tests for a determination of suitability for use in the National Reporting System for Adult Education.

SUMMARY: The Department of Education (Department) announces the date by which test publishers must submit tests to the Secretary for review and approval for use in the National Reporting System for Adult Education (NRS).

FOR FURTHER INFORMATION CONTACT: Mike Dean, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11152, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7828 or by e-mail: *Mike.Dean@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1–800–877–8339,

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: The Department's Measuring Educational Gain in the National Reporting System for Adult Education regulations, 34 CFR part 462 (NRS regulations), include the procedures for determining the suitability of tests for use in the NRS.

Criteria the Secretary uses: In order for the Secretary to consider a test suitable for use in the NRS, the test must meet the criteria and requirements established in § 462.13 of the NRS regulations.

Submission Requirements:

(a) A test publisher must comply with the requirements in § 462.11 of the NRS regulations when submitting an application.

(b) In accordance with § 462.10 of the NRS regulations, the deadline for transmittal of applications is October 1, 2010.

(c) Whether you submit your application by mail (through the U.S. Postal Service or a commercial carrier) or you hand deliver (or use a courier service) your application, you must mail or deliver three copies of your application, on or before the deadline date, to the following address: NRS Assessment Review, c/o American Institutes for Research, 1000 Thomas Jefferson Street, NW., Washington, DC 20007.

(d) If you submit your application by mail or commercial carrier, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

(e) If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(f) If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(g) If you submit your application by hand delivery, you (or a courier service) must deliver three copies of the application by hand, on or before 4:30:00 p.m., Washington, DC time on the application deadline date.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 14, 2010.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2010–23309 Filed 9–16–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. PP–334]

Notice of Availability of Draft Environmental Impact Statement and Public Hearings for the Proposed Energia Sierra Juarez U.S. Transmission Project (ESJ–U.S.)

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the "*Draft Environmental Impact Statement for the Energia Sierra Juarez U.S. Transmission Line Project*" (DOE/EIS–0414) for public comment. DOE also announces three public hearings to receive comments on the Draft EIS. The Draft EIS evaluates the environmental impacts of DOE's proposed Federal action of issuing a Presidential permit to Energia Sierra Juarez U.S. Transmission, LLC (ESJ–U.S.), for the construction, operation, maintenance, and connection of either a double-circuit 230-kilovolt (kV) or a single-circuit 500-kV electric transmission line that would cross the U.S.-Mexico border in the vicinity of Jacumba, California.

DATES: DOE invites interested members of Congress, State and local governments, other Federal agencies, American Indian tribal governments, organizations, and members of the public to provide comments on the Draft EIS during the 45-day public comment period. The public comment period starts on September 17, 2010, with the publication in the **Federal Register** by the U.S. Environmental Protection Agency of its Notice of Availability of the Draft EIS, and will continue until November 1, 2010. Written and oral comments will be given equal weight and all comments received or postmarked by that date will be considered by DOE in preparing the Final EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Requests to speak at a specific public hearing should be received by Dr. Jerry Pell as indicated in the **ADDRESSES** section below on or before September 30, 2010.

ADDRESSES: Requests to speak at the public hearings should be addressed to: Dr. Jerry Pell, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; *Jerry.Pell@hq.doe.gov* (preferred); or by facsimile to 202–318–7761. Requests to speak may also be made at the time of registration for the hearing(s). However, persons who have submitted advance requests to speak will be given priority if time should be limited during the hearing.

Written comments on the Draft EIS may be provided on the project EIS website at *http://esjprojecteis.org* (preferred) or addressed to Dr. Pell as indicated.

The locations, dates, and times of the public hearings appear in the Table below:

DRAFT EIS PUBLIC HEARINGS

Location	Day, date, time	Directions
Jacumba Highland Center, 44681 Old Highway 80, Jacumba, California 91934.	Tuesday, October 5, 2010, 7–9 p.m.	From the West, take I–8 East and take Exit 73 toward Jacumba. Turn right (South) onto Carrizo Gorge Road and drive South 1.1 miles. Turn right at Old Highway 80. Jacumba Highland Center will be on the left hand side. From the East, take I–8 West and take Exit 73 toward Jacumba. Turn left (South) onto Carrizo Gorge Road and drive South 1.1 miles. Turn right at Old Highway 80. Jacumba Highland Center will be on the left hand side.
Boulevard Volunteer Fire Department, 39919 Highway 94, Boulevard, California 91905.	Wednesday, October 6, 2010, 7–9 p.m.	From the West, take I–8 East and take the CA–94 Exit (Exit 65), toward Campo/Boulevard. Turn right (South) onto CA–94/Ribbonwood Road and drive South 0.5 miles. Boulevard Volunteer Fire Station will be on the left-hand side. From the East, take I–8 West and take the CA–94 Exit toward Boulevard/Manzanita. Turn left (South) onto CA–94/Ribbonwood Road and drive South 0.6 miles. Boulevard Volunteer Fire Station will be on the left-hand side.
County of San Diego Department of Planning and Land Use Planning Commission Hearing Room, 5201 Ruffin Road, Suite B, San Diego, CA 92123.	Thursday, October 7, 2010, 5–7 p.m.	From Downtown, take Highway 163 North and take Exit 7B towards CA–274/Balboa Boulevard East. Turn left on Kearny Villa Road and take the 1st right on Balboa Boulevard. Drive East 1.0 mile and turn left on Ruffin Road. From the East, take I–8 East to I–15 North. Take Exit 10, Clairemont Mesa Boulevard. Drive 0.5 miles, turn left on Ruffin Road. From the North, take Highway 805 South, and take Exit 23 for CA–52. Take Exit 7 for Kearny Villa Road. Turn right on Kearny Villa Road, drive 400 feet, and continue onto Ruffin Road.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the EIS or Presidential permit process, please contact Dr. Jerry Pell at the Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; *Jerry.Pell@hq.doe.gov* (preferred); telephone to 202–586–3362, or facsimile to 202–318–7761.

For general information on the DOE NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone: 202–586–4600 or leave a message at 800–472–2756; facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION: In order to ensure that all interested parties can be heard in the time available, speakers are asked to limit their presentation to three minutes; however, there is no limit on the amount of written material that can be submitted either at the hearings or otherwise before the close of the comment period.

The public hearings will consist of the formal taking of comments with transcription by a court stenographer. The hearings will provide interested parties the opportunity to view proposed project exhibits and make comments for consideration in the course of preparing the Final EIS. In advance of commencing the hearings, representatives from the applicant, DOE, and the County of San Diego as the cooperating agency will be available to informally (off the record) answer questions and provide additional information to attendees to the extent that additional information is available.

Availability of the Draft EIS

Copies of the Draft EIS have been distributed to appropriate Members of Congress, State and local government officials, American Indian tribal governments, and other Federal agencies, groups, and interested parties. Printed copies of the document may be obtained by contacting Dr. Pell at the above address. Copies of the Draft EIS and supporting documents are also available for inspection at the Jacumba Branch Library, 44605 Old Highway 80, Jacumba, CA 91934 and the Campo-Morena Village Branch Library, 31466 Highway 94, Campo, CA 91906. The Draft EIS is also available on the EIS Web site at *http://esjprojecteis.org* and on the DOE NEPA Web site at *http://nepa.energy.gov/draft_environmental_impact_statements.htm.*

Issued in Washington, DC, on September 13, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–23244 Filed 9–16–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Addressing Policy and Logistical Challenges to Smart Grid Implementation

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Request for Information.

SUMMARY: The Department of Energy (DOE) is seeking comments from interested parties on policy and logistical challenges that confront smart grid implementation, as well as recommendations on how to best overcome those challenges. DOE is undertaking this Request for Information (RFI) on behalf of the Administration and in consultation with key stakeholders from state regulatory bodies. The RFI will assist these parties

as they seek to assure smart grid deployments benefit consumers, the economy and the environment. In particular, comments on the RFI will help inform the Administration's analysis of policy challenges and possible solutions being developed by the Smart Grid Subcommittee of the National Science and Technology Council's Committee on Technology. The Subcommittee seeks to base its analysis on an up-to-date understanding of the context in which smart grid technologies, business models and policies operate. This is the third in a series of RFIs issued by DOE regarding smart grid implementation. Prior RFIs sought comment on data access, data usage and privacy issues, and on communications requirements for the smart grid. In this RFI, DOE seeks specific input on: the best way to define the term "smart grid" for policymaking purposes; the consumer-level benefits from, and challenges to, smart grid deployment; the benefits and challenges associated with smart grid implementation on the "utility side" of the meter; the ways in which policy makers at all levels of government can share experience and resources; and the broader, economy-wide benefits and challenges associated with the smart grid. In so doing, this RFI avoids duplicating questions that were raised in prior RFIs.

DATES: Comments must be transmitted or postmarked by no later than November 1, 2010.

ADDRESSES: You may submit comments identified by "Smart Grid RFI: Addressing Policy and Logistical Challenges" via any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov (following the instructions for submitting comments);

E-mail: smartgridpolicy@hq.doe.gov. Include "Smart Grid RFI: Addressing Policy and Logistical Challenges" in the subject line of the message; or

Mail: U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW., Room 8H033, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Michael Li, Electricity Policy Specialist (202) 287–5718. For media inquiries you may contact Tiffany Edwards at 202–586–6683.

SUPPLEMENTARY INFORMATION:

Introduction

As noted in earlier RFIs, the smart grid has significant promise. The smart grid better integrates information, communication, and intelligent control technology, into the nation's electrical system. It will offer new tools to maintain reliability and improve flexibility. It has the potential to improve power quality, manage power scarcities and reduce transmission congestion costs. A truly smart grid should achieve environmental goals at lower cost than the traditional grid, be able to respond more quickly to natural or man-made outages and, overall, operate the electrical system more efficiently without reducing system cyber security or reliability.

President Obama's energy and climate change policy aims to reduce harmful greenhouse gas emissions and U.S. dependence on foreign oil, to create jobs, and to help U.S. industry compete successfully in global markets for clean energy technology. Smart grid deployment is an important component of the Administration's broader strategy. The American Recovery and Reinvestment Act of 2009 ("Recovery Act") took large, initial steps to accelerate the smart grid transition. The Recovery Act included $11 billion for smart grid technologies, transmission system expansion and upgrades, and other investments to modernize and enhance the electric transmission infrastructure.

To build on the Recovery Act's initiatives, the National Science and Technology Council's (NSTC) Committee on Technology has established a Subcommittee on Smart Grid, co-led by DOE's Office of Electricity Delivery and Energy Reliability and the Department of Commerce's National Institute of Standards and Technology (*http://www.smartgrid.gov/news/nstc_subcommittee*). The Subcommittee on Smart Grid is working to ensure the federal government develops and executes a long-term, comprehensive strategy in partnership with the states that will further President Obama's comprehensive energy and climate plan, as well as the Recovery Act's effort to catalyze the development of a smarter grid. The Subcommittee will develop policy options and recommendations for the Administration as a whole and guide federal-state cooperative efforts. It will investigate emerging technologies and provide analysis about ways to advance the smart grid in a cost-effective and appropriate manner.

DOE's Office of General Counsel issued two RFIs on May 11, 2010 on smart grid policy issues. (75 FR 26203 and 75 FR 26206) The first RFI sought comments on ongoing federal, state and private sector efforts to make more effective use of consumer energy usage data, while at the same time safeguarding consumer privacy. The second RFI sought comments to assist the Department in identifying the present and future communications needs of electric utilities as smart grid technologies are deployed more broadly. This RFI seeks to collect information and open a dialogue about a wide range of additional issues dealing with smart grid technology, applications, consumer interaction, policy initiatives and economic impact.

Background

The smart grid has the potential to add devices and applications that improve power quality, reduce transmission congestion costs, read meters and provide prompt feedback that allows better decision making; better synchronize consumption with generation; help integrate variable renewable generation and electric vehicles into the electric system; detect and address equipment problems and outages; and provide central and end-user control over energy consumption. The United States can be a global leader in developing these innovative technologies. For many reasons, then, it is important to continue to research, develop and deploy smart grid systems.

DOE is aware that technology, business, consumer and regulatory issues interact in complicated ways. The smart grid will be composed of numerous vast, evolving and interrelated systems including communication networks, sensors on transmission and distribution systems such as phasor measurement units (PMU) and advanced metering infrastructure (AMI), and controls such as programmable communicating thermostats. It will facilitate changes in how electricity is produced, distributed. consumed and conserved.

DOE also recognizes that while it may be possible to estimate the benefits of current efforts to deploy smart grid technologies and applications, it may be unrealistic to precisely quantify their future impacts because the smart grid is not fully developed and its future applications are likely to change. Nevertheless, even unavoidable uncertainty should not deter federal and state authorities, utilities or other interested parties from assessing current implications of, barriers to, and the best-available estimates of the likely impact of making the grid smarter. For example, certain smart grid and demand-response applications have been deployed by utilities and electric cooperatives for

many years.[1] These applications include automated collection of detailed meter data, direct load control, and systems that vary prices based on typical or actual grid conditions at the time the customer used power. We seek to learn from those preexisting efforts, as well as newer projects and pilots.

Request for Information

The following questions cover the major areas we seek comment on. They are not a determination of the final topics that DOE and the NSTC Smart Grid Subcommittee will address, and commenters may address any topic they believe to have important implications for smart grid policy regardless of whether this document mentions it.

In response to any question that asks about smart grid technologies broadly defined, please describe the set of smart grid technologies your response considers. To aid the discussion of the relevant issues, commenters are welcome to use the following categories to classify the technologies they discuss, adding any clarifying language they view as appropriate.

- Instrumenting and automating the transmission and generation system
- Distribution automation
- Upgraded metering, such as AMI or even enhanced technologies that improve the capabilities of traditional AMR
- Consumer facing programs such as feedback, demand response, energy efficiency, and automation strategies
- Integrating new end user equipment like distributed generation and electric vehicles

Commenters can assume a high degree of general knowledge on the part of DOE and the Subcommittee. Commenters are encouraged to cite or include relevant data and analyses in their responses. In addressing the following questions, we ask stakeholders to be concise. We primarily seek facts and concrete recommendations that can augment that general knowledge. We encourage stakeholders to use concrete examples of benefits, costs, and challenges or to bring novel or underappreciated sources of evidence to our attention wherever possible.

Definition and Scope

The deployment of technology to make the nation's electric grid a more interactive, efficient and responsive system is already underway. At the early stages of any major technological shift, stakeholders often use the same term-of-art to mean different things which can lead to miscommunication. To minimize confusion as we identify policy challenges and recommendations, this RFI uses the broad definition of Smart Grid laid out in Title XIII of the Energy Independence and Security Act of 2007 (EISA). Title XIII mentions that the smart grid uses communications, control, and information technology to optimize grid operations, integrate distributed resources including renewable resources, increase energy efficiency, deploy demand response, support electric vehicles, and integrate automated, interactive interoperable consumer devices. We encourage commenters to reference the full text of EISA section 1301.

We invite comment however on whether this is the best way to define the smart grid. What significant policy challenges are likely to remain unaddressed if we employ Title XIII's definition? If the definition is overly broad, what policy risks emerge as a result?

We also invite comments on the geographic scope of standardization and interconnection of smart grid technologies. Should smart grid technologies be connected or use the same communications standard across a utility, state, or region? How does this vary between transmission, distribution, and customer-level standards? For example, is there need to go beyond ongoing standards development efforts to choose one consumer-facing device networking standard for states or regions so that consumers can take their smart appliances when they move and stores' smart appliance will work in more than one service area?

Interactions With and Implications for Consumers

Typical consumers currently get limited feedback about their daily energy consumption patterns and associated costs. They also have limited understanding of variations in the cost of providing power over the course of the day and from day to day. Many smart grid technologies aim to narrow the typical consumers' knowledge gap by empowering consumers with greater knowledge of and ability to control their consumption and expenditures. This vision transforms many consumers' relationship with the grid, which prompts us to ask the following questions.

- For consumers, what are the most important applications of the smart grid? What are the implications, costs and benefits of these applications? What new services enabled by the smart grid would customers see as beneficial? What approaches have helped pave the way for smart grid deployments that deliver these benefits or have the promise to do so in the future?
- How well do customers understand and respond to pricing options, direct load control or other opportunities to save by changing when they use power? What evidence is available about their response? To what extent have specific consumer education programs been effective? What tools (*e.g.* education, incentives, and automation) increase impacts on power consumption behavior? What are reasonable expectations about how these programs could reshape consumer power usage?
- To what extent might existing consumer incentives, knowledge and decision-making patterns create barriers to the adoption or effective use of smart grid technologies? For instance, are there behavioral barriers to the adoption and effective use of information feedback systems, demand response, energy management and home automation technologies? What are the best ways to address these barriers? Are steps necessary to make participation easier and more convenient, increase benefits to consumers, reduce risks, or otherwise better serve customers? Moreover, what role do factors like the trust, consumer control, and civic participation play in shaping consumer participation in demand response, time-varying pricing, and energy efficiency programs? How do these factors relate to other factors like consumer education, marketing and monthly savings opportunities?
- How should combinations of education, technology, incentives, feedback and decision structure be used to help residential and small commercial customers make smarter, better informed choices? What steps are underway to identify the best combinations for different segments of the residential and commercial market?
- Are education or communications campaigns necessary to inform customers prior to deploying smart grid applications? If so, what would these campaigns look like and who should deploy them? Which related education or public relations campaigns might be attractive models?
- What should federal and state energy policymakers know about social norms (e.g. the use of feedback that compares a customers' use to his neighbors) and habit formation? What are the important lessons from efforts to persuade people to recycle or engage in other environmentally friendly activity? What are the implications of these

[1] Fed. Energy Regulatory Comm'n. *Assessment of Demand Response and Advanced Metering*, 8, 65 (Dec. 2008), *available at http://www.ferc.gov/legal/staff-reports/12-08-demand-response.pdf.*

insights for determining which tasks are best automated and which should be subject to consumer control? When is it appropriate to use social norm based tools?

• How should insights about consumer decision-making be incorporated into federal-state collaborative efforts such as the Federal Energy Regulatory Commission's (FERC) National Action Plan on Demand Response?

Interaction With Large Commercial and Industrial Customers

Large commercial and industrial customers behave differently than residential consumers and small businesses. They regularly use sophisticated strategies to maximize their energy efficiency, to save money and to assure reliable business operations. Indeed, some already are or others are seeking to participate directly in wholesale energy and ancillary services markets. Please identify benefits from, and challenges to, smart grid deployment that might be unique to this part of the market and lessons that can be carried over to the residential and small business market. Please identify unmet smart grid infrastructure or policy needs for large customers.

Assessing and Allocating Costs and Benefits

Regulators pay a great deal of attention to the costs and benefits of new investments, appropriate allocation of risk and protection of vulnerable customer segments. The many unknowns associated with smart grid programs make these ubiquitous questions particularly challenging, which suggests a great need to share perspectives and lessons.

• How should the benefits of smart grid investments be quantified? What criteria and processes should regulators use when considering the value of smart grid applications?

• When will the benefits and costs of smart grid investments be typically realized for consumers? How should uncertainty about whether smart grid implementations will deliver on their potential to avoid other generation, transmission and distribution investments affect the calculation of benefits and decisions about risk sharing? How should the costs and benefits of enabling devices (e.g. programmable communicating thermostats, in home displays, home area networks (HAN), or smart appliances) factor into regulatory assessments of smart grid projects? If these applications are described as benefits to sell the projects, should the costs also be factored into the cost-benefit analysis?

• How does the notion that only some customers might opt in to consumer-facing smart grid programs affect the costs and benefits of AMI deployments?

• How do the costs and benefits of upgrading existing AMR technology compare with installing new AMI technology?

• How does the magnitude and certainty of the cost effectiveness of other approaches like direct load management that pay consumers to give the utility the right to temporarily turn off air conditioners or other equipment during peak demand periods compare to that of AMI or other smart grid programs?

• How likely are significant cost overruns? What can regulators do to reduce the probability of significant cost overruns? How should cost overruns be addressed?

• With numerous energy efficiency and renewable energy programs across the country competing for ratepayer funding, how should State Commissions assess proposals to invest in smart grid projects where the benefits are more difficult to quantify and the costs are more uncertain?

• What are appropriate ways to track the progress of smart grid implementation efforts? What additional information about, for example, customer interactions should be collected from future pilots and program implementations? How are State Commissions studying smart grid and smart meter applications in pilots? In conducting pilots, what best practical approaches are emerging to better ascertain the benefits and costs of realistic options while protecting participants?

• How should the costs of smart grid technologies be allocated? To what degree should State Commissions try to ensure that the beneficiaries of smart grid capital expenditures carry the cost burdens? Which stakeholder(s) should bear the risks if expected benefits do not materialize? How should smart grid investments be aligned so customers' expectations are met?

• When should ratepayers have the right to opt out of receiving and paying for smart grid technologies or programs like meters, in home displays, or critical peak rebates? When do system-wide benefits justify uniform adoption of technological upgrades? How does the answer depend on the nature of the offering? How should regulators address customer segments that might not use smart grid technologies?

• How might consumer-side smart grid technologies, such as HANs, whether controlled by a central server or managed by consumers, programmable thermostats, or metering technology (whether AMR or AMI), or applications (such as dynamic pricing, peak time rebates, and remote disconnect) benefit, harm, or otherwise affect vulnerable populations? What steps could ensure acceptable outcomes for vulnerable populations?

Utilities, Device Manufacturers and Energy Management Firms

Electricity policy involves the interaction of local distribution utilities, bulk power markets and competitive markets for electrical appliances and equipment. Retail electricity service is under state and local jurisdiction. Generally, bulk power markets are under FERC jurisdiction. Appliances comply with federal safety and efficiency rules. Smart grid technologies will change the interactions among these actors and should create new opportunities for federal-state collaboration to better serve citizens.

Greater collaboration seems essential. Some state regulatory agencies already oversee energy efficiency programs that help ratepayers acquire equipment like energy efficient appliances. Those appliances also are subject to federal regulatory oversight. As the smart grid evolves, these types of ties are likely to deepen. Moreover, EISA foresees a federal role in developing potentially mandatory standards for some smart grid equipment and voluntary standards for smart-grid enabled mass-produced electric appliances and equipment for homes and businesses. Many commentators suggest that utilities may lack appropriate incentives to invest in the most cost effective smart grid infrastructure and allow that infrastructure to be used to conserve energy, because most service providers generate revenue based on the number of kilowatt hours sold and pass through the capital costs of things like smart grid infrastructure. If this is accurate, then those disincentives are an impediment to achieving national and state goals and, therefore, merit state and federal policy makers' attention.

In issuing this RFI, DOE is mindful that the states oversee retail electric service and that state regulation differs state by state. Within states different types of service providers may be subject to different regulatory schemes depending, for example, on whether the service provider is investor owned, publicly owned or a cooperative. Recognizing the primary role of states in this area, we ask the following questions:

• How can state regulators and the federal government best work together to achieve the benefits of a smart grid? For example, what are the most appropriate roles with respect to development, adoption and application of interoperability standards; supporting technology demonstrations and consumer behavior studies; and transferring lessons from one project to other smart grid projects?

• How can federal and state regulators work together to better coordinate wholesale and retail power markets and remove barriers to an effective smart grid (*e.g.* regional transmission organization require that all loads buy "capacity" to ensure the availability of power for them during peak demand periods, which makes sense for price insensitive loads but requires price sensitive loads to pay to ensure the availability of power they would never buy)?

• How will programs that use pricing, rebates, or load control to reduce consumption during scarcity periods affect the operations, efficiency, and competiveness of wholesale power markets? Will other smart grid programs have important impacts on wholesale markets? Can policies improve these interactions?

• Do electric service providers have the right incentives to use smart grid technologies to help customers save energy or change load shapes given current regulatory structures?

• What is the potential for third-party firms to provide smart grid enabled products and services for use on either or both the consumer and utility side of the meter? In particular, are changes needed to the current standards or standard-setting process, level of access to the market, and deployment of networks that allow add-on products to access information about grid conditions? How should the interaction between third-party firms and regulated utilities be structured to maximize benefits to consumers and society?

• How should customer-facing equipment such as programmable communicating thermostats, feedback systems, energy management systems and home area networks be made available and financed? Are there consumers behavior or incentive barriers to the market achieving efficient technology adoption levels without policy intervention?

• Given the current marketplace and NIST Smart Grid Interoperability Panel efforts, is there a need for additional third-party testing and certification initiatives to assure that smart grid technologies comply with applicable standards? If there is a need for additional certification, what would need to be certified, and what are the trade-offs between having public and private entities do the certification? Is there a need for certifying bodies to oversee compliance with other smart grid policies, such as privacy standards?

Commenters should feel free to describe current and planned deployments of advanced distribution automation equipment, architectures, and consumer-facing programs in order to illustrate marketplace trends, successes, and challenges. And they should feel free to identify any major policy changes they feel would encourage appropriate deployment of these technologies.

Long Term Issues: Managing a Grid With High Penetration of New Technologies

Significant change in the technologies used to generate power and to keep supply and demand balanced is likely to occur over the foreseeable future. We invite comments on the steps that should be taken now to give the grid the flexibility it will need to deal with transitions that are likely in the next few decades. Commenters might address the following questions, some of which have more immediate implications.

• What are the most promising ways to integrate large amounts of electric vehicles, photovoltaic cells, wind turbines, or inflexible nuclear plants? What approaches make sense to address the possibility that large numbers of other consumer devices that might simultaneously increase power consumption as soon as power prices drop? For instance, what is known about the viability of and tradeoffs between frequently updated prices and direct load control as approaches to help keep the system balanced? How do factors like the speed of optimization algorithms, demand for reliability and the availability of grid friendly appliances affect those trade-offs?

• What are these strategies' implications for competition among demand response, storage and fast reacting generation? What research is needed to identify and develop effective strategies to manage a grid that is evolving to, for example, have an increasing number of devices that can respond to grid conditions and to be increasingly reliant on variable renewable resources?

• What policies, if any, are necessary to ensure that technologies that can increase the efficiency of ancillary services provision can enter the market and compete on a level playing field?

• What policies, if any, are necessary to ensure that distributed generation and storage of thermal and electrical energy can compete with other supply and demand resources on a level playing field?

• What barriers exist to the deployment of grid infrastructure to enable electric vehicles? What policies are needed to address them?

Reliability and Cyber-Security

We invite comment on the reliability opportunities and challenges that smart grid technologies create, including: What smart grid technologies are or will become available to help reduce the electric system's susceptibility to service disruptions?

• What policies are needed to facilitate the data sharing that will allow sensors (*e.g.,* phasor measurement units) and grid automation to achieve their potential to make reliability and performance improvements in the grid? Is there a need to revisit the legal and institutional approaches to generation and transmission system data collection and interchange?

• What is the role of federal, state, and local governments in assuring smart grid technologies are optimized, implemented, and maintained in a manner that ensures cyber security? How should the Federal and State entities coordinate with one another as well as with the private and nonprofit sector to fulfill this objective?

Managing Transitions and Overall Questions

The following questions focus on managing incremental change during the gradual evolution of the grid that may transform the power sector over the next few decades.

• What are the best present-day strategies for transitioning from the status quo to an environment in which consumer-facing smart grid programs (*e.g.,* alternative pricing structures and feedback) are common? What has been learned from different implementations? What lessons fall into the "it would have been good to know that when we started" category? What additional mechanisms, if any, would help share such lessons among key stakeholders quickly?

• Recognizing that most equipment on the electric grid, including meters, can last a decade or more, what cyber security, compatibility and integration issues affect legacy equipment and merit attention? What are some strategies for integrating legacy equipment into a robust, modernized grid? What strategies are appropriate for investing in equipment today that will be more valuable if it can delay obsolescence by

integrating gracefully with future generations of technology?

• How will smart grid technologies change the business model for electric service providers, if at all? What are the implications of these changes?

• What are the costs and benefits of delaying investment in metering and other smart grid infrastructure while the technology and our understanding of it is rapidly evolving? How does that affect the choice of an appropriate time to invest?

• What policy changes would ensure that the U.S. maintains global competiveness in smart grid technology and related businesses?

• What should be the priority areas for federally funded research that can support smart grid deployment?

Finally, as noted at the outset, we invite commenters to address any other significant issues that they believe implicate the success or failure of the transition to smart grid technology.

Issued in Washington, DC, on September 13, 2010.

Patricia Hoffman,

Assistant Secretary.

[FR Doc. 2010–23251 Filed 9–16–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–494–000]

Tallulah Gas Storage LLC; Notice of Application

September 9, 2010.

Take notice that on August 31, 2010, Tallulah Gas Storage LLC (Tallulah), 10370 Richmond Avenue, Suite 510, Houston, TX 77042, filed in Docket No. CP10–494–000, an application, pursuant to section 7(c) of the Natural Gas Act, subpart F of part 157, and subpart G of part 284 of the Commission's regulations for: (1) A certificate of public convenience and necessity authorizing Tallulah to construct and operate a natural gas storage facility and pipeline facilities connecting with Midcontinent Express Pipeline LLC (Midcontinent Express), Columbia Gulf Transmission Co. (Columbia Gulf), Gulf South Pipeline Co., LP (Gulf South) and Southeast Supply Header, LLC (SESH) in Madison Parish Louisiana; (2) a blanket certificate authorizing Tallulah to construct, acquire, operate, rearrange, and abandon facilities; (3) a blanket certificate authorizing Tallulah to provide open access firm and interruptible gas storage services on behalf of others in interstate commerce with pre-granted abandonment of such services; and (4) waivers of Commission regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Tallulah proposes to construct, own, operate, and maintain a new underground natural gas salt cavern storage facility consisting of three caverns, each with a working gas capacity of 8 billion cubic feet (Bcf), and approximately 3.4 Bcf of base gas, having a combined maximum daily withdrawal rate of 1,575 million cubic feet per day (MMcf/d) and a maximum injection capability of 900 MMcf/d. Tallulah also states that the facility will have a total capacity of approximately 11.4 Bcf and a peak deliverability of 525 MMcf/d. Tallulah also proposes to construct approximately 3.3 miles of dual 24-inch diameter lateral pipeline to four new meter and regulator stations interconnecting with Midcontinent Express, Columbia Gulf, Gulf South, and SESH. Tallulah will also install six natural gas-fired compressors totaling 28,410 horsepower as well as associated interconnecting piping and appurtenant facilities. Tallulah seeks authorization to charge market-based rates for its proposed services.

The filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Mark Fullerton, Tallulah Gas Storage LLC, 10370 Richmond Avenue, Suite 510, Houston, TX 77042, or by calling (713) 403–6454 (telephone) or (713) 403–6461 (fax), *mfullerton@icon-ngs.com,* or to John S. Decker, Vinson & Elkins L.L.P., 1455 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–1008, or by calling (202) 639–6599 (telephone) or (202) 879–8899 (fax), *jdecker@velaw.com.*

Pursuant to § 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be

required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: September 30, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23212 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–492–000; PF10–6–000]

Columbia Gas Transmission, LLC; Notice of Application

September 9, 2010.

Take notice that on August 26, 2010, Columbia Gas Transmission, LLC (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application in Docket No. CP10–492–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to replace, operate, abandon and maintain its existing natural gas pipeline system in Pike County, Pennsylvania, and Orange County, New York as a result of the age and condition of the existing pipeline (the Projects), as more fully detailed in the application. Specifically, Columbia proposes to (1) abandon and remove the 14-inch-diameter Line 1278 and Line K pipelines, and replace it with approximately 16.08 miles of 20-inch-diameter pipeline and 0.44 mile of two 10-inch-diameter parallel pipelines; (2) abandon in place the existing 0.06 miles of 4-inch-diameter Line U pipeline and replace it with 0.08 miles of relocated 4-inch-diameter pipeline; (3) abandon and remove the Sparrowbush Compressor Station; (4) abandon in place 0.08 mile of 8-inch-diameter Line 1842; and (5) perform minor valve, piping, and regulator modifications to the Milford Compressor Station. In all, Columbia proposes to abandon by replacement approximately 16.39 miles of natural gas pipeline for the Projects. The proposed project would enable Columbia to restore the historical design operating pressures and enhance the reliability and flexibility of its system, all as more fully set forth in the application. The application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Fredric J. George, Lead Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25325–1273; telephone 304–357–2359, fax 304–357–3206.

Columbia states that by letter dated February 3, 2010, in Docket No. PF10–6–000, the Commission's Office of Energy Projects granted Columbia's January 26, 2010, request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process for the Projects. Columbia has also submitted an applicant-prepared Draft Environmental Assessment that was prepared during the Pre-Filing Process that was included with this application. Now, as of the filing of this application on August 26, 2010, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP10–492–000, as noted in the caption of this notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the

Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll-free). For TTY, call (202) 502–8659.

Comment Date: September 30, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23226 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG10–40–000, EG10–41–000, et al.]

Notice of Effectiveness of Exempt Wholesale Generator Status; Taloga Wind, LLC, Stephentown Regulation Services LLC, et al.

September 9, 2010.

	Docket No.
Taloga Wind, LLC	EG10–40–000
Stephentown Regulation Services LLC	EG10–41–000
Longview Power, LLC	EG10–42–000
Alta Wind I, LLC	EG10–43–000
Alta Wind II, LLC	EG10–44–000
Alta Wind III, LLC	EG10–45–000
Alta Wind IV, LLC	EG10–46–000
Alta Wind V, LLC	EG10–47–000
Synergics Roth Rock Wind Energy, LLC	EG10–49–000
Synergics Roth Rock North Wind Energy, LLC	EG10–50–000

Take notice that during the month of August 2010, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations, 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23213 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2495–000]

Fulgora Arbitrage Fund, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Fulgora Arbitrage Fund, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23216 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2514–000]

Alta Wind III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Alta Wind III, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23218 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2515–000]

Alta Wind IV, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Alta Wind IV, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23219 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2513–000]

Alta Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Alta Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 29, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23217 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2516–000]

Alta Wind V, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Alta Wind V, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23220 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2567–000]

Kit Carson Windpower, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Kit Carson Windpower, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23224 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2551–000]

Baldwin Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Baldwin Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket

authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23223 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2541–000]

Maple Analytics, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Maple Analytics, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23222 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2522–000]

Top of the World Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Top of the World Wind Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23221 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2453–000]

Icetec.com, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Icetec.com, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 30, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23215 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR10–19–000]

Enbridge Pipelines (North Dakota) LLC; Enbridge Pipelines (Bakken) L.P.; Notice of Petition for Declaratory Order

September 10, 2010.

Take notice that on August 26, 2010, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2010), Enbridge Pipelines (North Dakota) LLC (EPND) and Enbridge Pipelines (Bakken) L.P. (Enbridge Bakken U.S.) (collectively, Petitioners) filed a petition requesting the Commission to issue a declaratory order approving (1) the tariff and priority service structure for the EPND portion of the Bakken Expansion Program (the Program); and (2) the overall tariff and rate structure for the Enbridge Bakken U.S. portion of the Program. Petitioners request that the Commission act on the petition expeditiously.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Petitioners. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, September 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23225 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–497–000]

Venice Gathering System, LLC; Notice of Request Under Blanket Authorization

September 10, 2010.

Take notice that on September 3, 2010, Venice Gathering System, LLC (VGS), 1000 Louisiana, Suite 4300, Houston, Texas 77002, filed a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) and VGS's blanket certificate issued in Docket No. CP97–535–000, for authorization to abandon certain offshore facilities. Specifically, VGS seeks to abandon approximately 10.87 miles of 10- and 14-inch diameter pipeline (the ST177 Pipeline), approximately 0.1 mile of 12-inch diameter pipeline (the ST151 Pipeline), a related receiving station (the South

Timbalier 177 Receiving Station), and appurtenances located offshore Louisiana by sale to Chevron USA Inc. (CUSA) pursuant to a Purchase and Sale Agreement by which the ownership of the Facilities will be transferred to CUSA. VGS states no service will be abandoned by the proposed abandonment, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to counsel for Applicant, Mark K. Lewis, Esq., Bracewell & Giuliani, 2000 K St., NW., Suite 500, Washington, DC 20006, telephone no. (202) 828–5834, facsimile no. (202) 857–2110 and e-mail: *Mark.Lewis@bglp.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–23214 Filed 9–16–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8992–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 09/07/2010 Through 09/10/2010 Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html*. Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100367, Draft EIS, USFS, CO, Big Moose Vegetation Management Project, Implementation, Divide Ranger District, Rio National Forest, Hinsdale and Mineral Counties, CO, *Comment Period Ends:* 11/01/2010, *Contact:* Thomas Malecek 719–657–3321.

EIS No. 20100368, Draft EIS, USFS, WA, Pack and Saddle Stock Outfitter-Guide Special Use Permit Issuance, Okanogan, Chelah, and Skagit Counties, WA, *Comment Period Ends:* 11/01/2010, *Contact:* Jennifer Zbyszewski 509–996–4021.

EIS No. 20100369, Draft EIS, FTA, CA, Hercules Intermodal Transit Center, Construction To Improve Access to Public Transit, Funding, Contra Costa County, CA, *Comment Period Ends:* 11/01/2010, *Contact:* Paul Page 415–744–3133.

EIS No. 20100370, Final EIS, FHWA, WY, Jackson South Project, US/26/89/189/91 Improvements, Funding and Right-of-Way Approval, Teton County, WY, *Wait Period Ends:* 10/18/2010, *Contact:* Lee Potter 307–771–2946.

EIS No. 20100371, Final EIS, USDA, MN, Bemidji—Grand Rapid 230 kV Transmission Line Project, Propose to Construct and Operate, Beltrami, Hubbard, Cass, Itasca Counties, MN, *Wait Period Ends:* 10/18/2010, *Contact:* Stephanie Strength 202–720–0468.

EIS No. 20100372, Draft Supplement, FHWA, GA, Northwest Corridor Improvements, I–75/I–575 Construction, New Alternative, USACE Section 404 Permit, NPDES Permit, Cobb and Cherokee Counties, CA, *Comment Period Ends:* 11/03/2010, *Contact:* Rodney N. Barry 404–562–3630.

EIS No. 20100373, Draft EIS, DOE, CA, Energia Sierra Juarez U.S. Transmission Line Project, Construction, Operation, Maintenance, and Connection of either 230-kilovolt or a 500-kilovolt Electric Transmission Line Crossing U.S.-Mexico Border, Presidential Permit Approval, San Diego County, CA, *Comment Period Ends:* 11/01/2010, *Contact:* Dr. Jerry Pell 202–586–3362.

Amended Notices

EIS No. 20100281, Draft EIS, FHWA, IN, I–69 Evansville to Indianapolis Tier 2 Section 4 Project, From U.S. 231 (Crane NSWC) to IN–37 South of Bloomington in Section 4, Greene and Monroe Counties, IN, *Comment Period Ends:* 10/28/2010, *Contact:* Janice Osadczuk 317–226–7486. Revision to FR Notice 07/30/2010: Extending Comment Period from 09/28/2010 to 10/28/2010.

EIS No. 20100360, Draft Supplement, USFS, CA, Gemmill Thin Project, Updated Information on Four Alternatives, Chanchellula Late-Successional Reserve, Shasta-Trinity National Forest, Trinity County, CA, *Comment Period Ends:* 10/25/2010, *Contact:* Bobbie DiMonte Miller 530–226–2425. Revision to FR 09/10/2010: Change Draft to Draft Supplemental.

EIS No. 20100363, Draft EIS, NOAA, NC, Gray's Reef National Marine Sanctuary (GRNMS) Research Areas Designation, Establish a Research Area, Implementation, NC, *Comment Period Ends:* 12/08/2010, *Contact:* George Sedberry 912–598–2345. Revision to FR Notice 09/10/2010: Correction to the State from GA to NC.

Dated: September 14, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–23325 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0184; FRL–8844–2]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Cheminova A/S, c/o Cheminova, Inc., to conditionally register the pesticide products Cheminova Flutriafol Technical and TOPGUARD Fungicide containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Tamue L. Gibson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9096; e-mail address: *Gibson.Tamue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0184. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of flutriafol, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of flutriafol during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditional Approval Form

EPA issued a notice, published in the **Federal Register** of November 18, 2009 (74 FR 59536) (FRL–8795–5), which announced that Cheminova A/S, c/o Cheminova, Inc., 1600 Wilson Blvd., Arlington, VA 22209, had submitted applications to conditionally register the pesticide products, Cheminova Flutriafol Technical, a manufacturing use formulation (EPA file symbol 4787–LL), containing flutriafol at 80% an active ingredient not included in any previously registered product and TOPGUARD Fungicide, an end-use product (EPA file symbol 67760–TL), containing flutriafol at 11.8% an active ingredient not included in any previously registered product.

Listed below are the applications conditionally approved on April 29, 2010, for a technical and an end-use product.

1. Cheminova Flutriafol Technical (EPA registration number 4787–55) was approved on April 29, 2010, as a manufacturing use product for formulation into end-use products for use on apples and soybeans.

2. TOPGUARD Fungicide (EPA registration number 4787–55) was approved on April 29, 2010, for foliar use on soybeans to control brown spot, cercospora blight, frogeye leaf spot, leaf spot, powdery mildew, and soybean rust, and on apples to control cedar apple rust, powdery mildew, quince rust, and scab.

List of Subjects

Environmental protection, Chemicals, Pests and pesticides.

Dated: September 9, 2010.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–23288 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0031]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Report of Premiums Payable for Financial Institutions Only (EIB 92–30).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Report of Premiums Payable for Financial Institutions Only is used to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

The Export-Import Bank has made changes to incorporate additional flexibility in identifying eligible U.S. content, as well as adding an additional report (the Content Report) for use only in those cases where the company chooses to make use of some aspects of the additional flexibility. Customers who do not meet the eligibility requirements for the additional flexibility or who chose only to make use of the flexibility in the percentage of U.S. content do not need to complete the Content Report. In addition to the changes to reflect the additional content flexibility, we also deleted the option of "Ex-Im Bank Sole Risk" as an obligor type; added the option "CAD or SDDP" to the terms; deleted the "Sight Payments (non-letter of credit) from the terms, and further broke out the frequency of repayment terms to include: 1–30 Days, 31–60 Days. 61–90 Days, and 91–120 Days.

DATES: Comments should be received on or before November 16, 2010 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *http://www.regulations.gov* or by mail to Michele Kuester, Export Import Bank of the United States, 811 Vermont Ave., NW. Washington. DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–30. Report of Premiums Payable for Financial Institutions Only.

OMB Number: 3048–0021.

Type of Review: Regular.

Need and Use: The information collected enables Ex-Im Bank to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program.

Affected Public: This form affects entities involved in the export of U.S goods and services.

Annual Number of Respondents: 150.

Estimated Time per Respondent: 20 minutes.

Government Annual Burden Hours: 50 hours.

Frequency of Reporting or Use: Monthly.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–23189 Filed 9–16–10; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0030]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Report of Premiums Payable for Exporters Only (EIB 92–29).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Report of Premiums Payable for Exporters Only is used to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

The Export-Import Bank has made changes to incorporate additional flexibility in identifying eligible U.S. content, as well as adding an additional report (the Content Report) for use only in those cases where the company chooses to make use of some aspects of the additional flexibility. Customers who do not meet the eligibility requirements for the additional flexibility or who choose only to make use of the flexibility in the percentage of U.S. content do not need to complete the Content Report. In addition to the changes to reflect the additional content flexibility, we also deleted the option of "Ex-Im Bank Sole Risk" as an obligor type; added the option "CAD or SDDP" to the terms; deleted the "Sight Payments (non-letter of credit) from the terms, and further broke out the frequency of repayment terms to include: 1–30 Days, 31–60 Days, 61–90 Days, and 91–120 Days.

DATES: Comments should be received on or before November 16, 2010 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Michele Kuester, Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–29. Report of Premiums Payable for Exporters Only.

OMB Number: 3048–0017.

Type of Review: Regular.

Need and Use: The information collected enables Ex-Im Bank to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program.

Affected Public: This form affects entities involved in the export of U.S goods and services.

Annual Number of Respondents: 22,800.

Estimated Time per Respondent: 15 minutes.

Government Annual Burden Hours: 5,700 hours.

Frequency of Reporting or Use: Monthly.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–23191 Filed 9–16–10; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities: Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board)

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (the "agencies") may not

conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), which are currently approved information collections. The Board is publishing this proposal on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the reports. The Board will then submit the reports to OMB for review and approval.

DATES: Comments must be submitted on or before November 16, 2010.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments will be shared among the agencies. You may submit comments, identified by FFIEC 002 (7100–0032), by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foio/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulotions.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federolreserve.gov.* Include the OMB control number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federolreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collections may be requested from Michelle E. Shore, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years with revision the following currently approved collections of information:

Report Titles: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: FFIEC 002–240; FFIEC 002S–59.

Estimoted Time per Response: FFIEC 002–25.42 hours; FFIEC 002S–6.0 hours.

Estimated Total Annual Burden: FFIEC 002–24,403 hours; FFIEC 002S–1,416 hours.

General Description of Reports: These information collections are mandatory: 12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4) and (8)].

Abstroct: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund (IMF) and the Bank for International Settlements (BIS) that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

Current Actions: The agencies propose to implement a number of revisions to the existing reporting requirements of the FFIEC 002, principally to help achieve consistency with the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031 and FFIEC 041) filed by insured commercial banks and state-chartered savings banks. The proposed revisions to the FFIEC 002 summarized below have been approved for publication by the FFIEC. The agencies would implement the proposed changes for the March 31, 2011, reporting date.

Discussion of Proposed Revisions to the FFIEC 002

A. Additional Detail on Trading Assets

U.S. branches and agencies of foreign banks (branches) currently report mortgage-backed securities (MBS) issued or guaranteed by U.S. Government agencies that are held for investment in Schedule RAL, item 1.c.(2)(a), all other MBS that are held for investment in Schedule RAL, item 1.c.(2)(b), and other asset-backed securities (other than MBS) held for investment in Schedule RAL, item 1.c.(3). However, branches currently report only a two-way split of trading assets between U.S. Treasury and Agency securities held for trading (Schedule RAL, item 1.f.(1)) and all

other trading assets (Schedule RAL, item 1.f.(2)). The agencies propose to collect information on Schedule RAL, Assets and Liabilities, for mortgage-backed securities (MBS) held for trading, with a split between MBS issued or guaranteed by U.S. Government agencies (new Schedule RAL, item 1.f.(2)(a)) and all other MBS (new Schedule RAL, item 1.f.(2)(b)), and for other asset-backed securities (other than MBS) held for trading (new Schedule RAL, item 1.f.(3)). Current Schedule RAL, item 1.f.(2), Other trading assets, would be defined to exclude all asset-backed securities held for trading and would be renumbered as item 1.f.(4).

The additional detail would allow the agencies to better monitor movements in trading securities over time, and provide for more meaningful analysis of the existing categories of trading assets. For example, from March 2003 to December 2006 U.S. Treasury and Agency securities held for trading by branches fell from $33.0 billion to $23.7 billion, and by December 2009 had declined to $19.3 billion. From March 2003 to December 2006 other trading assets [1] held by branches rose from $41.5 billion to $120.6 billion, and by December 2009 had declined to $52.0 billion.

B. Time Deposits of $100,000 or More

The reporting instructions for Schedule E, Deposit Liabilities and Credit Balances, memorandum item 1.a, Time deposits of $100,000 or more, indicate that branches should *include* in this item all brokered deposits issued in amounts of $100,000 or more, regardless of whether they were participated out in shares of less than $100,000. However, in March 2007 the Call Report instructions for a comparable item were modified to *exclude* all brokered deposits issued in amounts of $100,000 or more that have been participated out by the broker in shares of less than $100,000. The agencies propose to revise the reporting instructions for Schedule E, memorandum item 1.a, to exclude such brokered deposits. Thus the instructions would be amended to state "Exclude from this item all time deposits issued to deposit brokers in the form of large ($100,000 or more) certificates of deposit that have been participated out by the broker in shares of less than $100,000." This will make the instructions consistent across these reporting series and also simplify reporting for those foreign banks that own both domestically chartered banks (which file the FFIEC 031 or 041 Call Report) and U.S. agencies or branches (which file the FFIEC 002).

Schedule E, memorandum item 1.c, Time certificates of deposit in denominations of $100,000 or more with remaining maturity of more than 12 months, is currently defined to include those time certificates of deposit issued in denominations of $100,000 or more, and to exclude open-account time deposits. The agencies propose to revise the caption to this item as "Time deposits of $100,000 or more with remaining maturity of more than 12 months included in Memorandum item 1.a, 'Time deposits of $100,000 or more,' above" to include both time certificates of deposit and open-account time deposits. The agencies also propose to revise the reporting instructions for this item to report such deposits "with outstanding balances of $100,000 or more" rather than "issued in denominations of $100,000 or more" and to indicate that amounts reported in memorandum item 1.c are included in memorandum item 1.a. These changes would make the reporting of memorandum item 1.c more consistent with the reporting of memorandum item 1.a and with the reporting of comparable items collected on the bank Call Report.

C. Financial Assets and Liabilities Measured at Fair Value

Effective for the September 30, 2008, report date, the banking agencies began collecting information on certain assets and liabilities measured at fair value on FFIEC 002 Schedule Q, Financial Assets and Liabilities Measured at Fair Value. Currently, this schedule is completed by branches with a significant level of trading activity or that use a fair value option. The information collected on Schedule Q is intended to be consistent with the fair value disclosures and other requirements in Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 820, *Fair Value Measurements and Disclosures* [formerly FASB Statement No. 157, *Fair Value Measurements* (FAS 157)]. Based on the agencies' ongoing review of industry reporting and disclosure practices since the inception of this standard, and the reporting of items at fair value on Schedule RAL, Assets and Liabilities, the agencies propose to expand the data collected on Schedule Q in two material respects.

First, to improve the consistency of data collected on Schedule Q with the ASC Topic 820 disclosure requirements and industry disclosure practices, the agencies propose to expand the detail of the collected data. The agencies propose to expand the detail on Schedule Q to collect fair value information on all assets and liabilities reported at fair value on a recurring basis in a manner consistent with the asset and liability breakdowns on Schedule RAL. Thus, the agencies propose to change the title of Schedule Q to Assets and Liabilities Measured at Fair Value on a Recurring Basis and add items to collect fair value information on:

- Available-for-sale securities (new item 1);
- Federal funds sold and securities purchased under agreements to resell (new item 2);
- Federal funds purchased and securities sold under agreements to repurchase (new item 9);
- Other borrowed money (new item 11); and
- Subordinated notes and debentures (new item 12).

The agencies also propose to modify the existing collection of loan and lease data and trading asset and liability data to collect data separately for:

- Loans and leases held for sale (new item 3);
- Loans and leases held for investment (new item 4);
- Trading derivative assets (new item 5.a);
- Other trading assets (new item 5.b);
- Trading derivative liabilities (new item 10.a); and
- Other trading liabilities (new item 10.b).

The agencies also propose to add totals to capture total assets (new item 7) and total liabilities (new item 14) for items reported on the schedule. In addition, the agencies propose to modify the existing items for "other financial assets and servicing assets" and "other financial liabilities and servicing liabilities" to collect information on "all other assets" (new item 6) and "all other liabilities" (new item 14) reported at fair value on a recurring basis, including nontrading derivatives. Components of "all other assets" and "all other liabilities" would be separately reported (in new memorandum items 1 and 2, respectively) if they are greater than $25,000 and exceed 25 percent of the total fair value of "all other assets" and "all other liabilities," respectively. In conjunction with this change, the existing reporting for loan commitments accounted for under a fair value option would be revised to include these instruments, based on whether their fair values are positive or negative, in the items for "all other assets" and "all other liabilities" reported at fair value on a

[1] As reported in Schedule RAL, item 1.f.(2), less the amount of trading derivatives with a positive fair value, as such amounts are separately disclosed on the FFIEC 002.

recurring basis, with separate disclosure of these commitments if significant. Furthermore, current item 2.a, Nontrading securities at fair value with changes in fair value reported in current earnings, and current item 4, Deposits, would be renumbered as items 5.b.(1) and 8, respectively.

Second, the agencies propose to modify the reporting criteria for Schedule Q. The current instructions require all branches that have adopted ASC Topic 820 and (1) have elected to account for financial instruments or servicing assets and liabilities at fair value under a fair value option or (2) have trading assets of $2 million or more in any of the four preceding calendar quarters, to complete Schedule Q. The agencies propose to maintain this reporting requirement for branches that use a fair value option or that have significant trading activity. In addition, the agencies propose to extend the requirement to complete Schedule Q to all branches that reported $500 million or more in total assets as of the preceding December 31, regardless of whether they have elected to apply a fair value option to financial or servicing assets and liabilities.

The agencies believe that the proposed information is necessary to more accurately assess the impact of fair value accounting and fair value measurements for safety and soundness purposes. The collection of the information on Schedule Q, as proposed, will facilitate and enhance the banking agencies' ability to monitor the extent of fair value accounting by branches, including the elective use of fair value accounting and the nature of the inputs used in the valuation process, pursuant to the disclosure requirements of ASC Topic 820. The information collected on Schedule Q is consistent with the disclosures required by ASC Topic 820 and consistent with industry practice for reporting fair value measurements and should, therefore, not impose significant incremental burden on branches.

Paperwork Reduction Act Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

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

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

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

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimate and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, September 2, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–23231 Filed 9–16–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 4, 2010.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Kendall L. Combs and Patricia A. Combs, both of Hollister, Missouri; to retain control of Branson Bancshares, Inc., Branson, Missouri, and thereby indirectly retain control of Branson Bank, Branson, Missouri.

Board of Governors of the Federal Reserve System, Septmber 14, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–23229 Filed 9–16–10; 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 October 14, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Grandpoint Capital, Inc., Los Angeles, California; to acquire 100 percent of the voting shares of Southern Arizona Community Bank, Tucson, Arizona.

Board of Governors of the Federal Reserve System, September 14, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–23230 Filed 9–16–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: September 22, 2010–2 p.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Part of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

Matters To Be Considered

Open Session

1. Staff Update on Study of European Union Block Exemption Repeal.
2. Staff Briefing Regarding Passenger Vessel Financial Responsibility Notice of Inquiry Information Collection.

Closed Session

1. Staff Briefing on Financial Responsibility of Cruise West.
2. Staff Briefing on Economic Conditions and Impact on Stakeholder.
3. Staff Briefing Regarding Shanghai Shipping Exchange and China Ministry of Transport Regulations.
4. Fact Finding No. 27: Complaints or Inquiries from Individual Shippers of Household Goods or Private Automobiles—Status Report.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–23435 Filed 9–15–10; 4:15 pm]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Grand Junction Operations Office, Grand Junction, CO, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Grand Junction Operations Office, Grand Junction, Colorado, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Grand Junction Operations Office.

Location: Grand Junction, Colorado.

Job Titles and/or Job Duties: All laborers, labor supervisors, painters, grounds personnel, and Fire Chief.

Period of Employment: January 1, 1943 through July 31, 2010.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–23242 Filed 9–16–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Blockson Chemical Company in Joliet, Illinois, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On September 3, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at the Blockson Chemical Company in Joliet, Illinois from March 1, 1951 to June 30, 1960, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective October 3, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the *Federal Register* reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–23241 Filed 9–16–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary of Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on September 30, 2010, and Friday, October 1, 2010. The meeting will be held from 10 a.m. to approximately 5 p.m., on September 30, 2010, and from 9 a.m. to approximately 3 p.m., on October 1, 2010.

ADDRESSES: Department of Health and Human Services, Room 800 Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION, CONTACT: Mr. Melvin Joppy, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443H Humphrey Building, Washington, DC 20201; (202) 690–5560. More detailed information about

PACHA can be obtained by accessing the Council's Web site, *http://www.pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies to (a) reduce HIV incidence; (b) advance research on HIV/AIDS; (c) improve health outcomes and ensure people living with HIV have access to treatment, provide global leadership in responding to the HIV pandemic and expand access to treatment, care, and prevention for people infected with and affected by HIV/AIDS around the world. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy.

The agenda for the upcoming meeting will be posted on the Council's Web site, *http://www.pacha.gov.*

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the building. Individuals planning to attend who have special needs, require assistance, and/or reasonable accommodations, such as sign language interpretation, should notify the designated contact person. Pre-registration for public attendance is advisable and can be accomplished by contacting the PACHA Committee Manager.

Members of the public will have the opportunity to provide comments on September 30, 2010. Pre-registration is required for public comment. Any individual who wishes to participate in the public comment session must contact the PACHA Committee Manager. Public comment will be limited to three minutes per speaker. Members of the public who wish to have printed materials distributed to PACHA for discussion at the meeting are asked to provide, at a minimum, 30 copies of the materials to the PACHA Committee Manager no later than close of business on Friday, September 23, 2010. Contact information for the PACHA Committee Manager is provided above.

Dated: September 14, 2010.

La Vonnia Persaud,

Director, Humphrey Administrative Resource Center, Office of the Assistant Secretary for Health.

[FR Doc. 2010–23306 Filed 9–16–10; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Standards Committee's Workgroups: Clinical Operations Vocabulary, Clinical Quality, Implementation, and Privacy & Security workgroups.

General Function of the Committee: to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The HIT Standards Committee Workgroups will hold the following public meetings during October 2010: October 7th Implementation Workgroup, 2 p.m. to 3:30 p.m./ET; October 18th Clinical Operations Workgroup, 11 a.m. to 1 p.m./ET; and October 22nd Vocabulary Task Force, 2 p.m. to 4 p.m./ET.

Location: All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* clinical operations vocabulary standards, clinical quality measure, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: September 13, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–23256 Filed 9–16–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Tiger Team, Enrollment, Governance, Adoption/Certification, and Information Exchange workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The HIT Policy Committee Workgroups will hold the following public meetings during October 2010: October 4th Governance Workgroup, 9 a.m. to 4 p.m./ET; October 5th Meaningful Use Workgroup, 10 a.m. to 12 p.m./ET; October 6th Privacy & Security Tiger Team, 1 p.m. to 3 p.m./ET; October 8th Quality Measures Workgroup, 2 p.m. to 5 p.m./ET; October 12th Governance Workgroup, 2:30 p.m. to 4:30 p.m./ET; October 14th Information Exchange Workgroup, 3 p.m. to 5 p.m./ET; October 15th Privacy & Security Tiger Team, 3 p.m. to 5 p.m./ET; and October 28th Quality Measures Workgroup, 11 a.m. to 1 p.m./ET.

Location: All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov*. Please check the ONC Web site for additional information or revised schedules as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.*, meaningful use, information exchange, privacy and security, enrollment, governance, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: September 13, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–23257 Filed 9–16–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on October 20, 2010, from 10 a.m. to 4 p.m./Eastern Time.

Location: To be determined. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov*.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Privacy & Security Tiger Team, the Information Exchange Workgroup, the Enrollment Workgroup, and the Governance Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 13, 2010. Oral comments from the public will be scheduled between approximately 3 p.m. to 4 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: September 13, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–23259 Filed 9–16–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on October 27, 2010, from 9 a.m. to 3 p.m./Eastern Time.

Location: To be determined. For up-to-date information go to the ONC Web site, *http://healthit.hhs.gov*.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 19, 2010. Oral comments from the public will be scheduled between approximately 2 and 3 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: September 13, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–23258 Filed 9–16–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Availability of Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM)-Test Method Evaluation Reports: In Vitro Ocular Safety Testing Methods and Strategies, and Routine Use of Topical Anesthetics, Systemic Analgesics, and Humane Endpoints for Ocular Safety Testing; Notice of Transmittal to Federal Agencies

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Availability of ICCVAM Test Method Evaluation Reports (TMERs); Notice of Transmittal.

SUMMARY: NICEATM announces availability of ICCVAM TMERs that provide recommendations regarding proposed *in vitro* ocular safety testing methods, testing strategies, and the routine use of anesthetics, analgesics, and humane endpoints for ocular safety testing to avoid or minimize any pain and distress. The reports and recommendations have been transmitted to Federal agencies for their review and response to ICCVAM in accordance with the ICCVAM Authorization Act of 2000. In the first report, ICCVAM recommends pain management procedures that should always be used to avoid or minimize pain and distress when it is determined necessary to conduct the

rabbit eye test for regulatory safety purposes. In the second report, ICCVAM recommends that the Cytosensor microphysiometer (CM) test method can be used as a screening test to identify some types of substances that may cause permanent or severe eye injuries. ICCVAM also recommends that the CM test method can be used to determine if some types of substances will not cause sufficient injury to require hazard labeling for eye irritation. ICCVAM evaluated four other *in vitro* test methods for their usefulness and limitations for identifying substances with the potential to cause reversible and nonsevere ocular injuries, but concluded that the performance of these methods must be improved before they can be used for regulatory safety testing to classify such substances. The report includes ICCVAM recommendations for future studies that could potentially improve these test methods. In the third report, ICCVAM recommends further studies to characterize the usefulness and limitations of a non-animal *in vitro* testing strategy that uses three *in vitro* test methods. In the fourth report, ICCVAM recommends that a proposed low volume rabbit eye test (LVET) should not be used for regulatory testing due to performance issues when compared to the current standard rabbit eye test.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director. NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov*. Courier address: NICEATM, NIEHS, Room 2034, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

In October 2003, the U.S. Environmental Protection Agency (EPA) requested ICCVAM to: (1) Evaluate the current validation status of the bovine corneal opacity and permeability (BCOP), hen's egg test–chorioallantoic membrane (HET–CAM), isolated chicken eye (ICE), and isolated rabbit eye (IRE) test methods; (2) identify *in vivo* ocular toxicity reference data to support the validation of *in vitro* test methods; (3) explore ways of alleviating pain and suffering from current *in vivo* ocular safety testing; and (4) review the state of the science and the availability of *in vitro* test methods for assessing mild or moderate ocular irritants. The highest priority activity, an evaluation of the BCOP, HET–CAM, ICE, and IRE test methods for their ability to identify potential ocular corrosives, was completed in 2006 (NIH Publication No. 07–4517; available at *http://iccvam.niehs.nih.gov/methods/ocutox/ivocutox/ocu_tmer.htm*). ICCVAM recently completed additional test method evaluations relevant to the original EPA nomination and a subsequent EPA request for ICCVAM to evaluate a proposed *in vitro* testing strategy for identifying the ocular hazard potential of antimicrobial cleaning products (AMCPs).

NICEATM and ICCVAM compiled comprehensive draft background review documents (BRDs) and released them for public comment in March 2009 (74 FR 14556). ICCVAM convened a public panel meeting on May 19–21, 2009, to review the draft documents and assess whether the information they contained supported draft ICCVAM test method recommendations for test method uses and limitations, updated standardized test method protocols, and proposed future studies. The panel considered public comments made at the meeting as well as public comments submitted in advance of the meeting before concluding its deliberations. The panel's report was made available in July 2009 (74 FR 33444) for public comment. The draft ICCVAM BRDs, draft ICCVAM test method recommendations, the panel's report, and all public comments were made available to ICCVAM's Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) for comment at its meeting on June 25–26, 2009 (74 FR 19562).

After considering the conclusions and recommendations of the panel, comments from SACATM, and public comments, ICCVAM forwarded final test method recommendations to U.S. Federal agencies for their consideration. Agency responses to the ICCVAM test method recommendations will be made available on the NICEATM–ICCVAM Web site (*http://www.iccvam.niehs.nih.gov)* as they are received.

The ICCVAM TMER, *Recommendations for Routine Use of Topical Anesthetics, Systemic Analgesics, and Humane Endpoints to Avoid or Minimize Pain and Distress in Ocular Safety Testing* (NIH Publication No. 10–7514) provides ICCVAM's evaluation and recommendations for the routine use of topical anesthetics, systemic analgesics, and humane endpoints to avoid or minimize pain and distress in ocular safety testing. ICCVAM concludes that balanced preemptive pain management procedures should always be provided when it is determined necessary to conduct the rabbit eye test for regulatory safety assessments. ICCVAM also identifies clinical signs and ocular lesions that are considered predictive of an ocular corrosive or severe irritant response and, therefore, can be routinely used as humane endpoints to end studies early when deemed appropriate. The report also includes a test method protocol that incorporates the ICCVAM-recommended procedures, the final BRD, and the panel's peer review report.

The ICCVAM TMER, *Current Validation Status of In Vitro Test Methods Proposed for Identifying Eye Injury Hazard Potential of Chemicals and Products* (NIH Publication No. 10–7553) provides ICCVAM's updated evaluation and recommendations for the use of five *in vitro* ocular test methods (*i.e.*, BCOP, CM, HET–CAM, ICE, and IRE) for their ability to identify nonsevere ocular irritants and substances not labeled as irritants. ICCVAM concludes that the CM test method can be used as a screening test to identify test substances within a defined limited applicability domain that may cause permanent or severe eye injuries. ICCVAM also recommends that the CM can be used to determine if substances within an even more restricted applicability domain will not cause sufficient injury to require hazard labeling for eye irritation. The performance of the remaining four *in vitro* test methods must be improved before they can be used in regulatory safety testing for classifying substances not labeled as irritants. None of these *in vitro* test methods were considered adequately predictive of all ocular hazard categories to support their use as a complete replacement for the current standard rabbit eye test. This report also includes updated ICCVAM-recommended BCOP, CM, HET–CAM, ICE, and IRE test method protocols, final BRDs for the BCOP, CM, HET–CAM, and ICE test methods, and the panel's peer review report.

ICCVAM also discovered during these evaluations that an estimated 30% of chemicals identified as eye hazards by current U.S. regulations will not be labeled as eye hazards by the United Nations Globally Harmonized System for Classification and Labelling of Chemicals (GHS), which some Federal agencies are or will be considering for implementation. The reduced hazard labeling that will result from implementing the GHS was based on analyzing actual testing data for over 250 chemicals. Of concern is that over 50% of the chemicals that will no longer be labeled using GHS criteria produced eye injuries expected to interfere with normal vision. Accordingly, the report

includes an optional GHS hazard category that could be used to provide at least equivalent hazard labeling as current U.S. regulations in order to support continued protection of consumers and workers.

The ICCVAM TMER, *Current Validation Status of a Proposed In Vitro Testing Strategy for U.S. Environmental Protection Agency Ocular Hazard Classification and Labeling of Antimicrobial Cleaning Products* (NIH Publication No. 10–7513) provides ICCVAM's evaluation and recommendations regarding the use of a proposed in vitro testing strategy to classify and label AMCPs for eye irritation. ICCVAM concludes that the data are insufficient to adequately demonstrate that the proposed *in vitro* testing strategy can classify test substances to all four EPA ocular hazard categories. ICCVAM recommends further studies to characterize the usefulness and limitations of the non-animal *in vitro* testing strategy that uses the three in vitro test methods. This report also includes updated ICCVAM-recommended BCOP, CM, and EpiOcular™ test method protocols, the final summary review document (SRD), and the panel's peer review report.

The ICCVAM TMER, *Recommendation to Discontinue Use of the Low Volume Eye Test for Ocular Safety Testing* (NIH Publication No. 10–7515) provides ICCVAM's evaluation and recommendations on the usefulness of the LVET as an *in vivo* reference test method. ICCVAM concludes that the proposed LVET should not be used for regulatory safety testing due to performance issues.

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, or generate toxicological and safety testing information for chemicals, products, and other substances. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability, and promotes the scientific validation and regulatory acceptance of toxicological and safety testing methods that more accurately assess the safety and health hazards of chemicals and products while reducing, refining (decreasing or eliminating pain and distress), or replacing animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–2, 285l–5 [2000], available at *http://iccvam.niehs.nih.gov/docs/about_docs/PL106545.pdf*) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM.

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and coordinates international validation studies of new and improved test methods. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods for validation studies as well as technical evaluations. Additional information about NICEATM and ICCVAM can be found on the NICEATM–ICCVAM Web site (*http://www.iccvam.niehs.nih.gov*).

SACATM was established January 9, 2002, and is composed of scientists from the public and private sectors (67 FR 11358). SACATM provides advice to the Director of the NIEHS, ICCVAM, and NICEATM regarding the statutorily mandated duties of ICCVAM and activities of NICEATM. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167*.

References

ICCVAM. 2006. ICCVAM Test Method Evaluation Report: In Vitro Ocular Toxicity Test Methods for Identifying Severe Irritants and Corrosives. NIH Publication No. 07–4517. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/ivocutox/ocu_tmer.htm*.

ICCVAM. 2010. ICCVAM Test Method Evaluation Report: Recommendations for Routine Use of Topical Anesthetics, Systemic Analgesics, and Humane Endpoints to Avoid or Minimize Pain and Distress in Ocular Safety Testing. NIH Publication No. 10–7514. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/OcuAnest-TMER.htm*.

ICCVAM. 2010. ICCVAM Test Method Evaluation Report: Current Validation Status of In Vitro Test Methods Proposed for Identifying Eye Injury Hazard Potential of Chemicals and Products. NIH Publication No. 10–7553. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/MildMod-TMER.htm*.

ICCVAM. 2010. ICCVAM Test Method Evaluation Report: Current Validation Status of a Proposed *In Vitro* Testing Strategy for U.S. Environmental Protection Agency Ocular Hazard Classification and Labeling of Antimicrobial Cleaning Products. NIH Publication No. 10–7513. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/AMCP–TMER.htm*.

ICCVAM. 2010. ICCVAM Test Method Evaluation Report: Recommendation to Discontinue Use of The Low Volume Eye Test for Ocular Safety Testing. NIH Publication No. 10–7515. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/LVET.htm*.

Dated: September 10, 2010.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2010–23262 Filed 9–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Strategic Prevention Framework State Incentive Grant (SPF SIG) Program (OMB No. 0930–0279)—Revision

SAMHSA's Center for Substance Abuse Prevention (CSAP) is responsible for the evaluation instruments of the Strategic Prevention Framework State Incentive Grant (SPF SIG) Program. The program is a major initiative designed to: (1) Prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking; (2) reduce substance abuse related problems; and, (3) build prevention capacity and infrastructure at the State-, territorial-, tribal- and community-levels.

Five steps comprise the SPF:

Step 1: Profile population needs, resources, and readiness to address the problems and gaps in service delivery.

Step 2: Mobilize and/or build capacity to address needs.

Step 3: Develop a comprehensive strategic plan.

Step 4: Implement evidence-based prevention programs, policies, and practices and infrastructure development activities.

Step 5: Monitor process, evaluate effectiveness, sustain effective programs/activities, and improve or replace those that fail.

An evaluation team is currently implementing a multi-method, quasi-experimental evaluation of the first two Strategic Prevention Framework State Incentive Grant (SPF SIG) cohorts receiving grants in FY 2004 and FY 2005. This notice invites comments for revision to the protocol for the ongoing cross-site evaluation for the Strategic Prevention Framework State Incentive Grant (SPF SIG) (OMB No. 0930–0279) which expires on 11/30/12. This revision includes two parts:

(1) Continuation of the use of the previously approved two-part Community Level Instrument (CLI Parts I and II) for Cohorts I and II and the use of an instrument to assess the sustainability of grantee implementation and infrastructure accomplishments which is a modification of an instrument used in an earlier phase of the evaluation.

(2) The use of three additional instruments to support the SPF SIG Cohorts III and IV Cross-site Evaluation. All three instruments are modified versions of data collection protocols used by Cohorts I and II. The three instruments are:

a. A Grantee-Level SPF Implementation Instrument,

b. A Grantee-Level Infrastructure Instrument, and

c. A two-part Community-Level SPF Implementation Instrument.

An additional Cohort III and IV evaluation component (*i.e.*, participant-level NOMs outcomes) is also included in this submission as part of the comprehensive evaluation, however, no associated burden from this evaluation activity is being imposed and therefore clearance to conduct the activities is not being requested. Specifically, Cohort III and IV SPF SIG grantees have been included in the currently OMB approved umbrella NOMs application (OMB No. 0930–0230) covering the collection of participant-level NOMs outcomes by all SAMHSA/CSAP grantees.

Every attempt has been made to make the evaluation for Cohorts III and IV comparable to Cohorts I and II. However, resource constraints for the Cohorts III and IV evaluation have necessitated some streamlining of the original evaluation design. Since the ultimate goal is to fund all eligible jurisdictions, there are no control groups at the grantee level for Cohorts III and IV. The primary evaluation objective is to determine the impact of SPF SIG on the reduction of substance abuse related problems, on building state prevention capacity and infrastructure, and preventing the onset and reducing the progression of substance abuse, as measured by the SAMHSA National Outcomes Measures (NOMs). Data collected at the grantee, community, and participant levels will provide information about process and system outcomes at the grantee and community levels as well as context for analyzing participant-level NOMS outcomes. The Grantee-Level Infrastructure and Implementation Instruments (Cohorts III and IV) and the Community-Level Part I and Part II (Cohorts I, II, III, and IV) Instruments are included in an OMB review package and are the main focus of this announcement.

Grantee-Level Data Collection

Cohort I and II Continuation

The Sustainability Interview will be conducted during Phase II of the evaluation in 2011 (Cohort I) and 2012 (Cohort II). The interview guide is adapted from the Phase I instruments (OMB No. 0930–0279) and focuses on state-level prevention capacity and infrastructure in relation to the five steps of the SPF process: Needs assessment, capacity building, strategic planning, implementation of evidence-based programs, policies, and practices (EBPPPs), and evaluation/monitoring. The interviews will be aimed at understanding the status of the prevention infrastructure at the time of the interview, whether the status has changed since the previous rounds of interviews (conducted in 2007 and 2009), and whether the SPF SIG had any influence on changes that might have occurred.

Cohort III and IV Revision

Two Grantee-level Instruments (GLI) were developed to gather information about the infrastructure of the grantee's overall prevention system and collect data regarding the grantee's efforts and progress in implementing the Strategic Prevention Framework 5-step process. Both instruments are modified versions of the grantee-level interview protocols used in the SPF SIG Cohort I and II Cross-Site Evaluation (OMB No. 0930–0279). The total burden imposed by the original interview protocols has been reduced by restructuring the format of the original protocol, deleting several questions and replacing the majority of open-ended questions with multiple-choice-response questions. The Infrastructure Instrument will capture data to assess infrastructure change and to test the relationship of this change to outcomes. The Strategic Prevention Framework Implementation Instrument will be used to assess the relationship between SPF implementation and change in the NOMs. Information for both surveys will be gathered by the grantees' evaluators twice over the life of the SPF SIG award.

Based on the current 16 grantees funded in Cohort III and an estimated 20 to be funded in Cohort IV the estimated annual burden for grantee-level data collection is displayed below in Table 1. The burden estimates for the GLIs are based on the experience in the Cohort I and II SPF SIG evaluation as reported in the original OMB submission (OMB No. 0930–0279), less the considerable reduction in length of these instruments implemented by the Cohort III and IV evaluation team.

Community-Level Data Collection (Continuation and Revision)

Cohort I and II Continuation

The Community-level Instrument (CLI) is a two part, web-based survey for capturing information about SPF SIG implementation at the community level (originally submitted as an addendum to OMB No. 0930–0279). Part I of this instrument was developed to assess the progress of communities as they implement the Strategic Prevention Framework (SPF), and Part II was developed to gather descriptive information about the specific

interventions being implemented at the community level and the populations being served including the gender, age, race, ethnicity, and number of individuals in target populations. Each SPF SIG funded community will complete a separate Part II form for each intervention they implement.

The CLI (Parts I and II) was designed to be administered two times a year (every six months) over the course of the SPF SIG Cohort I and II initiative. Four rounds of data were collected under the current OMB approval period and the Cohorts I and II cross-site evaluation team plans to collect additional rounds once this request for a revision is approved. Data from this instrument will allow CSAP to assess the progress of the communities in their implementation of both the SPF and prevention-related interventions funded under the initiative. The data may also be used to assess obstacles to the implementation of the SPF and prevention-related interventions and facilitate mid-course corrections for communities experiencing implementation difficulties.

The estimated annual burden for community-level data collection is displayed below in Table 1. Note that the total burden reflects the 443 communities that have received SPF funds from their respective Cohort I and Cohort 2 States. Burden estimates are based on pilot respondents' feedback as well as the experience of the survey developers reported in the original OMB submission (OMB No. 0930–0279). Additionally, an individual community's burden may be lower than the burden displayed in Table 1 because all sections of the Community-level Instrument (parts I and II) may not apply for each reporting period as community partners work through the SPF steps and only report on the step-related activities addressed. Note also that some questions will be addressed only once and the responses will be used to pre-fill subsequent surveys.

Cohort III and IV (Revision)

The Community-Level Instrument to be completed by Cohort III and IV funded subrecipient communities is a modified version of the one in use in the SPF SIG Cohorts I and II Cross-Site Evaluation (OMB No. 0930–0279). The total burden imposed by the original instrument was reduced by reorganizing the format of the original instrument, optimizing the use of skip patterns, and replacing the majority of open-ended questions with multiple-choice-response questions.

Part I of the instrument will gather information on the communities' progress implementing the five SPF SIG steps and efforts taken to ensure cultural competency throughout the SPF SIG process. Subrecipient communities receiving SPF SIG awards will be required to complete Part I of the instrument annually. Part 2 will capture data on the specific prevention intervention(s) implemented at the community level. A single prevention intervention may be comprised of a single strategy or a set of multiple strategies. A Part II instrument will be completed for each prevention intervention strategy implemented during the specified reporting period. Specific questions will be tailored to match the type of prevention intervention strategy implemented (*e.g.*, Prevention Education, Community-based Processes, and Environmental). Information collected on each strategy will include date of implementation, numbers of groups and participants served, frequency of activities, and gender, age, race, and ethnicity of population served/affected. Subrecipient communities' partners receiving SPF SIG awards will be required to update Part II of the instrument a minimum of every six months.

The estimated annual burden for specific segments of the community-level data collection is displayed in Table 1. The burden estimates for the CLIs are based on the experience in the Cohort I and II SPF SIG evaluation as reported in the original OMB submission (OMB No. 0930–0279), less the considerable reduction in length of these instruments implemented by the Cohort III and IV evaluation team. The total burden assumes an average of 15 community-level subrecipients per grantee (n=36 Grantees) for a total of 540 community respondents, annual completion of the CLI Part I, a minimum of two instrument updates per year for the CLI Part II, and an average of three distinct prevention intervention strategies implemented by each community during a 6-month period. Additionally, some questions will be addressed only once and the responses will be used to pre-fill subsequent updates.

Participant-Level Data Collection (Cohort III and IV—Continuation)

Participant-level change will be measured using the CSAP NOMs Adult and Youth Programs Survey Forms already approved by OMB (OMB No. 0930–0230). Subrecipient communities will have the opportunity to select relevant measures from the CSAP NOMs Adult and Youth Programs Survey Forms based on site-specific targeted program outcomes and may voluntarily select additional outcome measures that are relevant to their own initiatives. Cohort III and IV SPF SIG grantees have been included in the currently OMB approved umbrella NOMs application (OMB No. 0930–0230) covering all SAMHSA/CSAP grantees, therefore no additional burden for this evaluation activity is being imposed and clearance to conduct the activities is not being requested.

Total Estimates of Annualized Hour Burden

Estimates of total and annualized reporting burden for respondents by evaluation cohort are displayed below in Table 1. Overall summaries appear in Table 2. The estimated average annual burden of 5,642.9 hours is based on the completion of the Community Level-Instrument (CLI Parts I and II) and Sustainability Interview for Cohorts I and II, and the Grantee-level Instruments (GLI) and the Community-Level Instrument (CLI) for Cohorts III and IV.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS

Instrument	Respondent	Number of respondents	Number of responses per respondent (over four years)	Total number of responses (over four years)	Burden per response (hrs.)	Total burden (hrs.)
Cohorts 1 and 2—Grantee Level Burden						
CLI grantee input	Grantee	26	2	52	1	52.0
Sustainability Interview	Grantee	26	1	26	1.5	39.0

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS—Continued

Instrument	Respondent	Number of respondents	Number of responses per respondent (over four years)	Total number of responses (over four years)	Burden per response (hrs.)	Total burden (hrs.)
Total Burden	Grantee	26	3	78	2.5	91.0
Average Annual Burden Over 4 Reporting years	Grantee	26				22.8
Cohorts 1 and 2—Community Level Burden						
CLI Part 1	Community	443	2	886	2.17	1,922.6
CLI Part 2	Community	443	8	3,544	2.17	7,690.5
Review of Past Responses	Community	443	2	886	2.50	2,215.0
Total Burden	Community	443	12	5,316	6.84	11,828.1
Average Annual Burden Over 4 Reporting years	Community	443				2,957.0
Cohorts 3 and 4—Grantee Level Burden						
GLI Infrastructure & Implementation Instruments (Reporting Years 1–4)	Grantee	36	2	72	4.75	342.0
CLI Part I, 1–20: Community Contact Information (Reporting Year 1)	Grantee	36	1	36	1.5	54.0
CLI Part I, 1–20: Community Contact Information (Reporting Years 2–4)	Grantee	36	3	108	0.25	27.0
Total Burden Over 4 Reporting Years	Grantee	36	6	216	6.5	423.0
Average Annual Burden	Grantee	9				105.8
Cohorts 3 and 4—Community Level Burden						
CLI Part I, 21–172: Community SPF Activities (Reporting Year 1)	Community	540	1	540	3	1,620.0
CLI Part II (Reporting Year 1)	Community	540	6	3,240	0.75	2,430.0
CLI Part I, 21–172: Community SPF Activities (Reporting Years 2–4)	Community	540	3	1,620	0.75	1,215.0
CLI Part II (Reporting Years 2–4)	Community	540	18	9,270	0.5	4,860.0
Total Burden Over 4 Years	Community	540	28	15,120	5	10,125.0
Average Annual Burden	Community	540				2,531.3

TABLE 2—ANNUALIZED SUMMARY TABLE

Respondents	Number of respondents	Responses/ respondent	Total responses	Total annualized hour burden
All Cohorts—Total Burden				
Cohort 1 and 2:				
Grantees	26	3	78	48.8
Community	443	12	5,316	2,957.0
Cohort 3 and 4:				
Grantees	36	6	216	105.8
Community	540	28	15,120	2,531.3
Sub-total Grantees	62			128.6
Sub-total Community	983			5,488.3
Total	1045		20,730	5,616.9

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail a copy to *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: September 10, 2010.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2010–23207 Filed 9–16–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Evaluation of the National Guideline Clearinghouse." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by November 16, 2010.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHIRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRO.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of the National Guideline Clearinghouse

The mission of the Agency for Healthcare Research and Quality (AHRQ) is to enhance the quality, appropriateness, and effectiveness of Health services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical and health system practices, including the prevention of diseases and other health conditions. 42 U.S.C. 299(b). AHRQ supports the dissemination of evidence-based guidelines through its National Guideline Clearinghouse™ (NGC).

The NGC serves as a publicly accessible Web-based database of evidence-based clinical practice guidelines meeting explicit criteria. The NGC also supports AHRQ's strategic goal on effectiveness: to improve health care outcomes by encouraging the use of evidence to make informed health care decisions. The NGC is a vehicle for such encouragement. The mission of the NGC is to provide physicians, nurses, and other health professionals, health care providers, health plans, integrated delivery systems, purchasers and others an accessible mechanism for obtaining objective, detailed information on clinical practice guidelines and to further their dissemination, implementation and use.

AHRQ proposes to conduct a comprehensive evaluation of the NGC. This evaluation will build on the site trends AHIRQ has already identified, including growth from 70,000 to 700,000 visits per month, 600 to approximately 40,000 e-mail subscribers, 250 to 2,370 guidelines represented, and 50 to nearly 300 participating guideline developer organizations from July 1999 to July 2009.

The objectives of the NGC evaluation are to gain a better understanding of how:

- The NGC is used.
- The NGC supports dissemination of evidence-based clinical practice guidelines and related documents.
- The NGC has influenced efforts in guideline development and guideline implementation and use.
- The NGC can be improved.

This study is being conducted by AHRQ through its contractor, AFYA, Inc. and The Lewin Group (AFYA/Lewin), pursuant to AJ4RQ's statutory authority to conduct and support research and disseminate information on healthcare and on systems for the delivery of such care, including activities with respect to clinical practice. 42 U.S.C. 299a(a)(4).

Method of Collection

To achieve the objectives of this project the following data collections will be implemented:

(1) NGC evaluation survey—a web-based survey administered to a convenience sample of both users and non-users of the NGC,

(2) Focus groups—conducted with guideline developers, medical librarians, informatics specialists, clinicians, and students, and

(3) Key informant interviews—in-person interviews conducted with influential individuals in medical societies, health plans, and quality improvement organizations as well as medical librarians, researchers, and informatics specialists who produce, use, and disseminate guidelines.

Questions in the survey, focus group, and key informant discussion guides will focus on the effectiveness of NGC in areas of dissemination, implementation, and use of evidence-based clinical practice guidelines, and relative to other available guideline sources. For example, measures to be gathered through the instruments include the level of trust of the NGC, the use of the NGC relative to other guideline sources, and the influence of the NGC on various stakeholder groups. In addition, the instruments will be used to measure the use of other guideline resources which are used by non-NGC users.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this evaluation. The NGC evaluation questionnaire will be completed by approximately 40,220 persons and will require 10 minutes to complete for users of the NGC and about 2 minutes for non-users. For the purpose of calculating respondent burden an average of 8 minutes is used and reflects a mix of users and non-users with most respondents expected to be users.

Eleven different focus groups consisting of 9 persons each will be conducted and are expected to last 90 minutes each. Key informant interviews will be conducted with 30 individuals and will last about 60 minutes. The total annual burden hours are estimated to be 5,542 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in this project. The total annual cost burden is estimated to be $185,712.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection method	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
NGC Evaluation Survey	40,220	1	8/60	5,363
Focus Groups	99	1	1.5	149
Key Informant Interviews	30	1	1	30
Total	40,349	NA	NA	5,542

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection method	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
NGC Evaluation Survey	40,220	5,363	$33.51	$179,714
Focus Groups	99	149	33.51	4,993
Key Informant Interviews	30	30	33.51	1,005
Total	40,349	5,542	NA	185,712

*Based upon the mean of the average wages for healthcare practitioner and technical occupations (29–0000) presented in the National Compensation Survey: Occupational wages in the United States, May 2009, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government for this one year project. The total cost is estimated to be $350,000 to conduct the one-time survey, 11 focus groups, and 30 key informant interviews and to analyze and present their results. This amount is the contract total for AFYA's contract with AHRQ to evaluate the NGC. This amount includes the costs for project development and management ($70,000 or 20% of the entire contract amount); data collection activities ($105,000 or 30% of the entire contract amount); data processing and analysis ($70,000 or 20% of the entire contract amount); and administrative support activities and reporting ($105,000 or 30% of the entire contract amount).

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development and Management	$70,000	$70,000
Data Collection Activities	105,000	105,000
Data Processing and Analysis	70,000	70,000
Administrative Support and Reporting	105,000	105,000
Total	350,000	350,000

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 1, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–23110 Filed 9–16–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State Personal Responsibility Education Program (PREP).

OMB No.: 0970–0380.

Description: The Patient Protection and Affordable Care Act, 2010, also known as health care reform, amends Title V of the Social Security Act (42 U.S.C. 701 *et seq.*) as amended by sections 2951 and 2952(c), by adding section 513, authorizing the Personal Responsibility Education Program (PREP). The President signed into law the Patient Protection and Affordable Care Act on March 23, 2010, Public Law 111–148, which adds the new PREP

formula grant program. The purpose of this program is to educate adolescents on both abstinence and contraception to prevent pregnancy and sexually transmitted infections (STIs); and at least three adulthood preparation subjects. The Personal Responsibility Education grant program funding is available for fiscal years 2010 through 2014.

An emergency request is being made to solicit comments from the public on paperwork reduction as it relates to ACYF's receipt of the following documents from applicants and awardees: Application for Mandatory Formula Grant State Plan; Performance Progress Report.

Respondents: 50 States and 9 Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands and Palau

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application, to include program narrative	59	1	24	1,416
State Plan	59	1	40	2,360
Performance Progress Reports	59	5	16	4,720

Estimated Total Annual Burden Hours: 8,496

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 14, 2010

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–23200 Filed 9–16–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10267, CMS–10137, CMS–10237, CMS–R–240, CMS–10316 and CMS–10305]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506I(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* QualityNet Identity Management System (QIMS) Account Form; *Use:* The QualityNet Identity Management System (QIMS) account registration form must be completed by any new persons needing access to Consolidated Renal Operations in a Web Enabled Network (CROWNWeb.) The 8,561 existing accounts owners will not have to reregister for new user accounts. The CROWNWeb user community is composed of CMS employees, ESRD Network Organization staff and dialysis facilities staff. The CROWNWeb system is the system used as the collection point of data necessary for entitlement of ESRD patients to Medicare benefits and Federal Government monitoring and assessing of quality and type of care provided to renal patients. The data collected in QIMS will provide the necessary security measures for creating and maintaining active CROWNWeb user accounts and collection of audit trail information required by the CMS Information Security Officers (ISSO). *Form Number:* CMS–10267 (OMB#: 0938–1050); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 7,439; Total *Annual Responses:* 7,439; *Total Annual Hours:* 3,720. (For policy questions regarding this collection contact Michelle Tucker at 410–786–0376. For all other issues call 410–786–1326.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Application for Prescription Drug Plans (PDP); Application for Medicare Advantage Prescription Drug (MA–PD); Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application for Prescription Drug Coverage; *Use:* The Applications for Part D sponsors to offer qualified prescription drug coverage are completed by entities seeking approval to offer Part D benefits under the Medicare Prescription Drug Benefit

program established by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and is codified in section 1860D of the Social Security Act.

Effective January 1, 2006, the Part D program established an optional prescription drug benefit for individuals who are entitled to Medicare Part A or enrolled in Part B. In general, coverage for the prescription drug benefit is provided through PDPs that offer drug-only coverage, or through MA organizations that offer integrated prescription drug and health care coverage (MA–PD plans). PDPs must offer a basic drug benefit. Medicare Advantage Coordinated Care Plans (MA–CCPs) must offer either a basic benefit or may offer broader coverage for no additional cost. Medicare Advantage Private Fee for Service Plans (MA–PFFS) may choose to offer a Part D benefit. Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Plans may also provide a Part D benefit. If any of the contracting organizations meet basic requirements, they may also offer supplemental benefits through enhanced alternative coverage for an additional premium.

The information will be collected under the solicitation of proposals from PDP, MA–PD, Cost Plan, PACE, and EGWP applicants. The collected information will be used by CMS to: (1) ensure that applicants meet CMS requirements, (2) support the determination of contract awards. *Form Number:* CMS–10137 (OMB#: 0938–0936); *Frequency:* Once; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 295; Total *Annual Responses:* 295; *Total Annual Hours:* 3,576. (For policy questions regarding this collection contact Linda Anders at 410–786–0459. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Part C Medicare Advantage Application and 1876 Cost Plan Expansion Application; *Use:* The Balanced Budget Act of 1997 (BBA) established a new "Part C" in the Medicare statute (sections 1851 through 1859 of the Social Security Act (the Act) which provided for a Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for most individuals with end-stage renal disease (ESRD), could elect to receive benefits either through the Original Medicare Program or an M+C plan, if one was offered where he or she lived. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), established the Medicare Prescription Drug Benefit Program (Part D) and made revisions to the provisions of Medicare Part C, governing what is now called the Medicare Advantage (MA) program (formerly Medicare+Choice) Organizations wishing to provide healthcare services under MA and/or MA–PD plans must complete an application, file a bid, and receive final approval from CMS. Existing MA plans may expand their contracted area by completing the Service Area Expansion (SAE) application. Any current Cost Plan Contractor that wants to expand its Medicare cost-based contract with CMS under Section 1876 of the Act, as amended by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and subsequent legislation can complete the application. *Form Number:* CMS–10237 (OMB#: 0938–0935); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 870; Total *Annual Responses:* 870; *Total Annual Hours:* 15,696. (For policy questions regarding this collection contact Letticia Ramsey at 410–786–5262. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Prospective Payments for Hospital Outpatient Service and Supporting Regulations is 42 CFR 413.65; *Use:* Section 1833(t) of the Social Security Act (the Act) requires the Secretary to establish a prospective payment system (PPS) for hospital outpatient services. Successful implementation of an outpatient PPS requires that CMS distinguish facilities or organizations that function as departments of hospitals from those that are freestanding, so that CMS can determine which services should be paid under the outpatient prospective payment system (OPPS), the clinical laboratory fee schedule, or other payment provisions applicable to services furnished to hospital outpatients.

CMS will use the information from sections 413.65(b)(3) and (c) to determine whether a facility or organization acquired by a main provider should be treated as provider-based for Medicare certification, coverage, and payment purposes or whether a main provider has had a material change in its relationship to a provider-based facility or organization that affects the provider-based status of the facility or organization. In addition, section 1866(b)(2) of the Act authorizes hospitals and other providers to impose deductible and coinsurance charges for facility services, but does not allow such charges by facilities or organizations which are not provider-based. Implementation of this provision requires that CMS have information from the required reports, so it can determine which facilities are provider-based. *Form Number:* CMS–R–240 (OMB#: 0938–0798); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 905; *Total Annual Responses:* 500,405; *Total Annual Hours:* 26,563 (For policy questions regarding this collection contact Daniel Schroder at 410–786–7452. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Prescription Drug Plan (PDP) and Medicare Advantage Prescription Drug Plan (MA–PD) Disenrollment Reasons Survey; *Use:* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires the collection and reporting performance data for Part D prescription drug plans. Specifically, the MMA under section 1860D–4 (Beneficiary Protections for Qualified Prescription Drug Coverage) requires CMS to conduct consumer satisfaction surveys regarding PDPs and MA–PDs. CMS will use the survey to obtain information regarding beneficiaries' reasons for disenrolling from their chosen Part D plan, and their expectations relative to provided benefits and services. Determining the reasons for disenrollment from Part D plans will provide important information regarding potential dissatisfaction with some aspect of the plan, such as access, service, cost, quality of care, or the benefits provided. This information can be used by CMS to improve the design and functioning of the Part D program. *Form Number:* CMS–10316 (OMB#: 0938–New); *Frequency:* Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 120,000; *Total Annual Responses:* 120,000; *Total Annual Hours:* 34,800. (For policy questions regarding this collection contact Phyllis Nagy at 410–786–6646. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Part C and Part D Data Validation (42 CFR 422.516g and 423.514g); *Use:* Organizations contracted to offer Medicare Part C and Part D benefits are required to report data to the Centers for

Medicare & Medicaid Services on a variety of measures. In order for the data to be useful for monitoring and performance measurement, the data must be reliable, valid, complete, and comparable among sponsoring organizations. To meet this goal, CMS is developing reporting standards and data validation specifications with respect to the Part C and Part D reporting requirements. These standards will provide a review process for Medicare Advantage Organizations (MAOs), Cost Plans, and Part D sponsors to use to conduct data validation checks on their reported Part C and Part D data. *Form Number:* CMS–10305 (OMB#: 0938–NEW); *Frequency:* Yearly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 634; *Total Annual Responses:* 634; *Total Annual Hours:* 237,127. (For policy questions regarding this collection contact Terry Lied at 410–786–8973. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on October 18, 2010. OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov*.

Dated: September 13, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–23160 Filed 9–16–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Black Lung Clinics Program Database (OMB No. 0915–0292)—Revision

The Office of Rural Health Policy (ORHP), Health Resources and Services Administration, conducts an annual data collection of user information for the Black Lung Program. This has been ongoing with OMB approval since 2004. The purpose of the Black Lung Clinic Program is to improve the health status of coal workers by providing services to minimize the effects of respiratory and pulmonary impairments of coal miners, treatment procedures required in the management of problems associated with black lung disease which improves the quality of life or the miner and reduces economic costs associated with morbidity and mortality arising from pulmonary diseases. The purpose of collecting this data is to provide HRSA with information on how well each grantee is meeting the needs of active and retired miners in the funded communities.

Data from the annual report will provide quantitative information about the programs, specifically: (a) The characteristics of the patients they serve (gender, age, disability level, occupation type); (b) the characteristics of services provided (medical encounters, non-medical encounters, benefits counseling, or outreach); and (c) the number of patients served. The annual report will be updated to include a qualitative measure on the percent of patients that show improvement in pulmonary function. This assessment will provide data useful to the program and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993. It will also ensure that funds are being effectively used to provide services to meet the needs of the target population.

There has been a modification to a long term Black Lung performance measures. The new measure will be the evaluation of the quality of spirometry performed by the clinic. The evaluation of coal miners for the presence of disabling pneumoconiosis depends on well performed, valid and accurate lung function testing. There is no additional burden on the grantee to collect this information since the grantees are currently collecting this data.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Database	15	1	1	10	150

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: September 13, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–23260 Filed 9–16–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: New Runaway and Homeless Youth Management Information System (NEORHYMIS)

OMB No.: 0970–0123.

Description: The Runaway and Homeless Youth Act, as amended by Public Law 106–71 (42 U.S.C. 5701 *et seq.*), mandates that the Department of Health and Human Services (HHS) report regularly to Congress on the status of HHS-funded programs serving runaway and homeless youth. Such reporting is similarly mandated by the Government Performance and Results Act. Organizations funded under the Runaway and Homeless Youth program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714–2) to meet certain data collection and reporting requirements. These requirements include maintenance of client statistical records on the number and the characteristics of the runaway and homeless youth, and youth at risk of family separation, who participate in the project, and the services provided to such youth by the project.

Respondents: Public and private, community-based nonprofit, and faith-based organizations receiving HHS funds for services to runaway and homeless youth.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth profile	536	153	0.25	20,502
Street Outreach Report	141	4,211	0.02	11,875.02
Brief Contacts	536	305	0.15	24,522
Turnaways	536	13	0.15	1,045.20
Data Transfer	536	2	0.50	536

Estimated Total Annual Burden Hours: 58,480.22.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: September 14, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–23253 Filed 9–16–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Recruitment and Screening for the Insight Into Determination of Exceptional Aging and Longevity (IDEAL) Study

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for the opportunity for public comment on proposed data collection projects, the National Institute on Aging (NIA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Recruitment and Screening for the Insight into Determination of Exceptional Aging and Longevity (IDEAL) Study. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The purpose of the project for is to conduct recruitment and screening for the IDEAL Study. A multifaceted recruitment approach will be used to reach the target audience in a wide variety of ways. Those who are interested in participating in the IDEAL study will be asked to complete a two stage recruitment process consisting of a telephone interview and a physical exam. The Stage One interview consists of questions concerning demographics, physical ability, health status, and medical conditions. Those who are eligible after completing the telephone interview will be asked to complete the second stage of the screening process. The physical examination is a modified version of the full BLSA assessment protocol consisting of the following components: general appearance; vital signs; chest and heart auscultation; sensory systems including vision, hearing, sensory proprioception, neuropathy and balance; and movement and strength of the upper and lower extremities. In addition the potential participant will also be asked to complete physical performance tests, cognitive exams, an electrocardiogram and a blood draw. *Frequency of Response:* Once. *Affected Public:* Individuals or households. *Type of Respondents:* Healthy individuals who are at least 80 years of age. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,500; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.833; and *Estimated Total Annual Burden Hours Requested:* 701. There is no annualized cost to respondents. There are no Capital costs to report. There are no Operating or Maintenance Costs to report.

Type of respondent	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Individuals who complete the phone interview	1,500	1	0.167	251
Individuals who complete the physical exam	*300	1	1.5	450

Type of respondent	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Totals	1,500			701

* These individuals are included in the 1,500 above.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or obtain a copy of the data collection plans and instruments, contact Dr. Luigi Ferrucci, Principal Investigator, NIA Clinical Research Branch, Harbor Hospital, 5th Floor, 3001 S. Hanover, Baltimore, MD 21225, or call this non-toll-free number (410) 350–3936 or E-mail your request including your address to: *Ferruccilu@grc.nia.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: September 8, 2010.

Melissa Fraczkowski,

Project Clearance Liason, NIA, National Institutes of health.

[FR Doc. 2010–23263 Filed 9–16–10; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL TRADE COMMISSION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1356–N]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Inspector General

Medicare Program; Workshop Regarding Accountable Care Organizations, and Implications Regarding Antitrust, Physician Self-Referral, Anti-Kickback, and Civil Monetary Penalty (CMP) Laws

AGENCY: Federal Trade Commission (FTC), Centers for Medicare & Medicaid Services (CMS), and Office of the Inspector General (OIG), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public workshop hosted by the Federal Trade Commission (FTC), the Centers for Medicare & Medicaid Services (CMS), and the Office of the Inspector General (OIG) of the Department of Health and Human Services (DHHS). This workshop will include panel discussions and a listening session on certain legal issues related to Accountable Care Organizations (ACOs). Physicians, physician associations, hospitals, health systems, consumers, and all others interested in ACOs are invited to participate, in person or by calling into the teleconference. The meeting is open to the public, but attendance is limited to space and teleconference lines available. An agenda will be posted on the CMS Web site at *http://www.cms.gov/center/physician.asp* prior to the session.

DATES: *Meeting Date:* The public workshop will be held on Tuesday, October 5, 2010 from 9 a.m. until 4:30 p.m. Eastern Daylight Time (E.D.T.).

Deadline for Meeting Registration and Request for Special Accommodations: Registration opens on September 16, 2010. Registration must be completed by 5 p.m. e.d.t. on September 27, 2010. Requests for special accommodations must be received by 5 p.m. e.d.t. on September 27, 2010.

Deadline for Submission of Written Comments or Statements for Discussion at the Workshop: Written comments or statements to be considered for discussion at the Workshop may be sent via mail or electronically to the address specified in the **ADDRESSES** section of this notice and must be received by 5 p.m. E.D.T. on September 27, 2010.

ADDRESSES: *Meeting Location:* The public workshop will be held in the main auditorium of the Central Building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Persons interested in attending the meeting in person must register by completing the on-line registration via the CMS Web site at *http://www.cms.hhs.gov/apps/events/event.asp?id=607* Individuals who require special accommodations should send an e-mail request to *thomas.carey@hhs.gov* or via regular mail to the address specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Information regarding attending via teleconference and Web conference will be posted on the CMS Web site at *http://www.cms.gov/center/physician.asp* prior to the session.

Written Comments or Statements: Written comments or statements may be sent via e-mail to *ACOlegalissues@cms.hhs.gov* or sent via regular mail to: Attn: ACO Legal Issues, Mail Stop C5–15–12, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

All persons planning to make a statement in person at the afternoon listening session are urged to submit statements in writing in advance of the listening session and should subsequently submit the information electronically by the timeframe specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Kristin Bohl at (410) 786–8680, for issues specific to CMS.

Elizabeth Jex at (202) 326–3273, for issues specific to FTC.

Patrice Drew at (202) 619–1368, for issues specific to OIG.

Thomas Carey at (410) 786–4560, for general and logistical issues. You may also send general and logistical inquiries about this workshop via e-

mail to *thomas.carey@hhs.gov* or via regular mail at Centers for Medicare & Medicaid Services, Mail Stop C5–15–12, 7500 Security Boulevard, Baltimore, MD 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Background

The Affordable Care Act seeks to improve the quality of health care services and to lower health care costs by encouraging providers to create integrated health care delivery systems. These integrated systems will test new reimbursement methods intended to incentivize providers to enhance health care quality and lower costs. One important delivery system reform is the Affordable Care Act's Shared Savings Program, section 3022 of the Affordable Care Act, which promotes the formation and operation of Accountable Care Organizations (ACOs). Under this provision, "groups of providers . . . meeting the criteria specified by the Secretary may work together to manage and coordinate care for Medicare . . . beneficiaries through an [ACO]." An ACO may receive payments for shared savings if the ACO meets certain quality performance standards established by the Secretary. In addition, under section 3021 of the Affordable Care Act, the Secretary is authorized to test whether ACOs improve the quality of care for Medicare beneficiaries and reduce unnecessary costs for the Medicare program.

A variety of legal regimes—such as the antitrust laws, the physician self-referral prohibition (section 1877 of the Social Security Act (the Act)), the Federal anti-kickback statute (section 1128B(b) of the Act), and the civil monetary penalty (CMP) law (sections 1128A(b)(1) and (2) of the Act)—will apply to ACOs, including those participating in the Medicare Shared Savings Program pursuant to section 3022 of the Affordable Care Act. The Federal Trade Commission (FTC) together with the Department of Justice Antitrust Division enforce the Federal antitrust laws; the Centers for Medicare & Medicaid Services (CMS) has primary enforcement authority for the physician self-referral prohibition; and the Office of the Inspector General (OIG) of the Department of Health and Human Services (DHHS) enforces the anti-kickback statute and CMP law and imposes CMPs for knowing violations of the physician self-referral prohibition. Each of these agencies recognizes the importance of evaluating how to apply these laws to the creation and operation of ACOs. All of these laws also are relevant to the regulations that CMS is developing to implement the Medicare Shared Savings Program.

In addition, an ACO may wish to contract with payers in the private health care market, as well as with CMS. Experience has shown that integrating health care delivery among independent providers is a complex process that requires a substantial commitment of health care providers' resources and time.[1] Recent commentary suggests that, because of the resources and time required to integrate independent provider practices, health care providers are more likely to integrate their care delivery for Medicare and Medicaid beneficiaries if they also use the same delivery system for patients covered by health care insurance in the private market. The potential for ACOs to operate in both public and private insurance markets further supports the need to explore the application to ACOs of the laws discussed above for which the FTC, CMS, and OIG have enforcement responsibilities.

II. Workshop Format, Discussion Topics, and Solicitation of Public Comment

A. Format of Panel Discussions and Listening Session

To explore these issues, the FTC, CMS, and OIG will be hosting a public workshop on October 5, 2010 to obtain information from industry stakeholders who have an interest in, or experience with, the development and operation of ACOs. One key focus of the workshop will be to assess how the variety of possible ACO structures in different health care markets could affect the prices and the quality of health care delivered to privately insured consumers, as well as to Medicare and Medicaid beneficiaries. Another key focus will be whether and, if so, how the requirements of the laws discussed above could or should be addressed in the regulations that CMS is developing for the Medicare Shared Savings Program. Finally, the workshop will focus on whether and, if so, to what extent any safe harbors, exceptions, exemptions, or waivers from the laws discussed above may be warranted.

1. FTC Panel Discussions

The two morning sessions will be devoted to exploring antitrust issues through moderated panel discussions. Panelists for both antitrust panels will include health care providers with integration efforts planned and underway, payers (insurers, employers, and consumers), and experts in health care policy.

At the first session, the panelists will address circumstances under which collaboration among independent health care providers in an ACO (not including a merger), permits ACO providers to engage in joint price negotiations with private payers without running the risk of engaging in illegal price fixing under the antitrust laws. In particular, the panel will address the indicia of clinical integration sufficient to indicate that an ACO is likely to enable participating providers to improve the quality of their health care services and whether joint price negotiation is reasonably necessary to achieve these efficiencies. Such indicia could include, for example, the degree to which the providers engage in integrated activities, the information processes used to ensure that providers are coordinating patient care, incentives for providers to adhere to evidence-based care protocols such as financial risk sharing, and/or financial and resource investments made by providers. The panel also will address options for dealing with Medicare ACOs that fail to achieve CMS-required quality performance standards and that, therefore, might no longer be eligible for Medicare Shared Savings Program payments under section 3022 of the Affordable Care Act.

At the second morning session, the panelists will explore ways to encourage formation of multiple ACOs among otherwise independent providers so that competition among ACOs in any given geographic market will drive improved quality and affordability of health care. For example panelists will explore: (1) The analysis of arrangements where providers or facilities are exclusive, or non-exclusive, to an ACO; (2) the impact, if any, of risk-based contracting (for example, global payments and/or capitated rates) on market power assessments; (3) ways to assess whether formation of an ACO among independent providers may allow the ACO to increase price and reduce the quality of care; and (4) the financial, utilization, outcome, and patient experience data necessary to monitor and measure the impact of an ACO on prices and quality in the relevant markets.

2. CMS and OIG Panel Discussion and Listening Session

The afternoon will consist of two separate sessions regarding how ACOs will interact with the physician self-referral prohibition, the anti-kickback statute, and the CMP law in order to

[1] Stephen M. Shortell, Lawrence P. Casalino, Elliott Fisher, "Implementing Accountable Care Organizations," Policy Brief (May 2010), available at: *http://www.law.berkeley.edu/files/chefs/Implementing_ACOs_May_2010.pdf.*

better inform CMS and OIG (HHS Agencies) decision-making regarding the application of these laws to ACOs. The first session will be a moderated panel discussion of industry stakeholders, including representatives of providers, suppliers, and health policy experts who will focus on the discussion topics listed below.

During the second session, a listening session, there will be an opportunity for other attendees to provide brief comments on the same topics either in person or via the teleconference, as time permits. An agenda for the moderated panel discussions and the listening session will be released at a later time.

B. Discussion Topics and Solicitation of Public Comment

The FTC and the HHS Agencies are interested in comments addressing the intersection of these laws and the various business models envisioned for ACOs with both the antitrust laws and the fraud and abuse laws. The FTC and the HHS Agencies are interested in details from the public concerning the types of contractual and financial relationships under existing or planned ACOs that might trigger or implicate the antitrust laws, the physician self-referral prohibition and/or the anti-kickback statute (for example, compensation and ownership relationships), as well as payment arrangements that might implicate the CMP law (for example, gainsharing structures). In addition to obtaining information on the planned legal structures or business models of ACOs, the HHS Agencies seek comments addressing whether the public believes that the incentive payments or shared savings to ACOs, or the distribution of these payments to the physicians or other providers and suppliers in the ACO, would trigger or implicate the physician self-referral prohibition, the anti-kickback statute, and/or the CMP law. Much of the discussion to date has involved the integration of group practices, hospitals, and networks of physicians or other professionals into ACOs, and we are interested in how these types of arrangements might be constrained by these laws. We are asking the public to describe in detail any potential impediments, including an explanation as to how current physician self-referral prohibition exceptions or anti-kickback statute safe harbors might be inadequate to address the types of financial arrangements that will be created by ACOs. We are also interested in explanations about the extent to which these laws currently accommodate integration and ways in which existing exceptions and safe harbors might be tailored to further address integration.

1. Exercise of the Section 3022 Affordable Care Act Waiver Authority

Section 3022 of the Affordable Care Act gives the Secretary authority to waive such requirements of Title XVIII as well as sections 1128A and 1128B of the Act as may be necessary to carry out the provisions of section 3022 of the Affordable Care Act. The HHS Agencies are interested in hearing from the public whether a waiver, to the extent granted, should apply only to the incentive payments distributed to the ACOs and participating physicians (and other participating suppliers or ACO professionals), or whether it would be necessary to create a broader waiver that would also apply to other financial relationships created by ACOs that participate in the Medicare Shared Savings Program under section 3022 of the Affordable Care Act. If the public believes that a broader waiver is necessary, the HHS Agencies request that interested stakeholders provide support for this view. For example, if the public recommends a waiver that applies to all contractual service relationships between ACOs and ACO professionals, the HHS Agencies are interested to hear why this is necessary and what safeguards should be required as part of such a broad waiver.

2. Creation of New Stark Exception and Anti-Kickback Safe Harbor

An alternative to the use of the Secretary's waiver authority under section 3022 of the Affordable Care Act would be for the Secretary to use her authority under section 1877(b)(4) of the Act to create a new shared savings/incentive payment exception to the physician self-referral prohibition. Similarly, OIG could consider a new safe harbor under section 1128B(b)(3) of the Act. CMS has attempted to address this issue in prior proposed rulemaking under section 1877 of the Act, and the HHS Agencies are interested in the public's recommendations for how a meaningful exception and safe harbor for the incentive payments related to the newly created ACOs could be crafted. In particular, they are interested in how a physician self-referral exception could be designed given that any new exception under section 1877 of the Act must present no risk of program or patient abuse.

C. Content and Timeframe for Submission of Written Comments or Statements

Written comments or statements should not include any sensitive personal information, such as an individual's Social Security number; date of birth; driver's license number or other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records and other individually identifiable health information.

Written comments or statements will be accepted and considered for discussion at the meeting if they are received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice.

III. Registration Instructions

For security reasons, any persons wishing to attend this meeting must register by the date listed in the **DATES** section of this notice. Persons interested in attending the meeting in person must register by completing the on-line registration via the designated Web site at *http://www.cms.hhs.gov/apps/events/event.asp?id=607*. The on-line registration system will generate a confirmation page to indicate the completion of your registration. Please print this page as your registration receipt.

Individuals may also participate in the listening session by teleconference or webcast. Information regarding attending via teleconference and Web conference will be posted on the CMS Web site at *http://www.cms.gov/center/physician.asp* prior to the session.

An audio download and transcript of the listening session will be available 2 weeks after completion of the listening session through the CMS Web site Physician Center Spotlights at *http://www.cms.gov/center/physician.asp*.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. The on-site check-in for visitors will begin at 7:30 a.m. E.D.T. Please allow sufficient time to complete security checkpoints.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and

instructions will be issued after the vehicle inspection.

• Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 90 minutes prior to the convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building. Seating capacity is limited to the first 350 registrants.

Authority: Section 3022 of the Affordable Care Act.

Dated: September 13, 2010.

By Direction of the Commission.

Donald S. Clark,

Secretary, The Federal Trade Commission.

Dated: September 9, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 13, 2010.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2010–23340 Filed 9–16–10; 8:45 am]

BILLING CODE 6750–01–P; 4120–01–P; 4152–01–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: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: October 12–13, 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: Richard Ingraham, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk Prevention and Intervention Addictions: Overflow.

Date: October 14–15, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pathogens and Symbiotes.

Date: October 19–20, 2010.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard G Kostriken, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Mechanisms and Circuits Underlying Arousal.

Date: October 19–20, 2010.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristin Kramer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Toxicology.

Date: October 19, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–142: Interface of the Life and Physical Sciences.

Date: October 20–22, 2010.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services Organization and Delivery Study Section.

Date: October 20–21, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins Hotel, 999 California Street, San Francisco, CA 94108.

Contact Person: Kathy Salaita, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–451–8504, *salaitak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–08–062: Alzheimer's Disease Pilot Clinical Trials.

Date: October 22, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Estina E Thompson, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–496–5749, *thompsone@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Biomedical Technology Research Resource.

Date: October 24–26, 2010.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hill Hotel, 25 Charles Street, Boston, MA 02114.

Contact Person: Lee Rosen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer and Musculoskeletal Imaging Applications.

Date: October 25, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Eileen W Bradley, DSC, Chief, SBIB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Grant Applications: Non-HIV Microbial Vaccine Development.

Date: October 25, 2010.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery Systems, and Nanotechnology.

Date: October 25–26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Computational Modeling and Sciences for Biomedical and Clinical Applications.

Date: October 25, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn San Francisco Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Devices.

Date: October 25, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberto J Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry and Biophysics.

Date: October 25–26, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology.

Date: October 25–26, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: J Scott Osborne, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vaccines Against Microbial Diseases.

Date: October 25, 2010.

Time: 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.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: September 13, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23275 Filed 9–16–10; 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 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 thediscussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms and Therapeutics for Neurodegenerative Diseases.

Date: September 28, 2010.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@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.

(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: September 13, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23270 Filed 9–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 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 materials,

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 Neurological Disorders and Stroke Special Emphasis Panel; EUREKA.

Date: November 8, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel, 200 West Kinzie Street, Chicago, IL 60654.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, DHHS/NIH/NINDS/DER/SRB, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892, 301–496–0660, *Benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 10, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23268 Filed 9–16–10; 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 Fellowships and Dissertations.

Date: October 13, 2010.

Time: 11 a.m. to 12:30 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, 301–443–3599, *elight@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel Developing & Advance Centers for Intervention and Services Research.

Date: October 22, 2010.

Time: 8 a.m. to 5 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: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov.*

(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: September 10, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23265 Filed 9–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Ethics Subcommittee (ES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned subcommittee:

Times and Dates: 1 p.m.–5 p.m., October 7, 2010; 8:30 a.m.–12:30 p.m., October 8, 2010.

Place: CDC, Thomas R. Harkin Global Communications Center, Distance Learning Auditorium, 1600 Clifton Road, NE., Atlanta, GA 30333. This meeting is also available by teleconference. Please dial (877) 928–1204 and enter code 4305992.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people. To accommodate public participation in the meeting, a conference telephone line will be available. The public is welcome to participate during the public comment. The public comment periods are tentatively scheduled for 4 p.m.–4:15 p.m. on October 7, 2010 and from 12 p.m.–12:15 p.m. on October 8, 2010.

Purpose: The ES will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matter To Be Discussed: Agenda items will include the following topics: Plans for obtaining public comment on the ventilator guidance document; efforts to support state, tribal, local and territorial health departments address ethical issues in the practice of public health; and ethical issues relating to patient notification following infection control lapses.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: For security reasons, members of the public interested in attending the meeting should contact Drue Barrett, PhD, Designated Federal Official, ACD, CDC–ES, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone (404) 639–4690. E-mail: *dbarrett@cdc.gov.* The deadline for notification of attendance is October 1, 2010.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 10, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–23228 Filed 9–16–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2010

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Final Document.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the publication of the following document entitled "NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2010." The document can be found at

http://www.cdc.gov/niosh/docs/2010-167/.

Background: The NIOSH Alert: Preventing Occupational Exposures to Antineoplastic and Other Hazardous Drugs in Health Care Settings was published in September 2004 (*http://www.cdc.gov/niosh/docs/2004-165/*). From that time until June 2007, approximately 60 new drugs have received FDA approval and approximately 60 drugs have received special warnings (usually black box warnings) based on reported adverse effects in patients. An additional 18 drugs were included from the updated NIH Hazardous Drug List. From this list of approximately 150 drugs, 62 drugs were determined to have one or more characteristic of a hazardous drug and published for comment in NIOSH Docket Number 105.

After expert panel review, public review and comment, input from stakeholders and review of the scientific literature NIOSH proposed a second, draft list of hazardous drugs that was published in NIOSH Docket 105A. The second, draft list identified 24 drugs that fit the NIOSH definition of hazardous drugs. The second draft list also proposed removing Bacillus Calmette-Guerin (BCG), based on additional comments received by NIOSH.

Following the second Federal Register Notice, BCG was reinstated to the list and a total of 21 new drugs were added to the 2004 list in Appendix A of the Alert.

This guidance document does not have the force and effect of law.

FOR FURTHER INFORMATION CONTACT: Barbara MacKenzie, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C26, Cincinnati, OH 45226, Telephone (513) 533–8132, e-mail *hazardousdrugs@cdc.gov.*

Reference: NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2010. Web address for this document: *http://www.cdc.gov/niosh/docs/2010-167/.*

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2010–23239 Filed 9–16–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Food and Drug Administration

[Docket No. FDA–2010–N–0308]

Parallel Review of Medical Products

AGENCIES: Centers for Medicare and Medicaid Services; Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) and the Centers for Medicare and Medicaid Services (CMS) are considering establishing a process for overlapping evaluations of premarket, FDA-regulated medical products when the product sponsor and both agencies agree to such parallel review. This process will serve the public interest by reducing the time between FDA marketing approval or clearance decisions and CMS national coverage determinations (NCDs). The agencies are establishing a docket to receive information and comment from the public on what products would be appropriate for parallel review by the two agencies, what procedures should be developed, how a parallel review process should be implemented, and other issues related to the effective operation of the process. The agencies are also announcing their intent to create a pilot program for parallel review of medical devices. The pilot program will begin after both agencies have reviewed the public comments on this notice. A memorandum of understanding (MOU) concerning the exchange of data and information has been completed between the two agencies. See *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/DomesticMOUs/ucm217585.htm.*

DATES: Submit either electronic or written comments by December 16, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

General questions about parallel review: Peter Beckerman, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4830, e-mail: *peter.beckerman@fda.hhs.gov*, or Tamara Syrek Jensen, Centers for Medicare and Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, e-mail: *Tamara.Syrekjensen@cms.hhs.gov.*

For device sponsors interested in requesting voluntary parallel review: Markham C. Luke, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–5550, e-mail: *markham.luke@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA and CMS share a common interest in improving the health of patients through the availability of safe, effective, and affordable medical products and fostering medical product innovations.

The mission of the FDA is to protect and promote the public health. It accomplishes this task, in part, by the following:

- Assuring the safety, efficacy, and quality of human drugs, biological products, and medical devices;
- Fostering innovations to make medical products safer and more effective; and
- Helping health care providers and the public get the accurate, science-based information they need to use medical products to improve public health.

The mission of CMS is to ensure effective, up-to-date Medicare coverage and to promote the continual improvement of the quality care for its beneficiaries. CMS accomplishes this mission by continuing to transform and modernize America's health care system, in part, by the following:

- Fostering accurate and predictable payments,
- Ensuring high-value health care,
- Promoting understanding of CMS programs among beneficiaries, the health care community, and the public.

Through coordinated decisions regarding medical products, FDA and CMS can affect public health in critical ways: FDA in determining the safety and effectiveness of those products and CMS in providing beneficial coverage and appropriate payment for covered items and services involving those products. Both agencies believe they should address the growing need to improve public health by speeding consumer access to and spurring the development of new, affordable, reliable, safer, and more effective medical products and services. FDA and

CMS are working together to identify areas in which they can collaborate to achieve these goals and parallel review provides one such opportunity.

A. Innovative Medical Products are Difficult to Develop

The recent boom in new basic science discoveries has generated hope for the development of new treatments and diagnostics for serious illnesses. However, there is concern as to whether there are adequate resources available for bringing the most innovative medical devices to market. The number of new drug and biologic applications submitted to FDA has been declining for several years for reasons not wholly clear. Inefficiencies and rising costs appear to account for only part of the reluctance to embark on new medical product development. The limited predictability of market access may also hinder investment in the development of innovative therapies and diagnostics. Reducing the time between marketing approval or clearance and obtaining third party payment ("approval-to-payment" time) can produce savings for sponsors and improve public health through overlapping medical review of data/evidence leading to more timely patient access to those new products.

Currently, medical product development and coverage and payment of new therapies and diagnostics generally occur in a serial manner. First, a new medical product is submitted to FDA, which determines whether it meets applicable safety and effectiveness standards for commercial marketing. Next, the company seeks coverage from the payer who in turn determines the payment rate for the product.

Timely access to innovative medical technologies has been identified as a significant issue in the delivery of high quality health care. Manufacturers of innovative medical products have said that after undergoing the FDA approval process the availability of their products to consumers is often slow because, in order to obtain coverage and payment from third-party payers, the manufacturers must go through a second review process by such payers. This is in part because the materials submitted by manufacturers for FDA review are, for various reasons, not generally made available to third-party payers prior to FDA approval or clearance. In addition, the materials submitted by manufacturers to FDA may not adequately address the issues of importance to payers, such as community or home based use outside of clinical trial protocols, generalizability of the results to target populations that may have not been studied, and the incremental clinical utility of these products compared to currently available technologies.

Although CMS is only one of many third-party payers and provides insurance benefits to select populations, the agency plays a leading role in healthcare through its coverage and payment decisions. Because many third-party payers tend to follow CMS' lead, a positive national coverage or payment decision by CMS often promotes rapid adoption of a new therapy by the medical community. However, a positive coverage decision after a long time lag following FDA approval or clearance can delay consumer access to new medical products.

B. Differences in FDA and CMS Review

FDA premarket review and CMS national coverage determinations differ significantly. Each process operates under different statutory standards and each asks different questions to meet its respective mandates. The FDA premarket review generally assesses the safety and effectiveness of these medical products. Even within FDA's review processes, there are differences in types of evaluation depending upon the application under consideration (for example, premarket approval applications (PMAs) must meet standards different from premarket notifications (510(k)s)).

CMS serves a different function by providing health insurance to protect the nation's aged and disabled persons from the substantial burdens of illness. Under section 1862(a)(1) of the Social Security Act (the Act), CMS makes determinations regarding the coverage of specific items and services. In short, CMS must make multiple decisions: It must decide what items and services it can and should pay for; how it should accomplish the payment; and how much to pay.

CMS' evaluation of medical products depends on the type of request. For most NCDs, CMS evaluates whether a medical product or service is reasonable and necessary to diagnose or treat an illness or injury affecting the Medicare population. This evaluation includes review of appropriate outcomes data, such as whether the product provides improved, equivalent, or complementary health outcomes in the Medicare population as compared to alternative treatments or diagnostics already covered by the program. CMS may also evaluate medical product indications that have not been approved or cleared by FDA, so-called unapproved or off-label uses.

C. Parallel Review—Opportunity To Speed Patient Access To Beneficial Medical Products

Under current practice, CMS does not routinely undertake an NCD unless it receives a complete formal external request. At times, CMS may also internally generate a request. Because local fiscal intermediaries, carriers, or Medicare Administrative Contractors are able to make decisions within their own jurisdictions, Medicare coverage and payment can occur in the absence of a NCD, such as from the initial market availability of a new technology.

CMS usually begins its national coverage decision making process for FDA-regulated medical products after they have been approved or cleared by FDA. Because FDA does not approve or clear all the marketing applications it reviews, such serial processing ensures that CMS does not expend its limited resources assessing medical products that never reach the U.S. market. In addition, the CMS NCD process is subject to strict statutory time limits (9 to 12 months from the opening to publication of the final decision) that cannot be extended if a manufacturer should encounter an unexpected delay in obtaining FDA approval or clearance. However, this serial review process has been subject to criticism because it potentially causes delay in consumer access to beneficial medical products. Overlapping evaluations by FDA and CMS for innovative products could speed consumer access to those new products by reducing the time span between marketing approval or clearance decisions and national coverage/payment determinations.

From time to time CMS finds that developers of new technology fail to recognize the differences between the regulatory requirements of FDA and CMS. They may undertake clinical studies that are designed to address FDA questions but do not adequately address CMS questions concerning the impact of the technology on Medicare beneficiary health outcomes. This omission can slow the developer's quest for Medicare coverage. We believe that a parallel review process can furnish an opportunity to educate developers regarding clinical study designs that are more likely to simultaneously address both FDA and CMS questions.

To potentially accelerate consumer access to new, particularly innovative, safe and effective medical products, FDA and CMS intend to establish a process for parallel review. Parallel review could also create incentives for venture capitalists and companies to increase their investment in innovative

medical products by reducing the time to return on investment for those products eligible for parallel review.

The agencies envision parallel review as a collaborative effort in which CMS will begin its NCD-related review process to determine whether the product is reasonable and necessary for the Medicare population while FDA is completing its premarket review. However, before developing and implementing such a process, the agencies believe that important issues must be resolved. For example, to avoid CMS reaching a coverage determination deadline before FDA has completed its review process and to minimize the possibility that CMS will begin its coverage process for a product that is subsequently not approved or cleared by FDA, the CMS process and FDA process should be carefully staged. FDA and CMS also seek comment on whether they should establish a voluntary process to allow companies to meet with both agencies to develop clinical trial protocols that would meet each agency's respective statutory standard rather than potentially conducting separate clinical studies.

This notice provides the first opportunity for the public to comment on these issues. The public will have a second opportunity to provide input should the agencies subsequently issue, as they currently intend, a joint draft guidance or other appropriate documents, describing the proposed process. The agencies envision that the decision to undertake the parallel review process with respect to a specific product will be at the request of the manufacturer and with the agreement of both agencies, thus making the process voluntary for all parties involved. FDA would make its approval or clearance determination first because CMS would not ordinarily provide coverage to a product not approved or cleared by FDA for marketing in the United States. In addition, CMS has statutory requirements (for example, CMS must issue a proposed coverage decision memorandum for comment) that make it impossible for the issuance of an NCD simultaneous with an FDA approval or clearance.

Parallel review would be a variation of the usual serial review process. Sponsors would be able to request use of this process in seeking an NCD. The regulatory standards and evidentiary standards used by FDA and CMS for decision-making would not change; under any review scenario, each agency would continue to make its decision under its respective authority and with its own standards, independent of the other. The sponsor requesting parallel review would be expected to meet the legal requirements, including data submission requirements, for both FDA premarket review or clearance and of an NCD request by CMS. Once formal procedures are developed, the agencies will work on making the data submissions efficient and nonduplicative with the intent of making parallel review less burdensome than if the sponsor went to each agency in serial fashion. Parallel review between the FDA and CMS would include only CMS coverage determination reviews and not any reviews of payment mechanisms.

By means of this notice, we are opening a public comment docket to solicit comment from the public on the parallel review process. We are interested in comments on all aspects of the process as we have explained it, including what categories of products are most appropriate for such review, the timing of parallel review, what procedures should be developed, how such a review process should be implemented, and what efficiencies could be achieved. After reviewing the public comments, FDA and CMS intend to issue a joint draft guidance describing the parallel review process and the procedures each agency would use for its implementation.

After review of the public comments on this notice, both agencies will consider a small number of requests from sponsors of innovative medical devices for parallel review on a pilot basis. (No new statutory authorities would be required to pursue such a pilot because FDA and CMS are continuing to comply with all aspects of current law.) The agencies will announce procedures for participating in the pilot at that time as well as criteria for participation. For general questions about parallel review, contact the persons listed in the "**FOR FURTHER INFORMATION CONTACT**" section of this document. Device sponsors interested in requesting voluntary parallel review should contact the person noted as the contact listed in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

To assist interested parties, we are asking for public comment on the following issues:

1. Should anyone other than the product sponsor be able to initiate a request for parallel review (for example, the FDA, CMS, an interested third party)?
2. For which classes of products would consumers, payers, or sponsors benefit most from parallel review? Why?
3. FDA and CMS may propose to limit the number of products concurrently under parallel review. How should limits be placed on the number and/or type of products concurrently under parallel review? Should CMS be permitted to review indications for which the sponsor is not seeking FDA clearance or approval under parallel review?
4. Are there disadvantages to parallel review?
5. Are there any barriers (for example, regulatory, legal, scientific) to parallel review and if so, how might they be overcome?
6. Should a voluntary process be put in place to encourage the conduct of clinical trials that are appropriately designed to support both FDA approval/clearance and CMS national coverage decisions? If so, what process should be established?
7. What criteria should the FDA and CMS use to decide whether to grant a request for parallel review?
8. At what point during FDA premarket review for prescription drugs, biologics, and medical devices, should parallel review begin in order to reduce the time between FDA marketing approval or clearance decisions and CMS national coverage decisions while avoiding the risk that CMS would initiate an NCD for a product whose premarket application the FDA subsequently does not approve or clear?
9. How should parallel review be implemented? Should the agencies use means in addition to a guidance document, such as designating agency liaisons, to educate sponsors about parallel review?
10. When, if at all, should the agencies offer joint meetings to interested sponsors during parallel review? Before parallel review begins? Before a premarket application is submitted to the FDA?
11. Should FDA and CMS have access to the same data and information about the product during parallel review? (Note: Both agencies will protect the confidentiality of proprietary information used in the parallel review process, as they currently do under their

respective approval/clearance and coverage processes.)

12. It is CMS' policy to inform the public when it begins an NCD process for a particular product. However, under applicable statutes and FDA's regulations, the existence of a premarket application is considered confidential commercial information prior to approval or clearance unless the sponsor has publicly acknowledged the application. With the consent of the sponsor, should CMS make public that it has begun the NCD process, as part of parallel review, for a product still undergoing FDA premarket review? As a condition of the agencies' agreement to initiate parallel review, should a sponsor have to inform the public, or consent to the agencies informing the public, that the product will be evaluated under parallel review? If the sponsor declines to consent to disclosure, should it be permitted to request parallel review anyway, which would prevent CMS from disclosing the NCD process until after the product is approved by the FDA? How can the transparency of CMS' NCD process be reconciled with the need to retain confidentiality of certain commercial information?

13. At present, sponsors whose medical products will undergo both FDA premarket review and CMS national coverage review submit separate application packages to FDA and CMS that, in part, contain the same data, and, in part, contain different data. Keeping in mind the limited resources available to the agencies, what steps can the agencies take to minimize duplication of data submissions? Would the use of electronic submissions reduce submission burdens and facilitate data transfers? Are there other steps the agencies can take to streamline a parallel review process without modifying the regulatory standards and evidentiary requirements of both agencies? Would the transparency of CMS' NCD process subject the FDA to additional public pressure regarding marketing authorization?

14. Should the agencies convene a joint advisory committee to consider common issues needing public discussion and advice during the parallel review process?

15. What other concerns or considerations should the agencies take into account when developing a process for parallel review?

16. Once FDA and CMS have opened a parallel review should a sponsor be able to terminate or withdraw the request for parallel review? If this happens, should that information be made public?

17. Sponsors who submit a PMA or 510(k) to the FDA generally must pay a user fee. One key advantage of parallel review is to streamline the current process by allowing engagement by a sponsor with both FDA and CMS concurrently. Earlier engagement could shorten the time between FDA approval or clearance of the PMA or 510(k) and a coverage decision from CMS. Parallel review could, however, entail additional costs for the agencies (for example, if the product ultimately does not receive FDA approval or clearance). Changes to a user fee would also require legislative changes. Given these factors, should the current Medical Device User Fee be restructured to support the FDA and CMS costs of this parallel review and if so, how?

Dated: September 10, 2010.

Margaret A. Hamburg,

Commissioner of Food and Drugs.

Dated: July 29, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–23252 Filed 9–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Delisting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from the Coalition for Quality and Patient Safety of Chicagoland (CQPS) of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21–b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on May 25, 2010.

ADDRESSES: Both directories can be accessed electronically at the following HHS *Web site: http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes a PSO from listing. AHRQ has accepted a notification from the Coalition for Quality and Patient Safety of Chicagoland (CQPS), PSO number P0027, to voluntarily relinquish its status as a component PSO of the Institute of Medicine of Chicago. COPS' notification stated that the Institute of Medicine of Chicago has relinquished its ownership of CQPS and transferred all of its assets to a successor organization, Project Patient Care, Inc. Accordingly, CQPS was delisted effective 12 Midnight ET (2400) on May 25, 2010. AHRQ has received and accepted certification from the Coalition for Quality and Patient Safety of Chicagoland PSO (CQPS PSO), PSO Number P0090, for listing as a component PSO of Project Patient Care, Inc. The listing was effective at 12:01 a.m. ET (2401) on May 26, 2010.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: September 3, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–23077 Filed 9–16–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0043, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on June 16, 2010, 75 FR 34148. The collection involves a certification form that applicants for the Federal Air Marshal positions are required to complete regarding their mental health history.

DATES: Send your comments by October 18, 2010. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; e-mail *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0043.

Form(s): TSA Form 1164.

Affected Public: Law Enforcement Officers/Air Marshal Applicants.

Abstract: TSA policy requires that applicants for Federal Air Marshal (FAM) positions meet certain medical standards, including whether the individual has an established medical history or clinical diagnosis of psychosis, neurosis, or any other personality or mental disorder that clearly demonstrates a potential hazard to the performance of FAM duties or the safety of self or others.

Number of Respondents: 10,000.

Estimated Annual Burden Hours: An estimated 10,000 hours annually.

Issued in Arlington, Virginia, on September 13, 2010.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–23193 Filed 9–16–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–777, Application for Replacement of Northern Mariana Card

ACTION: Correction to 30-day notice of Information Collection Under Review: Form I–777, Application for Replacement of Northern Mariana Card; OMB Control No. 1615–0042.

* * * * *

On August 26, 2010, USCIS published a 30-day notice in the **Federal Register** at 75 FR 52540. The 30-day notice contained a spelling error in the title of Form I–777 throughout the document. This notice advises the public that the title of the Form I–777 should read "Application for Replacement of Northern Mariana Card", instead of "Application for Replacement of Northern *Marina* Card".

Written comments and/or suggestions regarding the item(s) contained in the 30-day notice published on August 26, 2010, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0042 in the subject box.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: September 14, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–23344 Filed 9–16–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 29, 2010.

Henry County for Public Assistance. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–23331 Filed 9–16–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas A. Hall as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–23274 Filed 9–16–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1928–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1928–DR), dated July 27, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas A. Hall as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–23271 Filed 9–16–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1932–DR; Docket ID FEMA–2010–0002]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1932–DR), dated August 10, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William J. Doran III, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael R. Scott as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–23332 Filed 9–16–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5443–N–01]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Sunset Area Community, City of Renton, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives notice to the public, agencies, and Indian tribes that the City of Renton, WA, intends to prepare an Environmental Impact Statement (EIS) for the redevelopment of the Sunset Terrace public housing community and associated neighborhood revitalization. Pursuant to the authority granted by section 26 of the U.S. Housing Act of 1937 (42 U.S.C. 1437x) in connection with projects assisted under section 9 of that Act (42 U.S.C. 1437g), the City of Renton has assumed responsibility for compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321) in accordance with 24 CFR 58.1 and 58.4, and as the lead agency for compliance with the Washington State Environmental Policy Act (SEPA, RCW 43.21C), will perform the joint environmental review. This notice is in accordance with regulations of the Council on Environmental Quality at 40 CFR parts 1500–1508. All interested Federal, State, and local agencies, Indian tribes, groups, and the public are invited to comment on the scope of the EIS. If you are an agency with jurisdiction by law over natural or other public resources affected by the project, the City of Renton needs to know what environmental information germane to your statutory responsibilities should be included in the EIS.

ADDRESSES: Comments relating to the scope of the EIS are requested and will be accepted by the contact person listed below until October 18, 2010. Any person or agency interested in receiving a notice and wishing to make comment on the Draft EIS should contact the persons listed below.

FOR FURTHER INFORMATION CONTACT: The primary contact is Erika Conkling, AICP, Senior Planner, City of Renton Department of Community and Economic Development, 1055 S. Grady Way, Renton, WA 98057, 425–430–6578 (voice) 425–430–7300 (fax), or e-mail: *econkling@rentonwa.gov.* An alternative contact is Mark Santos-Johnson, Senior Economic Development Specialist, City of Renton Department of Community & Economic Development, 425–430–6584 (voice), *msantosjohnson@rentonwa.gov*, available at the same address and fax number listed above.

Public Participation: The public will be invited to participate in the review of the Draft EIS. Release of the Draft EIS will be announced through public mailings as well as the local news media.

SUPPLEMENTARY INFORMATION:

Project Name and Description

The primary proposal is redevelopment of the Sunset Terrace public housing community, a Renton Housing Authority property of approximately 100 existing units in 50-year old, two story structures, located at the intersection of Sunset Boulevard and Harrington Avenue on approximately eight acres. The Renton Housing Authority also owns another approximately 3 acres of vacant land along Edmonds Avenue, NE., Glenwood Avenue, NE., and Sunset Lane, NE., and intends to purchase additional property adjacent to Sunset Terrace along Harrington Avenue NE. for housing and associated services. Sunset Terrace was developed in approximately 1960 though the rest of the neighborhood largely developed between the 1940s and 1970s. Conceptual plans propose redevelopment of Sunset Terrace and adjacent properties with mixed-income, mixed-use residential and commercial space and public amenities. It is expected that with the Sunset Terrace property and associated properties owned or purchased by Renton Housing Authority, that up to 200 additional new affordable housing units and potentially 300 new moderate income to market rate housing units could be created. There would be a 1-to-1 unit replacement for all 100 existing public housing units. Public amenities would be integrated with the residential development and may include the following: a community gathering space or "Third Place"; a new recreation/community center; a new library; a new park/open space; retail shopping and commercial space; and/or green infrastructure.

As a result of the Sunset Terrace redevelopment, it is expected that private redevelopment in the neighborhood will be catalyzed. Supporting both Sunset Terrace and neighborhood redevelopment will be civic investments including: planned or anticipated upgrades to Sunset Boulevard (SR 900) and other local streets, stormwater drainage systems, parks and recreation facilities,

education facilities, and a new public library. The Sunset Area contains many public amenities and publicly-owned parcels creating significant opportunities for partnership and integration of civil infrastructure improvements. The City of Renton has already undertaken significant effort to prioritize strategies for public investment in the Sunset Area through the work of the recently approved Sunset Area Community Investment Strategy.

Sunset Terrace's redevelopment provides the opportunity to evaluate the neighborhood as a whole and determine what future land use redevelopment is possible and what public service and infrastructure improvements should be made in order to make this a more vibrant and attractive community for residents, businesses and property owners. The EIS will address the primary proposal of the Sunset Terrace area redevelopment as well as evaluate secondary proposals such as neighborhood redevelopment and supporting services and infrastructure improvements.

The City of Renton is also proposing to adopt a Planned Action Ordinance pursuant to SEPA. A Planned Action Ordinance, if adopted, would not require future SEPA threshold determinations or EISs when future projects are consistent with EIS assumptions and mitigation measures.

Alternatives to the Proposed Action: The alternatives to be considered by the lead agency will include the proposed action, a no action alternative, and a redevelopment alternative to the proposed action. The redevelopment alternative will be finalized after conclusion of the scoping comment period. It may address alternative land use mixes, infrastructure options, or other features.

Probable Environmental Effects

The lead agency has preliminarily identified the following areas for discussion in the EIS: aesthetics; air quality, including greenhouse gas emissions; earth; energy; environmental health; environmental justice; historic/cultural resources; housing; land use; noise; parks and recreation; plants and animals; public services, including public education, safety, health, and social services; socioeconomics, including demographic, employment, and displacement; transportation; utilities, including wastewater, stormwater, water supply, telecommunication, natural gas, power, electrical; and water resources, including groundwater and surface water.

Lead Agency

This EIS will be a joint National Environmental Policy Act (NEPA) and Washington State Environmental Policy Act (SEPA) document intended to satisfy requirements of federal and state environmental statutes. In accordance with specific statutory authority and HUD's regulations at 24 CFR part 58, the City of Renton is authorized to assume responsibility for environmental review, decision-making, and action that would otherwise to apply HUD under NEPA, which includes NEPA lead agency responsibility.

Questions may be directed to the individuals named in this notice under the heading "For Further Information Contact."

Dated: August 23, 2010.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–23181 Filed 9–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–36]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: September 17, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 9, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–22918 Filed 9–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5442–N–01]

Notice of Single Family Loan Sale (SFLS 2010)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized single family mortgage loans, without Federal Housing Administration (FHA) mortgage insurance, in a competitive, sealed bid sale (SFLS 2010). This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder's Information Package (BIP) was made available to qualified bidders on August 31, 2010. Bids for the loans must be submitted on the bid date, which is currently scheduled for September 22, 2010. HUD anticipates that award(s) will be made on or about September 22, 2010 (Award Date).

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/sfam/sfls.cfm*.

Please mail and fax executed documents to HUD's Asset Sales Office: Asset Sales Office, United States Department of Housing and Urban Development, 451 7th Street, SW., Room 3136, Washington, DC 20410, Attention: Single Family Sale Coordinator. Fax: 202–708–2771.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in SFLS 2010 certain unsubsidized non-performing mortgage loans (Mortgage Loans) secured by single family properties located throughout the United States. A listing of the Mortgage Loans will be included in the due diligence materials made available to bidders. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans may be stratified for bidding purposes into several mortgage loan pools based on the geographic location of the underlying properties. Qualified bidders may submit bids on one or more pools of Mortgage Loans.

The Bidding Process

The BIP describes in detail the procedure for bidding in SFLS 2010. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement (CAA Agreement). Bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each bidder's aggregate bid price.

HUD will evaluate the bids submitted and determine the successful bid or bids, in terms of the best value to HUD, in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are expected to take place on September 22, 2010 and October 27, 2010.

This notice provides a summary of some of the essential terms of sale. The CAA Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the CAA Agreement are not subject to negotiation.

Due Diligence Review

The BIP describes how bidders may access the due diligence materials remotely via a high-speed internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove Mortgage Loans from SFLS 2010 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the CAA Agreement.

This is a sale of unsubsidized mortgage loans, which are to be assigned to HUD pursuant to section 204(a)(1)(A) of the National Housing Act (the NHA), amended under Title VI of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999. The sale of the loans is pursuant to section 204(g) of the NHA.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. After receiving the BIP, bidders will also complete a Bid Terms Acknowledgement Form which will provide them access to HUD online bidding site. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in SFLS 2010:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24, and Title 25 of the Code of Federal Regulations, Part 2424;

(3) any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with SFLS 2010;

(4) any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 3 above to assist in preparing any of its bids on the Mortgage Loans;

(5) any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in SFLS 2010;

(6) any entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to the bid is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, and

(7) also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence (subparagraph 6); (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this subparagraph in preparing its bid on such Mortgage Loan.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding SFLS 2010, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to SFLS 2010, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to SFLS 2010 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: September 10, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–23182 Filed 9–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2010–N146; 1265–0000–10137 S3]

Camas National Wildlife Refuge, Jefferson County, ID; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for Camas National Wildlife Refuge (refuge) in Hamer, ID. We will also prepare an environmental assessment (EA) to evaluate the

potential effects of various CCP alternatives. We are providing this notice in compliance with our CCP policy to advise the public, Federal and State agencies, and Tribes of our intentions, and to obtain suggestions and information on the scope of issues to consider during the CCP planning process.

DATES: To ensure consideration, please send your written comments by October 18, 2010. We will announce opportunities for public input in local news media throughout the CCP planning process.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

E-mail: brian_wehausen@fws.gov. Include "Camas CCP/EA" in the subject line of the message.

Fax: Attn: Brian Wehausen, (208) 662–5525.

U.S. Mail: Camas National Wildlife Refuge, 2150 East 2350 North, Hamer, ID 83425.

In-Person Drop-off: You may drop off comments during regular business hours (8 a.m. to 4 p.m.) at 370 Webster St., Montpelier, ID 83254.

FOR FURTHER INFORMATION CONTACT: Brian Wehausen, (208) 662–5423.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for the Camas Refuge. This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management of goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge, The planning process is a way for us and the public to evaluate management goals and objectives that will insure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreational opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Camas Refuge.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Camas National Wildlife Refuge

The Camas Refuge was established by President Franklin D. Roosevelt in 1937 for the purpose of serving as a refuge and breeding ground for migratory birds and other wildlife. The refuge is located 36 miles north of Idaho Falls, near the community of Hamer, Idaho. The refuge lies in the upper Snake River plain at approximately 4,800 feet in elevation.

The refuge was historically comprised of a diverse mosaic of wetland and wet meadow habitats, surrounded by an expansive sea of sagebrush, termed the "high desert." The wetlands and wet meadows were once fed by surface water from the perennial flow of Camas Creek, and natural artesian wells which discharged groundwater and continually flooded the wetlands during the drier summer and fall months.

The upper Snake River climate and soils are favorable to agricultural uses, principally ranching and farming. In the late 1800s, large livestock and ranching operations were established in the area. The grazing lands were later divided into smaller units, and crops were cultivated for livestock feed. Agriculture further developed in the area to support the thousands of people working in mines. By the time mining diminished, railroads had begun connecting farmers and ranchers to markets far beyond rural southeast Idaho.

About half of the refuge's 10,578 acres are lakes, ponds, and marshlands, with the remainder consisting of grass/sagebrush uplands and meadows. There are 292 known species of wildlife that utilize the refuge during various periods of the year. Approximately 100 species of migratory birds nest at the refuge, and it is especially important to migrating land birds. A large number of songbirds use the refuge's cottonwood groves, which are also a significant winter roost site for bald eagles. Greater sandhill cranes gather on the refuge prior to fall migration. Sage grouse use the refuge during brood rearing. During migration, which peaks during March and April, and again in October, up to 50,000 ducks, 3,000 geese, and several hundred tundra and trumpeter swans may be present on the refuge. The refuge also hosts elk, white-tailed deer, mule deer, pronghorn, and moose.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized the issues below. During public scoping, we may identify additional issues.

- Are the refuge's water quantity management and groundwater pumping capabilities adequate for maintaining nesting and migratory waterbird habitats?
- Are we protecting the refuge's water rights adequately, and how can we improve water quality for fish and wildlife?
- What actions should we take to minimize disturbance to waterbirds nesting and migrating on the refuge, as well as other wildlife?
- How the refuge can meet increasing demands for recreational opportunities and conduct quality visitor services programs in a manner that protects wildlife from disturbances?
- What is the refuge's role in managing the established nonnative

cottonwood gallery forest for migratory landbirds?

- What are our options for preventing the introduction and dispersal of invasive plants and animals?
- What is the refuge's role in supporting native fish and restoring riparian habitat in Camas Creek?
- How can we maintain, manage, and restore the refuge's sagebrush, wet meadow, and upland habitats to support the long-term viability of native wildlife populations, and maximize habitat values for key wildlife species?
- How can the refuge adaptively manage habitat in response to climate change issues?
- How can we protect the refuge's cultural and historical resources?
- What is the most appropriate refuge land management strategy for providing contiguous and quality habitats for focal wildlife resources?

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 5, 2010.

Theresa E. Rabot,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2010–23243 Filed 9–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2008–N188; 60120–1113–0000; C2]

Endangered and Threatened Wildlife and Plants; Draft Revised Recovery Plan for Utah Prairie Dog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft revised recovery plan for the Utah prairie dog (*Cynomys parvidens*). This species is federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The Service solicits review and comment from the public on this draft revised plan.

DATES: Comments on the draft revised recovery plan must be received on or before November 16, 2010.

ADDRESSES: Copies of the draft revised recovery plan are available by request from the Utah Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119; telephone 801–975–3330. Submit comments on the draft recovery plan to the Field Supervisor at this same address. An electronic copy of the draft recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, at the above address, or telephone 801–975–3330.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for the federally listed species native to the United States where a plan will promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species, establish objective, measurable criteria which, when met, would result in a determination that the species no longer needs the protection of the Act (16 U.S.C. 1531 *et seq.*), and provide estimates of the time and cost for implementing the needed recovery measures.

The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information received during a public comment period when preparing each new or revised recovery plan for approval. The Service and other Federal agencies also will take these comments into consideration in the course of implementing approved recovery plans. It is our policy to request peer review of recovery plans. We will summarize and respond to the issues raised by the public and peer reviewers in an appendix to the approved recovery plan.

The Utah prairie dog (*Cynomys parvidens*), found only in southwestern and central Utah, was listed as an endangered species on June 4, 1973 (38 FR 14678). At the time of listing, the species was threatened by habitat destruction and modification, overexploitation, disease, and predation. Subsequently, Utah prairie dog populations increased significantly in portions of their range, and on May 29, 1984 (49 FR 22330), the species was reclassified as threatened with a special rule to allow regulated take of the species. This special rule was amended on June 14, 1991 (56 FR 27438), to increase the amount of regulated take allowed throughout the species' range. Recent Utah prairie dog population trends appear to be relatively stable, although the species remains vulnerable to several serious threats. These include habitat loss, plague, changing climatic conditions, unauthorized take, and disturbance from recreational and economic land uses.

The recovery of Utah prairie dogs will rely on effective conservation responses to the issues facing the species, which remain varied and complex. These issues include plague, urban expansion, grazing, cultivated agriculture, vegetative community changes, invasive plants, off-highway vehicle and recreation uses, climate change, energy resource exploration and development, fire management, poaching, and predation. Strategically, these issues can be reduced to two overriding concerns: loss of habitat and plague. The recovery strategy for the Utah prairie dog focuses on the need to address colony loss and disease through a program that encompasses threats abatement, population management, research, and monitoring. We emphasize conserving extant colonies, many of which occur on non-Federal lands; establishing additional colonies on Federal and non-Federal lands via habitat improvement or translocations; controlling the transmission of plague; and monitoring habitat conditions.

Request for Public Comments

The Service solicits public comments on the draft recovery plan. All comments received by the date specified in **DATES** will be considered prior to approval of the plan. Written comments and materials regarding the plan should be addressed to the Field Supervisor (*see* **ADDRESSES** section). Comments and materials received will be available, by appointment, for public inspection during normal business hours at the above address.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 18, 2010.

Hugh Morrison,

Acting Regional Director.

[FR Doc. 2010–23234 Filed 9–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP07000; L16100000.DU0000]

Notice of Availability of the Draft Buffalo Resource Management Plan Amendment for the Fortification Creek Planning Area and Environmental Assessment, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan Amendment and Environmental Assessment (RMPA/EA) for the Buffalo Field Office (BFO) and by this notice is announcing the opening of the comment period. The RMPA/EA will amend the 1985 Buffalo Resource Management Plan. The BLM also announces the availability of information regarding a proposed Area of Critical Environmental Concern (ACEC) considered in the Draft RMPA/EA.

DATES: The BLM must receive written comments on the Draft RMPA/EA and on the proposed ACEC information within 60 days following the date that this Notice of Availability appears in the **Federal Register**.

ADDRESSES: You may submit comments related to the Draft RMPA/EA by any of the following methods:

- *Web site: http://www.blm.gov/wy/st/en/info/NEPA/bfodocs/fortification_creek.html.*
- *E-mail: Fort_Crk_WYMail@blm.gov.*
- *Fax:* (307) 684–1122.
- *Mail:* Buffalo RMP Amendment/Fortification Creek EA, BLM Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82834.

Copies of the Draft RMPA/EA are available in the Buffalo Field Office at the above address and at the following location:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: For further information contact Thomas Bills, Buffalo RMPA Team Leader, telephone at 307–684–1133: mailing address at BLM Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82834; e-mail at *tom_bills@blm.gov.*

SUPPLEMENTARY INFORMATION: The Fortification Creek Planning Area (FCPA) is described as requiring "special management" in the Powder River Basin Oil and Gas Project Environmental Impact Statement (PRB EIS). The FCPA also contains an isolated elk herd, a Wilderness Study Area (WSA) and a citizen-proposed ACEC. The FCPA is 100,655 acres in size and located in the center of the Powder River Basin in parts of Campbell, Johnson, and Sheridan Counties, Wyoming.

An RMP amendment has been initiated to simplify, consolidate and unify overlapping planning decisions in the FCPA while ensuring the viability of the existing elk herd and maintaining other management activities in the planning area.

The Draft RMPA/EA documents the direct, indirect, and cumulative environmental impacts of three alternatives for management of BLM-administered public lands and mineral resources within the Fortification Creek Area of the BFO. The alternatives incorporate best management practices for oil and gas development and other measures necessary to address impacts to transportation, public safety, cultural resources, recreational opportunities, wildlife, threatened and endangered species, visual resources, air quality, wilderness characteristics, and other relevant issues. The following descriptions of alternatives considered in the Draft RMPA/EA have been included to provide context for reviewers. Three alternatives are analyzed in detail:

Alternative 1 (No Action Alternative): Continues the existing management direction in conformance with the current RMP and would not designate an ACEC in the FCPA;

Alternative 2: Amends the existing RMP to allow overhead power lines on BLM surface within pre-defined corridors, applies elk security habitat standards as recommended by the Wyoming Game and Fish Department (WGFD), prescribes acceptable mitigation measures, and would designate an ACEC based on citizen proposed boundaries (33,757 acres; primarily public surface); and

Alternative 3 (Agency Preferred Alternative): Amends the existing RMP by allowing overhead power lines along roads on BLM surface, applies elk security habitat standards developed jointly by the BLM and WGFD, establishes standards for performance based mitigation, and does not designate any area as an ACEC.

There are no ACECs in the existing BFO land use plan. As proposed in the Draft RMPA/EA, there is potential for designation of a Fortification Creek ACEC. Values of concern include steep slopes, erosive soils, elk habitat, cultural resources, and visual resources.

When commenting, please include reference to either the page or section in the Draft RMPA/EA to which the comment applies. To facilitate analysis of comments and information submitted, the BLM encourages those individuals submitting comments to submit them in electronic format.

Please note that public comments and information submitted including names, street addresses, and e-il addresses of respondents will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in 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 may 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.

Donald A. Simpson,

State Director.

[FR Doc. 2010–23330 Filed 9–16–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2010–N150; 50133–1265–CHNP–S3]

Chincoteague National Wildlife Refuge and Wallops Island National Wildlife Refuge, Accomack County, VA; Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of public scoping and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), are gathering information to prepare a comprehensive conservation plan (CCP) and associated environmental impact statement (EIS)

for Chincoteague National Wildlife Refuge (NWR) and Wallops Island NWR. We provide this notice in compliance with our policy to advise other agencies and the public of our intentions to conduct detailed planning on refuges, and obtain suggestions and information about the scope of issues to consider in the planning process.

DATES: We will hold public scoping open house meetings between August and November of 2010 in Accomack County, Virginia, and Worcester County, Maryland. The meetings will be announced through our Web site (*http://www.fws.gov/northeast/planning*), local newspapers, a newsletter, and personal contacts. *See* the **ADDRESSES** section for information about where to submit your comments. To ensure consideration of your written comments regarding the scope of the refuge management plan, you should submit them no later than *January 18, 2011.*

ADDRESSES: Send your comments or requests for more information on the planning process by any of the following methods:

Electronic mail: *northeastplanning@fws.gov.* Include "Chincoteague NWR" in the subject line of the message.

Facsimile: Attention: Thomas Bonetti, at 413–253–8468.

U.S. mail: Thomas Bonetti, Refuge Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

In person drop-off: You may drop off comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: To obtain more information on the refuge, contact Louis Hinds, Refuge Manager, at Chincoteague NWR, P.O. Box 62, Chincoteague Island, VA 23336; phone: 757–336–6122; facsimile: 757–336–5273; electronic mail: *fw5rw_cnwr@fws.gov* or Web site: *http://chinco.fws.gov/.*

For additional questions about the planning process, you may contact Thomas Bonetti via the above methods or by calling 413–253–8307.

SUPPLEMENTARY INFORMATION:

Introduction

This notice initiates the CCP process for Chincoteague NWR and Wallops Island NWR, located in Accomack County, Virginia.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires us to develop a CCP for each national wildlife refuge. The purpose of a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

We establish each refuge for specific purposes, and use those purposes to develop and prioritize its management goals, objectives, and public uses. The planning process is one way for us and for the public to evaluate those goals and objectives for the best possible conservation of important wildlife habitat, while providing opportunities for wildlife-dependent recreation compatible with those purposes and the mission of the NWRS.

We request your input on all issues, concerns, ideas, improvements, and suggestions for the future management of Chincoteague NWR. In addition to this opportunity to participate in the scoping for the project, you may submit additional comments during the planning process by writing to the refuge planner (*see* **ADDRESSES** section).

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations on NEPA (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and our policies and procedures for complying with them.

Chincoteague NWR and Wallops Island NWR

Under the authority of the Migratory Bird Conservation Act, Chincoteague NWR was established on May 13, 1943, for the protection and management of migratory birds, especially migrating and wintering waterfowl. Since that time, objectives have been expanded to protect and manage threatened and endangered species and other wildlife, and provide for wildlife-oriented public use.

The refuge encompasses 14,032 acres, of which all but 418 acres in Maryland are located in Accomack County on the Eastern Shore of Virginia. The refuge also manages three smaller divisions that are located on the Virginia Barrier Islands: Assawoman Island Division, which contains 1,434 acres and encompasses the entire island; Metompkin Island Division, which consists of 174 acres on the north end of the island; and Cedar Island Division, which contains over 1,412 acres in fee title and 600 acres in easements. Additional refuge lands include 546 acres on Wildcat Marsh (located on the north end of Chincoteague Island) and 427 acres on Morris Island (located between Chincoteague and Assateague Islands).

The refuge's location along the Atlantic Flyway makes it a vital resting and feeding spot for a large number and diversity of birds. Within a one-day drive to millions of people, Chincoteague NWR is one of the most visited refuges in the United States, providing visitors with outstanding opportunities to learn about and enjoy wildlands and wildlife.

Refuge staff manages this barrier island habitat to allow many species of wildlife to co-exist, each establishing its own place in the environment. For example, the refuge supports breeding populations of the federally endangered Delmarva Peninsula fox squirrel and the threatened piping plover. Additionally, the Atlantic loggerhead sea turtle is a threatened species that nests occasionally on the refuge. Refuge management programs are targeted to provide feeding and resting areas for birds in migration, and nesting and brood-rearing habitat for those birds that find the refuge suitable for reproduction.

The refuge is also one of the top shorebird migratory staging areas in the United States east of the Rocky Mountains. In 1990, the barrier islands that make up Chincoteague NWR, along with other barrier islands of the Eastern Shore of Virginia and Maryland, were designated an International Shorebird Reserve. This coastal barrier island/lagoon system has also been designated a World Biosphere Reserve by the United Nations Educational, Scientific, and Cultural Organization in recognition of its great ecological value. Moreover, the Department of Interior designated the area a National Natural Landmark in recognition of its outstanding natural values.

The refuge is an important recreational destination point for people

living in the Washington, Baltimore, Philadelphia, and New York City areas. Attracted to the beautiful beach and the aesthetically pleasing nature of the island, hundreds of thousands of people visit Assateague Island annually. Managed jointly by the National Park Service and the FWS, Assateague Island supports a growing tourism economy in the town of Chincoteague and Accomack County.

Popular attractions within the refuge include the undeveloped beach, the historic, functioning Assateague Lighthouse, the Wildlife Loop for automobiles, and 6.5 miles of walking trails (including some compliant with the Americans with Disabilities Act) that provide viewing opportunities of the Chincoteague ponies, wildlife such as the sika elk, and migratory birds. The Herbert H. Bateman Educational and Administrative Center, a green facility that opened in 2003, is the refuge's visitor center and offers 5,000 square feet of interpretive natural history exhibits, educational programming, a 125-seat auditorium, and a classroom/wet laboratory. The refuge also provides wildlife-dependent recreational opportunities such as fishing, hunting, and wildlife photography.

Wallops Island NWR was created on July 10, 1975, when 373 acres of land were transferred to the FWS from the National Aeronautics and Space Administration (NASA). Wallops Island NWR is located entirely in Accomack County, Virginia. The refuge, comprised mainly of salt marsh and woodlands, contains habitat for a variety of trust species, including upland- and wetland-dependent migratory birds. Wallops Island NWR was opened for the first time to public hunting in 2002 to reduce the effects of overbrowsing on refuge habitat by white-tailed deer, and to reduce the potential of deer collisions with vehicles on the adjacent State Highway 175 and neighboring NASA flight facility.

Public Availability of Comments

Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 10, 2010.

Anthony D. Léger,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, MA 01035.

[FR Doc. 2010–23233 Filed 9–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2010–NXXX; 10120–1112–0000–F2]

Oregon Parks and Recreation Department Habitat Conservation Plan Along the Pacific Coast in Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, and Curry Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final environmental impact statement and habitat conservation plan.

SUMMARY: Under the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) is advising the public of the availability of the final Environmental Impact Statement (FEIS) associated with an application received from the Oregon Parks and Recreation Department (OPRD) for an incidental take permit (permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). We also announce the availability of the OPRD Habitat Conservation Plan (HCP) as required by section 10(a)(2)(B) of the ESA. OPRD submitted the HCP, as well as a proposed Implementing Agreement (IA), as part of its incidental take permit application. If issued, the permit would authorize incidental take of the federally listed as threatened western snowy plover (*Charadrius alexandrinus nivosus*) caused by the OPRD and private landowners that engage in activities related to public use and recreation, beach management, and resource management activities along Oregon's coastal shores. The OPRD is requesting a 25-year permit term.

We request comments from the public on the permit application, the HCP, the IA, and the FEIS, all of which are available for review. The Service is furnishing this notice to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA. For locations to review the documents, please see the Availability of Documents section below.

DATES: Comments must be received from interested parties on or before October 18, 2010. The Service's decision on issuance of the permit will occur no sooner than 30 days after the publication of the Environmental Protection Agency notice of the FEIS in the **Federal Register** and will be documented in a Record of Decision.

ADDRESSES: All written comments and requests for information should be addressed to: Laura Todd, U.S. Fish and Wildlife Service, Newport Field Office, 2127 SE OSU Drive, Newport, OR 97365–5258; facsimile (541) 867–4551. You may submit comments by postal mail/commercial delivery or by e-mail. Submit comments by e-mail to *FW1ORDHCP@fws.gov;* in the subject line of the e-mail include the identifier OPRD HCP EIS. Comments and materials received also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Laura Todd at (541) 867–4558 or see **ADDRESSES** above.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by contacting Laura Todd (*see* **FOR FURTHER INFORMATION CONTACT**); or by making an appointment to view the documents at the above address during normal business hours. You may view or download the HCP and FEIS on the Internet at *www.fws.gov/oregonfwo/Species* or the HCP from OPRD's Web site at *egov.oregon.gov/OPRD/PLANS/osmp_hcp.shtml.*

Copies of the HCP and FEIS will be available at the following libraries: Astoria Public Library, 450 Tenth St., Astoria, Oregon 97103; Bandon Public Library, City Hall, Hwy. 101, Bandon, Oregon 97411; Chetco Community Public Library, 405 Alder St., Brookings, Oregon 97415; Coos Bay Public Library, 525 Anderson, Coos Bay, Oregon 97420; Siuslaw Public Library District, 1460 9th St., Florence, Oregon 97439; Garibaldi Branch Library, Garibaldi City Hall, 107 Sixth St., Garibaldi, Oregon 97118; Curry Public Library, 29775 Colvin St., Gold Beach, Oregon 97444; Langlois Public Library, 48234 Hwy. 101, Langlois, Oregon 97450; Driftwood Public Library, 801 SW. Highway 101, Suite 201, Lincoln City, 97367–2720; Manzanita Branch Library, 571 Laneda, Manzanita, Oregon 97130; Newport Public Library, 35 NW. Nye St., Newport, Oregon 97365; Marilyn Potts Guin Library, Hatfield Marine Science Center, Oregon State University, 2030

Marine Science Drive, Newport, OR 97365; South Tillamook Branch Library, 6200 Camp St., Pacific City, OR 97135; Port Orford Public Library, 555 W. 20th St., Port Orford, Oregon 97465; Reedsport Branch Library, 395 Winchester Ave., Reedsport, Oregon 97467; Seaside Public Library, 60 N. Roosevelt Blvd., Seaside, Oregon 97138; Tillamook County Library, 1716 3rd St., Tillamook, Oregon 97141; Waldport Public Library, 460 Hemlock, Waldport, Oregon 97394; Warrenton Community Library, 225 S. Main Ave., Warrenton, Oregon 97146; and the Yachats Public Library, 560 W. 7th St., P.O. Box 817, Yachats, OR 97498.

Background

Section 9 of the ESA (16 U.S.C. 1538) and the implementing regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). "Harm" is defined by Service regulation to include significant habitat modification or degradation where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). However, under limited circumstances, the Service may issue permits to authorize the "incidental take" of listed species. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively.

The OPRD has management responsibility on all Oregon coastal beaches, which extend for approximately 230 miles, for such activities as public use and recreation, beach management conducted by staff, and natural resource management. These activities may result in the incidental take of the threatened Pacific Coast population of the western snowy plover (*Charadrius alexandrinus nivosus*). As a result, the OPRD has prepared a 25-year HCP that addresses the incidental take of the western snowy plover. The HCP forms the basis of OPRD's permit application that was submitted to the Service and is the proposed action in the Service's FEIS.

Activities that the OPRD is proposing for permit coverage, and for which minimization and mitigation measures are described in the HCP include:

1. Public Use
   a. Dog Exercising
   b. Driving
   c. Recreational Activities
   d. Non-Motorized Vehicle Use
   e. Other Dry Sand Activities
2. Beach Management
   a. Public Safety
   b. Law Enforcement
   c. Boat and Marine Mammal Strandings
3. Natural Resource Management
   a. Snowy Plover Management
   b. Other Habitat Restoration

Public Involvement

The Service formally initiated an environmental review of the project through publication of a Notice of Intent to prepare an Environmental Impact Statement in the **Federal Register** on March 20, 2003 (68 FR 13720). That notice also announced a public scoping period through April 28, 2003, during which interested parties were invited to provide written comments expressing their issues or concerns relating to the proposal. In a letter jointly signed by the OPRD and the Service, agencies and the public were notified of the opportunity to comment and the dates and locations of public meetings. The public meetings were also posted on the OPRD's Web site. In March 2003, four public meetings were held in Coos Bay, Newport, Tillamook, and Portland. Utilizing the public scoping comments, the Service prepared a draft EIS to analyze the effects of the alternatives on the human environment. The draft EIS was released for a 60-day public comment on November 5, 2007, and the comment period was extended for an additional 15 days on February 26, 2008. The official comment period ended on March 12, 2008.

Public Review

Copies of the final FEIS, HCP, and IA are available for review (see Availability of Documents above). Any comments we receive will become part of the administrative record and may be available to the public.

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. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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. We will honor your request to withhold your personal information to the extent allowable by law.

This notice is provided pursuant to section 10(c) of the ESA and Service regulations for implementing NEPA, as amended (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA. A permit decision will be made no sooner than 30 days after the publication of the EPA's FEIS notice in the **Federal Register** and completion of the Record of Decision. If we determine that all requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the ESA to the OPRD for take of the western snowy plover, incidental to otherwise lawful activities in accordance with the HCP, the IA, and the permit.

Dated: August 11, 2010.

Carolyn A. Bohan,

Acting Deputy Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 2010–23108 Filed 9–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2010–N175; 61130–1115–0000 F2]

Montana Department of Natural Resources and Conservation Final Habitat Conservation Plan and Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we have received from the Montana Department of Natural Resources and Conservation (DNRC) a Final Habitat Conservation Plan (HCP) and prepared a Final Environmental Impact Statement (Final EIS). The purpose of the HCP is to provide measures for DNRC's forest management activities on State forested trust lands to minimize and mitigate to the maximum extent practicable the impacts of authorized incidental take under the Endangered Species Act of 1973, as amended (Act).

DATES: The Final HCP/EIS will be released for public review on September 17, 2010. We will sign a Record of Decision no sooner than 30 days after the publication of the Environmental Protection Agency (EPA) notice of the Final EIS in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, or to receive the documents on CD–ROM, please contact Kathleen Ports, at 406–542–4330, or Tim Bodurtha, at 406–758–6882.

SUPPLEMENTARY INFORMATION: We have received the Final HCP and prepared the Final EIS for DNRC's forest management activities on State forested trust lands to minimize and mitigate the impacts of authorized incidental take under the Act (16 U.S.C. 1531 *et seq.*).

We are the lead agency for issuance of the incidental take permit (Permit). On June 26, 2009, we published our notice of receipt of a Permit application, Draft HCP, and Draft Implementation Agreement and notice of availability of the Draft EIS in the **Federal Register** (74 FR 30617). We are now releasing for public review the Final HCP and the Final HCP/EIS, which includes our responses to public comments and changes to the documents based on public comments and recent scientific data. We furnish this notice to allow other agencies and the public an opportunity to review the revised documents and our responses to comments. For locations to review the documents, please see the **SUPPLEMENTARY INFORMATION** section below. We are providing 30 days to allow the public sufficient time to review these final documents.

Availability of Documents

You may review the documents by requesting copies on CD–ROM from us (*see* **FOR FURTHER INFORMATION CONTACT** section). The documents are also available on the Internet at *http://www.dnrc.mt.gov/HCP/default.asp* or at the following libraries:

- Missoula Public Library, 301 East Main Street, Missoula, Montana 59802–4799; (406) 721–2665.
- Flathead County Public Library, 247 First Avenue East, Kalispell, Montana 59901–4560; (406) 758–5819.
- Lincoln County Public Library, 220 W. 6th Street, Libby, Montana 59923–1898; (406) 293–2778.
- Lewis and Clark Library, 120 South Last Chance Gulch, Helena, Montana 59601–4165; (406) 447–1690.

Persons needing reasonable accommodations to access the public review locations should contact Kathleen Ports or Tim Bodurtha, (*see* **FOR FURTHER INFORMATION CONTACT** section). To allow sufficient time to process requests, please call no later than 1 week before the desired review time. Information regarding the proposed action is available in alternative formats upon request.

Background

The HCP covers timber harvest and associated activities on approximately 548,500 acres (2, 220m²) of trust lands in western Montana, overseen by three of the six DNRC land offices. The DNRC manages scattered parcels and blocks of land in the Swan River State Forest and Stillwater State Forest. .

The DNRC prepared a 50-year HCP to address impacts from incidental take of grizzly bear (*Ursus arctos horribilis*), Canada lynx (*Lynx canadensis*), and bull trout (*Salvelinus confluentus*), which are listed as threatened under the Act. Unlisted species included in DNRC's HCP and which would receive incidental take authorization, should they be listed during the term of the HCP, are the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) and Columbia redband trout (*Oncorhynchus mykiss gairdneri*).

Substantive modifications to the proposed HCP, as well as any associated modifications to the EIS, were made based on: (1) Public comments on the 2009 Draft EIS/HCP public comment period; (2) information from Canada lynx researcher, Dr. John Squires, U.S. Forest Service, whose ongoing research was deemed relevant to finalizing the HCP/EIS; and (3) recent guidance from the Council on Environmental Quality and recent Service policy on how to address climate change in National Environmental Policy Act (NEPA) documents. The Service and DNRC made substantive modifications to lynx and aquatic conservation commitments in the Final HCP/EIS in light of public comment and recent research.

In the Final HCP, DNRC increased the acres subject to lynx conservation commitments, removed the commitment to retain a minimum of two piles of woody debris per square mile as potential lynx den sites, and changed the foraging commitment from maintaining 20 percent of a combination of winter and summer foraging habitat to maintaining 20 percent of winter foraging habitat. We revised the tables in the Final HCP/EIS and the Final EIS analysis to reflect the increase of potential lynx habitat.

In the Final HCP, DNRC revised the aquatic riparian timber harvest strategy to widen the no-harvest buffer along streams from 25 feet to 50 feet (8m to 15m) and expand the number of streams subject to HCP prescriptions from just streams bearing the fish species covered by the HCP to all fish-bearing streams. The EIS analysis was also revised to reflect these changes.

National Environmental Policy Act Compliance

Our proposal to issue a Permit is a Federal action that triggers the need for compliance with NEPA. Accordingly, as the Federal agency responsible for compliance under NEPA, we have prepared an EIS that analyzes alternatives associated with issuance of the Permit. In addition to the proposed Permit issuance alternative, other alternatives we considered in the EIS include the "No Action" alternative, an "Increased Conservation" alternative, and an "Increased Management Flexibility" alternative. The "No Action" alternative would reflect continued implementation of the DNRC's existing rules and regulations. The "increased conservation" alternative contains expanded conservation commitments relative to those in the proposed HCP. The "Increased Management Flexibility" alternative contains commitments that would allow for smaller habitat areas for some species and longer timelines for implementation relative to the proposed HCP.

The Final EIS includes all comments we received on the Draft EIS and our responses to those comments. After the 30-day waiting period, we will complete a Record of Decision that announces our decision on which action to take and discusses all factors leading to the decision.

Public Involvement

The Service initiated an environmental review of the project through publication of a notice of intent to prepare an EIS in the **Federal Register** on April 26, 2003 (68 FR 22412). Beginning April 28, 2003, the DNRC and the Service held a 60-day scoping period for the proposed HCP and EIS to gather public comments on the proposed action. In October 2005, the DNRC opened a 45-day public review period to allow interested parties to review and comment on the conservation strategies. On June 26, 2009, we published a notice of availability in the **Federal Register** (74 FR 30617) of the Draft EIS/HCP. The draft documents were available for public review and comment for a 90-day period ending on October 9, 2009.

Public Review

Copies of the Final HCP/EIS, and Implementing Agreement are available for review (see Availability of Documents). Any comments we receive will become part of the administrative record and may be available to the public. Before submitting comments that include your address, telephone

number, e-mail address, or other personal identifying information, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may 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.

We will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the Act. We will make a permit decision no sooner than 30 days after the publication of the EPA's Final EIS notice in the **Federal Register** and our completion of a biological opinion under section 7 of the Act and the Record of Decision.

Dated: August 24, 2010.

Hugh Morrison,

Acting Regional Director.

[FR Doc. 2010–23099 Filed 9–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–ET; WYW 109115]

Public Land Order No. 7748; Extension of Public Land Order No. 6797; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the withdrawal created by Public Land Order No. 6797 for an additional 20-year period. This extension is necessary to continue the protection of the Whiskey Mountain Bighorn Sheep Winter Range in Fremont County.

DATES: *Effective Date:* September 14, 2010.

FOR FURTHER INFORMATION CONTACT: Janelle Wrigley, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6257.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension to continue the protection of the Whiskey Mountain Bighorn Sheep Winter Range. The withdrawal extended by this order will expire on September 13, 2030, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6797 (55 FR 37878 (1990)), which withdrew 9,609.74 acres of public mineral estate from location or entry under the United States mining laws (30 U.S.C. Ch. 2) to protect the Whiskey Mountain Bighorn Sheep Winter Range, is hereby extended for an additional 20-year period until September 13, 2030.

(Authority: 43 CFR 2310.4)

Dated: September 9, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–23328 Filed 9–16–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA22647 and AZA23294]

Public Land Order No. 7749; Extension of Public Land Order Nos. 6801 and 6812; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the duration of two withdrawals created by Public Land Order Nos. 6801 and 6812 for an additional 20-year period. The extensions are necessary to continue to protect valuable facilities and improvements associated with the Smithsonian Institution's Fred Lawrence Whipple Observatory and Base Camp site.

DATES: *Effective Date:* September 19, 2010 (PLO No. 6801) and October 31, 2010 (PLO No. 6812).

FOR FURTHER INFORMATION CONTACT: Karl Sandwell-Weiss, U.S. Forest Service Coronado National Forest Office, Federal Building, 300 West Congress Street, Tucson, Arizona 85701, (520) 388–8348, or Vivian Titus, Bureau of Land Management, Arizona State Office, One North Central, Suite 800, Phoenix, Arizona 85004, (602) 417–9598.

SUPPLEMENTARY INFORMATION: To maintain the purpose for which the withdrawals were first made, an extension is required to continue to protect valuable facilities and improvements associated with the Smithsonian Institution's Fred Lawrence Whipple Observatory and Base Camp site. The facilities include the observatory, a visitor center, the administrative offices, a motor pool, and the picnic area. The lands continue to be used for the purpose for which they were withdrawn.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 6801 (55 FR 38550, (1990)) that withdrew 61.356 acres of National Forest System lands from location or entry under the United States mining laws (30 U.S.C. chapter 2) on behalf of the U.S. Forest Service to protect valuable facilities and improvements for scientific work associated with the Smithsonian Institution's Fred Lawrence Whipple Observatory, is hereby extended for an additional 20-year period. Public Land Order No. 6801 will expire on September 18, 2030, unless, as a result of a new review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

2. Public Land Order No. 6812 (55 FR 45805, (1990)) that withdrew 40 acres of National Forest System lands from location or entry under the United States mining laws (30 U.S.C. chapter 2) on behalf of the U.S. Forest Service to protect valuable facilities and improvements associated with the Smithsonian Institution's Fred Lawrence Whipple Observatory Base Camp Site, is hereby extended for an additional 20-year period. Public Land Order No. 6812 will expire on October 30, 2030, unless, as a result of a new review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Dated: September 7, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–23326 Filed 9–16–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Proposed Collection of information; Comment Request

ACTION: Notice.

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 the proposed continued collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [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.

The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no person may be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 U.S.C. 1320.5(a) and 1320.6.

DATES: Written comments are to be submitted by November 16, 2010.

ADDRESSES: *Electronically:* You may submit comments and attachments by sending an e-mail to *ConferenceRoomsandServices.DOL @dol.gov, attention:* Tracey Schaeffer. Written comments may also be transmitted by facsimile to 202–693–7761. Address comments sent by mail or delivery service to Office of the Assistant Secretary for Administration and Management (OASAM), U.S. Department of Labor, 200 Constitution Avenue, NW., Room C5519, Washington, DC 20210, *attention:* Tracey Schaeffer. You may contact Tracey Schaeffer at 202–693–7773 (this is not a toll-free number) or e-mail *ConferenceRoomsandServices.DOL @dol.gov* to request a copy of this information collection or with general questions about this notice.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Labor headquarters building, the Frances Perkins Building (FPB), has conference and meeting capabilities located in its public space areas that entities outside of the Department may request to use. In general, use of public space in Federal buildings is governed by section 581(h) of Title 40 of the United States Code (40 U.S.C. 581(h)). Section 581 is implemented by the Federal Management Regulations (FMR), which are published by GSA. Section 121(d) of title 40 of the US Code (40 U.S.C. 121(d)) authorizes the GSA Administrator to delegate GSA's authority to an agency head. The Office of the Assistant Secretary for Administration and Management (OASAM) operates the FPB under a 2003 delegation from GSA; the existing GSA–DOL delegation includes the authority provided in section 581(h) and, so, OASAM may exercise the authority provided by section 581(h) at the FPB, subject to applicable GSA and DOL regulations, policies and procedures. The delegation includes specific terms and conditions and is subject to the terms and conditions set forth in the "Standard Operating Procedures for Delegated Government-Owned Real Property" "SOP". Under the Delegation and SOP, the Department has authority under section 581(h)(2) to issue occasional use permits. The issuance of permits must comply with the Department's Delegation and with GSA's regulations in title 41 of the CFR, which covers a variety of subjects. Occasional use permits may only be issued to organizations engaging in cultural, educational, or recreational activities. In general, these permits are not available for commercial purposes.

FMR 102–74, Subpart D—Occasional Use of Public Buildings—establishes rules and regulations for the occasional use of public areas of public buildings for cultural, educational and recreational activities as provided by 40 U.S.C. 581(h)(2). Under section 102–74.465, any person or organization wishing to use a public area must file an application for a permit from the Federal agency buildings manager. Section 102–74.470 states that applicants must submit the following information:

(a) Their full names, mailing addresses, and telephone numbers;

(b) The organization sponsoring the proposed activity;

(c) The individual(s) responsible for supervising the activity;

(d) Documentation showing that the applicant has authority to represent the sponsoring organization;

(e) A description of the proposed activity, including the dates and times during which it is to be conducted and the number of persons to be involved.

OASAM has established policies and procedures concerning FPB public space. These policies and procedures are set forth in the Department of Labor Manual Series (DLMS) 2–510 as well as an application for public space use by DOL Agencies and DOL-related entities. To comply with the above cited statutory, rules and regulatory requirements for entities sponsored or not sponsored by DOL Agencies or DOL-related entities which seek to use FPB public space, the Department has created a separate new application form. This notice relates to this new application form.

II. Current Action

OASAM is requesting that OMB approve the collection of information requirements on Form DL1–6062B, "Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building." Part of that approval process provides the public an opportunity to provide public comments about the proposed collection of information. OASAM will consider those comments prior to preparing a final package for submission to OMB. OASAM will also summarize the public comments submitted in response to this notice, and will include this summary in the request to OMB.

III. Desired Focus of Comments

OASAM 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.

Agency: Department of Labor, Office of the Assistant Secretary for Administration and Management;

Type of Review: New Collection (Request for OMB Control Number).

Title of Collection: Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.

OMB Control Number: 1225–0New.

Agency Form Number: DL1–6062B.

Affected Public: Private Sector (Business or not-for-profit institutions).

Estimated Number of Respondents: 5.

Frequency: On occasion.

Total Estimated Annual Responses: 5.

Estimated Average Time per Response: 5 minutes per application.

Estimated Total Annual Burden Hours: 25.

Total Estimated Annualized Cost Burden (excluding hour cost): $0.

Comments submitted in response to this notice will be summarized and may be included in the request for OMB approval of the information collection request. The comments will become a matter of public record.

Dated: September 13, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–23293 Filed 9–16–10; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

153rd Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 153rd open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 4, 2010.

The meeting will take place in C5515—Room 3, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Public access is available only in this room (i.e. not by telephone). The meeting will run from 12 p.m. to approximately 5 p.m. The purpose of the open meeting is to discuss reports/recommendations for the Secretary of Labor on the issues of (1) Healthcare Literacy, (2) Disparities for Women and Minorities in Retirement, and (3) Employee Benefit Plan Auditing and Financial Reporting Models. Descriptions of these topics are available on the Advisory Council page of the EBSA web site at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.*

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before September 27 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as e-mail attachments in text or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the e-mail. Relevant statements received on or before September 27 will be included in the record of the meeting and posted on the Advisory Council page of the EBSA Web site. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All statements are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the statements received, as they are public records.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 27 at the address indicated.

Signed at Washington, DC this 14th day of September, 2010.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2010–23304 Filed 9–16–10; 8:45 am]

BILLING CODE 4510–29–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2007–3 CRB CD 2004–2005]

Distribution of the 2004 and 2005 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Distribution order.

SUMMARY: The Copyright Royalty Judges are announcing the final Phase I distribution of cable royalty funds for the years 2004 and 2005.

DATES: Effective September 17, 2010.

ADDRESSES: The final distribution order also is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/proceedings/2007-3/final-distribution-order.pdf.*

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2008, the Copyright Royalty Judges published in the **Federal Register** a notice announcing the commencement of a proceeding to determine the Phase I distribution of royalties collected from cable systems under the section 111 statutory license for the period 2004 and 2005.[1] 73 FR 40623. The notice also requested interested parties to submit their Petitions to Participate in the proceeding no later than August 18, 2008. Petitions to Participate, all of which were joint petitions, were received from the following claimants: Public Broadcasting Service for Public TV Claimants ("PTV"); National Public Radio ("NPR"); Joint Sports Claimants ("JSC"); Canadian Claimants Group ("Canadian Claimants"); Devotional Claimants; the Motion Picture Association of America, Inc. ("MPAA") for certain Program Supplier Claimants ("Program Suppliers"); Music Claimants;[2] and the National Association of Broadcasters for all U.S. commercial television broadcast stations retransmitted by cable operators as distant signals during 2004 and 2005 ("CTV"). The Judges accepted these petitions. *Order Announcing Negotiation Period,* Docket No. 2007–3 CRB CD 2004–2005 (October 31, 2008).

After the expiration of the mandatory negotiation period, the parties were directed to submit their written direct statements on or before June 1, 2009.[3] [4]

[1] For a discussion of the operation of the section 111 license and the establishment of the funds for distribution, *see, Distribution of 2000–2003 Cable Royalty Funds, Distribution order, in Docket No. 2008–2 CRB CD 2000–2003 ("2000–03 Distribution Order"),* 75 FR 26798 (May 12, 2010).

[2] Music Claimants are comprised of the performing rights organizations ("PROs")—the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), and SESAC.

[3] Prior to this deadline, the participants filed a stipulation of settlement as to NPR's claim to the 2004 and 2005 cable royalty funds and their agreement that NPR no longer needed to participate further in this Phase I proceeding. Upon notification to the Judges that all Phase II claims had been resolved, NPR moved for final distribution of their share to the 2004 and 2005 funds. The

Continued

The Judges received written direct statements from Canadian Claimants; Program Suppliers; Devotional Claimants; and JSC, CTV, PTV, and Music Claimants (collectively, the "Settling Parties"). Discovery in the direct phase of the proceeding was conducted throughout June and July, and the hearings were conducted from October 6–20, 2009. The Settling Parties presented the following witnesses: James M. Trautman, Managing Director of Bortz Media & Sports Media, Inc.; Dr. Robert W. Crandall, Senior Fellow in Economic Studies at the Brookings Institution; Judith Meyka, independent consultant with clients in the cable and satellite television industry; Linda McLaughlin, Special Consultant to National Economic Research Associates, Inc.; Dr. Richard V. Ducey, Chief Strategy Officer, BIA Advisory Services; Dr. Joel Waldfogel, Ehrenkranz Family Professor of Business and Public Policy at the Wharton School of the University of Pennsylvania; Jerald N. Fritz, Senior Vice President for Legal and Strategic Affairs, Allbritton Communications Company; Seth Saltzman, Senior Vice President of Member Management in the Performing Rights Group, ASCAP; Michael O'Neill, Senior Vice President, Licensing, BMI; and William P. Zarakas, Principal, The Brattle Group.[5]

The Canadian Claimants presented Dr. Debra J. Ringold, Dean, Atkinson Graduate School of Management, Willamette University.[6]

The Devotional Claimants presented Dr. William Brown, Professor and Research Fellow, School of Communications and the Arts, Regent University.[7]

The Program Suppliers presented the following witnesses: Marsha E. Kessler, Vice President of Retransmission Royalty Distribution, the MPAA; John Mansell, Jr., President/Chief Executive Officer, John Mansell Associates, Inc.; Howard B. Homonoff, Director in the Entertainment, Media and Communications advisory practice, PricewaterhouseCoopers LLP; Dr. Arthur C. Gruen, Partner/Co-Founder, Wilkofsky Gruen Associates; Paul Lindstrom, Senior Vice President, The Nielsen Company ("Nielsen"); Bruce Hoynoski, Senior Vice President and Chief Research Officer, Global Media for Nielsen; and Dr. George S. Ford, President, Applied Economics Studies, and Chief Economist, the Phoenix Center for Advanced Legal & Economic Policy Studies.[8]

A rebuttal phase to the proceeding was requested by the parties, and written rebuttal statements were submitted by December 11, 2009. As a result of discovery on the written rebuttal statements, the Settling Parties and Program Suppliers filed a motion for adoption of a joint stipulation[9] regarding certain programming on Station WGN–TV (Chicago, Illinois) during the years 1998–99 and 2004–05, the adoption of which would obviate the need for the testimony of two witnesses for the Settling Parties: Dan Derian, Vice President of Research and Strategic Planning for Major League Baseball, and Marc Schader, former Senior Vice President of Programming for Tribune Broadcasting. The Judges granted the motion, and the Settling Parties withdrew the testimony of Messrs. Derian and Schader. *See Order on Witnesses and Joint Stipulations,* Docket No. 2007–3 CRB CD 2004–2005 (January 27, 2010); *see also* Tr. at 2335–36.

Rebuttal hearings were conducted February 1–5, 2010. The Settling Parties presented the rebuttal testimony of: Dr. Gregory S. Crawford, Professor of Economics, University of Warwick, United Kingdom; Jeffrey S. Berman, Senior Partner & Executive Vice President, C&R Research; Dr. Duncan; Edward S. Desser, President/Founder, Desser Sports Media, Inc.; and Mr. Trautman.[10]

The Devotional Claimants presented the rebuttal testimony of Dr. Michael Salinger, Professor of Economics, Boston University School of Management and Managing Director of LECG.

The Canadian Claimants presented the rebuttal testimony of: Ms. Martin; Dr. Gary T. Ford, Emeritus Professor of Marketing, the Kogod School of Business, American University; Dr. John E. Calfee, Resident Scholar, American Enterprise Institute; and Dr. Brian T. Ratchford, Charles and Nancy Davidson Professor of Marketing, University of Texas at Dallas.

Program Suppliers presented the rebuttal testimony of: Ms. Kessler; Dr. John R. Woodbury, Vice President, Charles River Associates; and Mr. Mansell.[11]

Proposed Findings of Fact and Conclusions of Law were submitted by the parties by March 17, 2010, and disputed findings were submitted by April 9, 2010. The parties also submitted Joint Agreed Findings of Fact and Conclusions of Law on April 19, 2010. Closing arguments were held on May 10, 2010, and the record to the proceeding was closed.[12]

Judges granted the motion. *See Order Granting Motion for Final Distribution,* Docket No. 2007–3 CRB CD 2004–2005 (April 16, 2009). It is the funds remaining after this Order that are the subject of this determination.

[4] Hereinafter, references to the written direct testimony shall be cited as "WDT" preceded by the last name of the witness and followed by the exhibit number and the page or paragraph number. Similarly, references to the written rebuttal testimony shall be cited as "WRT" preceded by the last name of the witness and followed by the exhibit number and the page or paragraph number. References to the transcript shall be cited as "Tr." followed by the page number and the name of the witness. References to the proposed findings of fact and conclusions of law shall be cited as "PFF" or "PCL," respectively, preceded by the name of the party that submitted same (*i.e.*, Settling Parties ("SP"), Program Suppliers ("PS"), Canadian Claimants ("CCG") or Devotionals ("D")) and followed by the paragraph number.

[5] The Judges also admitted the testimony of the following witnesses for the Settling Parties without live testimony pursuant to the stipulation of all parties: Dr. Gregory M. Duncan, Professor, the University of California, Berkley, and Managing Director, Huron Consulting Group, Tr. at 36–37; John F. Wilson, Senior Vice President & Chief TV Programming Executive, Public Broadcasting Service, *id.* at 397–98; Jonda K. Martin, President of Cable Data Corporation ("CDC"), *id.* at 528–29; and Alexandra Patsavas, Owner, Chop Shop Music Supervision, *id.* at 1009.

[6] The Judges also admitted the testimony of the following witnesses for the Canadian Claimants without live testimony pursuant to the stipulation of all parties: Janice de Freitas, Manager of the Rights Management Unit, Canadian Broadcasting Corporation/Radio-Canada, Tr. at 1270–72; Alison Smith, correspondent for the Canadian Broadcasting Corporation, *id.* at 1272; and Joan Fisher, Legal Counsel, Decode Entertainment, Inc., *id.* at 1273.

[7] The Judges also admitted the testimony of the following witnesses for the Devotional Claimants without live testimony pursuant to the stipulation of all parties: Dr. Charles F. Stanley, Senior Pastor, First Baptist Church, Atlanta, Georgia, and President, In Touch Ministries, Tr. at 1393–94; and Bruce Johansen, former President and CEO, the National Association of Television Program Executives, *id.* at 1394–95.

[8] The Judges also admitted the testimony of the following witnesses for the Program Suppliers without live testimony pursuant to the stipulation of all parties: Alex Paen, President, Telco Productions, Inc., Tr. at 1529; Jonda K. Martin, *id.* at 1529–30; Dr. Martin R. Frankel, Professor of Statistics and Computer Information Systems, Baruch College, City University of New York, *id.* at 1530–31; and Dr. Alan M. Rubin, Professor Emeritus and Director Emeritus, School of Communication Studies, Kent State University, *id.* at 1531–32.

[9] Neither the Canadian Claimants nor the Devotional Claimants objected to the adoption of the stipulation.

[10] The Judges also admitted the rebuttal testimony of two witnesses for the Settling Parties without live testimony pursuant to the stipulation of all the parties: Michael D. Topper, Vice President & Head of the Antitrust & Competition Practice, Cornerstone Research, Tr. at 2334–35; and Greg Stone, Owner/Chief Executive Officer, Greg Stone Media Consulting, *id.* at 2335.

[11] The Judges also admitted the rebuttal testimony of two witnesses of the Program Suppliers without live testimony pursuant to the stipulation of all the parties: Dr. Gruen, Tr. at 3238–39; and Dr. George Ford, *id.* at 3384–86.

[12] There remains an outstanding motion filed jointly by the parties requesting that the Judges adopt specific descriptions of the program categories at issue in this proceeding. However, at closing argument, the parties deemed the motion as no longer necessary. *See, e.g.*, 5/10/10 Tr. at 33, 94

The Distribution Order was issued to the parties on June 29, 2010. Motions for Rehearing were filed by Program Suppliers and Canadian Claimant Group. On July 19, 2010, the Judges DENIED the Motions for Rehearing.

II. The Governing Distribution Standard

Section 803(a)(1) of the Copyright Act Provides:

> The Copyright Royalty Judges shall act in accordance with this title, and to the extent not inconsistent with this title, in accordance with subchapter II of chapter 5 of title 5, in carrying out the purposes set forth in section 801. The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights), and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.
>
> 17 U.S.C. 803(a)(1).

All parties acknowledge that Congress did not set forth a statutory standard for cable royalty allocations. *See, e.g.*, SP PCL at ¶ 6. Beginning with the Copyright Royalty Tribunal, standards were created to assist the distribution process, which changed through the years under the Tribunal and later under the Copyright Arbitration Royalty Panel ("CARP") system administered by the Librarian of Congress.[13] However, for purposes of this proceeding, the parties are all in agreement that the sole governing standard is the relative marketplace value of the distant broadcast signal programming retransmitted by cable systems during 2004 and 2005. *See* CCG PCL at ¶ 9; DPCL at ¶ 2; SP PCL at ¶ 6; PS PCL at ¶ 9.

In applying the relative marketplace value standard to this proceeding, we are cognizant of the requirements of section 803(a)(1) described above. We have considered all of the evidence and the arguments presented by the parties. To the extent that they are incorporated into our determination as to the proper distribution of the cable funds, they are accepted. To the extent they are not, they are rejected.

III. JSC, CTV, PTV and Program Suppliers Claimants' Awards

Having carefully reviewed and considered all of the evidence in the record, the Judges find that the values of the program categories at issue among these contending claimants are most reasonably delineated by a range bounded by certain results indicated primarily by the Bortz constant sum survey, to a lesser extent by the Waldfogel regression analysis and, to a slight extent, by the Gruen constant sum survey. For the reasons discussed below, the Judges find that no single methodological approach, even when ostensibly adjusted to account for acknowledged shortcomings, persuasively obviates the need for relying, at least to some small extent, on other reasonable valuation approaches that offer additional perspective from a different methodological vantage point.

The market value of the non-network programming that appears on distant signal stations that are retransmitted by cable systems is not directly measurable. That is because the price charged to the cable system for the right to retransmit such programming is not determined in a free market, but rather is determined statutorily. Therefore, the evidence adduced in this proceeding aims to show how the programming in question would be valued in a hypothetical free market that would exist but for the regulatory regime currently in place.

However, such a hypothetical free market value for non-network distant signal programming is also not directly observable, because cable operators purchase a bundle of programming when they purchase a distant signal's entire output. ["Q. And why didn't you ask them about actual expenditures by that cable system for programming? A. Well, that's not something that's really possible to do, because cable operators buy whole signals. They don't buy the individual–when they're buying distant signals, they buy entire signals that include, in—in most instances—instances, multiple types of programming or multiple categories of programming. And, therefore, they're not, in the distant signal purchase decisions, making expenditures for the—these particular categories of programming." Tr. at 78 (Trautman).] Ergo, various alternative explanations about what induces cable system operators (the buyers) in a hypothetical distant signal market to exhibit preferences for one type of programming relative to the other types of programming that form part of the bundle on a distant signal station are the focus in this proceeding. The inducement to buy distant signals in the cable market stems from the derived demand for such distant signals as inputs in the various cable systems' channel lineups. In other words, any cable operator's demand for the programming input reflected in distant signals is only valuable to the extent that the demand for the total output of any cable system (*i.e.*, bundles of service options) can be related to that particular input.

Analysis of the Settling Parties' Evidence

One approach to valuation, favored by the Settling Parties, explains the demand for distant signals by cable operators in terms of the strength of the cable system operators' expressed preferences for the types of programming that they identify with the distant signal. This is grounded in the notion that a cable operator's association of certain kinds of "signature programming" with a particular distant signal station tends to be the starting point for driving value. Tr. at 86 (Trautman). Thus, the Bortz survey is predicated on the notion that the cable operator respondents are focusing on "signature programming" that drives the value of the distant signal station *to the cable operator*. ["And I think what you're expressing there in that example is exactly what I'm talking about in terms of the dominant impression of value and the notion of signature programming. I think, on any of these distant signals, although it may—what constitutes signature programming could differ from one respondent to the next, they are, in fact, in answering this question, thinking exactly along the lines that you expressed." Tr. at 91 (Trautman).] Following this line of analysis, the Settling Parties offer the Bortz constant sum survey of cable operators' relative preferences among certain categories of programming identifiably present on distant signal stations as determinative of the relative value of most of the categories of programming represented by the claimants in this proceeding.

Yet, it is not clear from the preferences expressed by the cable system operators who answer the Bortz survey questions where the key relative value question is limited to defining worth only "in terms of attracting and

(Closing Argument). Consequently, the motion is denied.

[13] For a more complete discussion of how the standards for distribution have changed throughout the course of the section 111 license, *see 2000–03 Distribution Order*, 75 FR at 26801–02 (May 12, 2010).

retaining subscribers," whether the preferences so expressed would reflect actual demand in a more realistic view of a hypothetical free market. That is, the purchase of one type of channel by cable operators (such as distant signal stations) and the programming it reflects would not occur in a vacuum to the exclusion of consideration of the remaining content to bundle with that distant signal channel in the product ultimately offered to subscribers. Underlying subscriber demand for the programming that appears on a particular distant signal station is only one part of a more complex decision facing cable operators as to whether the input in question is more attractive than a cable network alternative in terms of the net revenue or profit maximization goals of the buyers. This is not a trivial concern inasmuch as the buyers in this case (cable operators) are not participants in perfectly competitive input markets or in perfectly competitive output markets for their services. In the input market for cable channel programming as well as in the output market for providing consumer subscribers with cable television services, cable system operators exercise varying degrees of market power. Therefore, it is less than realistic to assume that cable operators' programming purchases are driven only by meeting their underlying subscriber programming preferences when a myriad of other net revenue considerations may be involved in any programming decision.[14]

One reason that more than just pure subscriber interests play a role in shaping the underlying demand for a cable operator's output is that the distant signal channels highlighted in this proceeding are not the subject of a direct choice by cable subscribers. Rather distant signal offerings are bundled together with non-distant signal broadcast channels, cable network channels and pay-per-view channels. Further, they are bundled into varying combinations of channels that are offered as different tiers of service for different prices. The bundles are packaged by the cable operator who selects the channel offerings, including any distant signal offerings. The rationale for the cable operator's decision concerning which channels to group in any tier offering and at what price, may depend not only on the impact on direct subscriber revenues, but also on such factors as advertising revenues associated with cable network channels, the relative license fee costs of various cable network channels, physical capacity constraints on the number of channels that can be transmitted over a particular cable system and even the direct ownership interests of the cable system in programming content on a given cable network.[15] In short, the preferences expressed by the cable system operators who answer the Bortz survey, where the key relative value question is limited to defining worth only "in terms of attracting and retaining subscribers," either may implicitly reflect more than an actual underlying subscriber demand for the programming that appears on a particular distant signal station or, alternatively, unrealistically minimize factors such as whether the input in question is more attractive than a cable network alternative in terms of the net revenue or profit maximization goals of the buyers.

This is not to say that the Bortz constant sum cable operator preference survey is substantially flawed, but rather that, given the interplay of all of the other factors described above that may color a cable operator's decision concerning the purchase of a distant signal input in a hypothetical cable market where the reality of bundling is taken into account, the Bortz survey's resulting point estimates are not a *precise* measure of all of those factors that may shape cable operator demand for the programming on distant signal stations. And, the Bortz study is certainly not a fully equilibrating model of supply and demand in the relevant hypothetical market, but rather a market research survey of buyer (*i.e.*, cable operator) preferences in that market, characterized by a less than fully comprehensive explanation of what shapes those preferences. Therefore, for reasons discussed below, while the Judges find the Bortz study to be the most persuasive piece of evidence provided on relative value in this proceeding, the Bortz confidence intervals around each point estimate inspire more confidence than a strict adherence to the point estimates, particularly in relation to the larger claimants.

This is not to say that the Bortz survey should ignore the role of the subscriber growth factor in the demand for programming content or that subscriber growth is not a consideration facing cable operators in planning their programming decisions. To the contrary, as noted above, subscriber growth is one consideration facing cable operators in making programming decisions; and, underlying subscriber demand was explicitly and properly a factor which the survey respondents were asked to consider. Moreover, that there are factors other than subscriber growth considerations which may also be at work in influencing the demand for distant signal stations, does not change our finding that the Bortz survey focuses on the appropriate buyer in the hypothetical market—*i.e.*, the cable operator.

Beyond the issue of the relevant contours of the hypothetical market, any study that purports to provide useful information on the relative value of the disparate categories of distant signal programming at issue in this proceeding must be reasonably well-founded methodologically. We find that the Bortz study is founded on a method—

[14] In markets characterized by some degree of monopoly power, consumer preferences are not honored in the same manner as in perfectly competitive markets, resulting in higher prices being charged to consumers and lesser quantities of goods/services being sold at the market price. Firms in such markets are, to varying degrees, price-makers rather than price-takers as compared to firms operating in perfectly competitive markets. So while a perfectly competitive firm is motivated to sell as much as it can produce up to the point where its marginal costs equate with the market price established by the *market* demand curve, a firm with some monopoly power is only motivated to sell up to the point where its marginal costs equate with the marginal revenues associated with the higher price it influences or dictates as reflected in the *firm's* downward sloping demand curve.

Testimony such as that offered by Judith Meyka describing the *coble marketploce* as competitive and declaring that the value of any particular programming to a cable operator is derived from the perceived value to the subscriber (*see* Meyka WDT (SP Ex. 4) at 4) is simply not credible in the face of well-documented studies showing the exercise of pricing power based on single cable operator dominance in the *coble markets* serving most Americans and in light of the fact that cable operators restrict their channel offerings to subscribers to *bundles of channels*, not just to the channels subscribers typically view. *See*, for example, U.S. General Accounting Office (GAO), *Issues Reloted to Competition ond Subscriber Rotes in the Cable Television Industry*, October, 2003 ("*October 2003 GAO Report*") at 30–31.

[15] *See*, for example, *October 2003 GAO Report* at 30–31. ["Most cable operators with whom we spoke provide subscribers with similar tiers of networks, typically the basic and expanded-basic tiers, which provide subscribers with little choice regarding the specific networks they purchase * * *. The manner in which cable networks are currently packaged has raised concern among policy makers and consumer advocates about the lack of consumer choice in selecting the programming they receive. Under the current approach, it is likely that many subscribers are receiving cable networks that they do not watch. In fact, a 2000 Nielsen Media Research Report indicated that households receiving more than 70 networks only watch, on average, about 17 of these networks. The current approach has sparked calls for more flexibility in the manner that subscribers receive cable service, including the option of à la carte service, in which subscribers receive only the networks that they choose and for which they are willing to pay."] *See olso*, U.S. Government Accountability Office, *Medio Progromming: Factors Influencing the Avoilobility of Independent Programming in Television and Progtomming Decisions in Rodio*, March, 2010 at 1–24. *See olso* the testimony by Dr. Crawford for the Settling Parties and Dr. George Ford for the Program Suppliers concerning some of the economic effects of bundling as summarized in SP PFF at ¶¶ 447–49, 534.

the constant sum survey—that has been long regarded as a recognized approach to market research. Tr. at 50 (Trautman), 1299 (Ringold), and 3007 (Gary Ford). Nevertheless, there are at least three aspects related to the execution of the Bortz survey methodology that we find additionally caution against regarding the Bortz point estimates as precise indicators of the relative value of the programming addressed in the record of this proceeding.

First, there *may* be bias introduced into the survey resulting from the respondents' potential misunderstanding of the exact parameters of the categories of programming they are being asked to compare in the key question (*i.e.*, question 4) addressing valuation in the survey. ["There are—there certainly is the potential that in—in some instances, on—I would say on the—on the fringes of these categories that a respondent might be thinking that one particular thing that is of value to them is in one category, when, in fact, for purposes of these proceedings, it should fit in another." Tr. at 83 (Trautman); and "Well, I think—first, I think that it's minor. I think that the program—there might be one or two exemptions, but the programs that are subject to miscategorization tend to be at the fringes and—and tend not to be things that drive substantial value in our service—in our survey. And, therefore, I think that the potential for spillover or for a change in result is—is limited." Tr. at 107–08 (Trautman).] However, although such bias may well be reflected in the Bortz survey point estimates, no one in the proceeding has precisely quantified the amount or direction of such bias. Therefore, we cannot say to what degree such bias may skew the Bortz point estimates. Moreover, we find no basis for concluding that such bias takes the true relative value numbers outside of range of the confidence intervals for the valuation estimates produced by the Bortz survey. ["Q. And have you considered whether your results are reliable in light of the possibility that there might be miscategorization in the response? A. I have considered that, and—and while I indicated that there's certainly some potential for spillover or miscategorization of certain types of programming, I think I have confidence that—that within the bounds of the estimation parameters that we set forth in the survey, that our results provide an accurate indication of relative value." Tr. at 107 (Trautman).]

Second, an acknowledged shortcoming of the Bortz survey valuations revolves around its handling of PTV and Canadian programming estimates. Because the Bortz methodology calls for surveying cable systems that contain at least one U.S. independent or network signal, cable systems which carry PTV-only or Canadian-only distant signals are excluded from the survey sample. The exclusion of such cable systems clearly biases the Bortz estimates downward for PTV and Canadian programming. The Bortz study seeks to excuse this bias on grounds that it is not possible to obtain an estimate of *relative* value where the cable system carries only one type of distant signal programming. But this explanation fails to adequately consider the view that: (1) A cable system that chooses only PTV or Canadian programming may be *implicitly* making a choice in favor of a 100% relative value score for such programming; (2) an explicit 100% relative value score for the Movies category (and concomitant 0% score for the remaining programming categories) is regarded as acceptable by the Bortz methodology in the case of a U.S. commercial station; and, (3) the latter occurrence—a 100% relative value score for the Movies category—would be recorded by Bortz even in the absence of PTV or Canadian distant signals from the responding cable operator's system. While the Bortz report acknowledges this bias (Bortz Report (SP Ex. 2) at 8–9) and the Settling Parties offer additional adjustments to purportedly remedy the problem (*see infra* at Section IV (Analysis of the Evidence)), the proffered remedies are not wholly satisfactory and, more importantly, obscure the basic difficulty that stems from asking cable operators to compare five different categories of *programming* with two types of distant *signals*. CCG PFF at ¶¶ 112,120. The Bortz survey may well be improved in this regard, either through the reformulation of the questions asked in the survey and/or by revisiting the underlying survey sample plan. Tr. at 2996–98 (Gary Ford); CCG PFF at ¶¶ 154–55. Yet, while this bias is troubling and proposed post-survey remedies based on the current record are discussed *infra* at Section IV (Conclusion and Award), it would be inappropriate to overstate the impact of this problem. No one in this proceeding maintains that it substantially affects more than a small portion of the total royalty pool (*i.e.*, the combined PTV–Canadian portion) under any of the competing theories of royalty distributions advanced in this proceeding. Nor has it been shown that the Bortz survey's remaining non-PTV–Canadian estimates were thrown outside the parameters of their respective confidence intervals solely because of this problem. That is, the PTV–Canadian problem does not substantially affect any of the remaining categories in some disproportionate way.[16]

Third, another acknowledged problem with the Bortz study flows from its handling of compensable as compared to non-compensable programming. ["* * * respondents to our survey are not informed that substantial portions of the movies and syndicated programming on Superstation WGN (the most widely carried distant signal) are not compensable in this proceeding because these programs are not broadcast by WGN on its over-the-air Chicago signal; thus the values that respondents to our survey attribute to these categories likely represent a 'ceiling' in that respondents are considering all programming on WGN rather than just the compensable programming on WGN." Bortz Report (SP Ex. 2) at 8.] The same issue affects the Devotional Claimants because of the presence of devotional programming on WGN that is also non-compensable. SP PFF at ¶ 686. (*See also infra* at Section V (Conclusion and Award)).

The Settling Parties offer some additional adjustments to the Bortz point estimates to address this problem. *See* SP PFF at ¶¶ 347–48. However, the Settling Parties do not incorporate their proposed adjustments explicitly into their proposed awards. Rather, the Settling Parties simply note their view that with respect to the Program Suppliers, their proposed award should only be regarded as a "ceiling" from which the Program Suppliers share should be reduced by some amount to reflect the disproportionate effect of the non-compensable programming issue. The Settling Parties clearly cannot precisely quantify an adjustment to the Bortz numbers for Program Suppliers because they recognize that

> The specific amount of an appropriate reduction in the Program Suppliers' share would depend on how much of the value attributed by Bortz survey respondents to Program Suppliers programming categories was attributable to non-compensable programming on WGN, *as to which there is no direct evidence*, but it would be reasonable to expect that some portion of that value was attributed to non-compensable Program Suppliers programming.

SP PFF ¶ 348, n.802 (emphasis added). Further, with respect to the Devotional Claimants' share, the Settling Parties do

[16] Indeed, even PTV does not object to the share accorded it under the Settling Parties' proposed shares which are based on the Bortz study as augmented by further adjustments.

not incorporate an explicit adjustment for this factor in their proposed award, being merely content to argue its relevance to adopting a prior lower award in place of its Bortz indicated share. *See* SP PFF at ¶¶ 686–87. Moreover, the method suggested by the Settling Parties for adjusting the Program Suppliers' share would produce no change in the Devotional Claimants' share—that is Dr. Waldfogel's comparison of implied royalty shares that resulted when all programming minutes on WGN were used in share calculations rather than just compensable programs showed no difference for the Devotional Claimants (a zero share in both cases). *See* SP PFF at ¶ 176 at Table 5. Thus, while we agree that some adjustment for this problem is reasonable, we find no reliably quantified adjustment on the record before us. However, because we focus on the confidence intervals for the Bortz estimates, rather than the Bortz point estimates themselves, we do not find that this issue alone so substantially affects the relative values of the programming so as to require us to discard those intervals as the best indicators in the record of the actual relative values of the programming of the larger claimants in this proceeding.

A number of other criticisms have been raised with respect to the Bortz survey by various claimants in this proceeding that suggest other shortcomings in terms of economic theory, statistical analysis or survey methodology. Yet, whether taken individually or viewed as a group, we do not find these other criticisms to undermine the general usefulness of the Bortz survey for the purpose offered. Certainly, none of the criticisms raised by the contending parties persuade us to "throw out the baby with the bathwater," particularly when viewing the Bortz survey results in terms of the confidence intervals around the point estimates rather than strictly limited to the point estimates themselves. Instead, particularly in the case of the larger claimants such as JSC, CTV and Program Suppliers, we find the confidence intervals provided by the Bortz study the best starting point for evaluating an award, although we also recognize the need to give due consideration to the reasonability of adjustments to deal with acknowledged problems such as the undervaluation of PTV and Canadian programming. The Bortz intervals certainly mark the most strongly anchored range of relative programming values produced by the evidence in this proceeding. Still, other evidence produced in the record also helps to more fully delineate all of the boundaries of reasonableness with respect to the relative value of distant signal programming.

Another piece of evidence helpful to some degree in this regard is the Waldfogel regression analysis. Dr. Waldfogel's multiple regression analysis attempts to analyze the relationship between the total royalties paid by cable operators for the carriage of distant signals in 2004–05 and the quantity of programming minutes by programming category on those distant signals. In addition to considering the impact on the dependent variable (total royalties) of independent variables representing minutes of programming for eight category types, Dr. Waldfogel considered the following additional independent variables in his analysis: the number of subscribers to the cable system in the prior period, the number of activated channels (*i.e.*, utilized capacity) for the cable system, average household income in the market in which the cable system was located, the number of channels originating locally, and dummy variables to indicate the presence of certain payment conditions (such whether a system pays any 3.75% fees or whether a system carries partially distant signals or whether a system imported only one DSE or whether a system imported less than one full DSE). *See* SP PFF at ¶ 156. Dr. Waldfogel's specification was similar in its choice of independent variables to a regression model utilized by Dr. Gregory Rosston to corroborate the Bortz survey results in the 1998–99 CARP proceeding. *See Report of the Copyright Arbitration Royalty Panel to the Librarian of Congress, in Docket No. 2001–8 CARP CD 98–99 ("1998–99 CARP Report")* at 46 (October 21, 2003). Dr. Waldfogel offered a total minutes (*i.e.*, compensable as well as non-compensable) version of his regression analysis as corroborative of the adjusted Bortz survey estimates. Tr. at 854 (Waldfogel).

Conceptually, the Waldfogel regression, with its focus on bundles of distant signals and inclusion of variables to capture both system capacity and the impact on the appetite for distant signals associated with the number of channels originating locally, may provide a richer look than the Bortz survey into factors that impact the purchasing decision of cable operators. Yet, unlike the Bortz survey, it does not purport to analyze data free from the strictures of the regulated market because the payment pools analyzed ultimately are impacted by the fee structure set in the regulated market. This raises the question of whether the Waldfogel analysis provides useful information on the key behavioral question or, alternatively, whether it merely mirrors the impact of the regulated market in its valuation. We agree with Dr. Waldfogel that the way to think about the bundle of programming that is being considered by the cable operator is to focus on its incremental value. Tr. at 890, 921, 926, and 940–41 (Waldfogel). Under that theory, Dr. Waldfogel has conceptually sought to separate the market impact of incremental signal purchasing decisions from the minimum fee issue and some other regulated fee considerations through the use of the dummy variables specified in the regression. We find, that as a result of the manner in which he has conceptualized his model, Dr. Waldfogel's regression coefficients do provide some additional useful, independent information about how cable operators may view the value of adding distant signals based on the programming mix on such signals. Although the determinants of distant signal prices in a hypothetical free market are not necessarily identified as such, some indication of what the cable operator finds valuable may be obtained by observing the way cable operators' total spending relates to the content of the bundle of distant signals purchased. That is because the cable operators are free to decide how many distant signals to purchase and, therefore, whether the addition of the content of an incremental distant signal will contribute to the net revenues of the system.

At the same time, while the Waldfogel regression analysis provides useful information, we also find that there are limits to that usefulness in corroborating the Bortz survey, largely stemming from the wide confidence intervals for the Waldfogel coefficients. Thus, the implied share of royalties calculated by Dr. Waldfogel would change substantially if the true value of the variable was at one end of the confidence interval rather than at the point estimate value used by Dr. Waldfogel in his calculations. Given the size of the standard errors around his estimates, Dr. Waldfogel concedes this imprecision. SP PFF at ¶ 184. Nevertheless, while one may question the precision of the results on this basis, it only cautions against assigning too much weight to its corroborative value.

As to the methodology employed, we find that Dr. Waldfogel employed generally reasonable methods to assure that the model's results were consistent in the face of changes in the model and that the parameter estimates did not vary in a statistically significant way

across years. SP PFF at ¶¶167–68. The strident criticisms raised by Dr. Salinger and Dr. George Ford concerning the "instability" of the Waldfogel estimates over time are excessive. For example, there is no *a priori* reason why the two individual years examined by Dr. Salinger (by breaking the Waldfogel entire sample in two) should have exactly matching minutes coefficients. Lack of precision can result merely from the fact that all items in a population were not observed. The smaller the sample size, the fewer are the number of observations and, hence, the less precision. Then too, it is not unusual to observe the coefficients of independent variables in a model varying between two samples because all possible combinations of forces at work that result in these coefficients can seldom be fully encompassed in an efficient specification of a model. Finally, the "instability" suggested by Dr. Salinger does not extend to the signs of the coefficients—all of the minutes variables examined by Dr. Salinger continue to carry the same positive or negative sign in 2004 as they carried in 2005. Thus, any instability does not extend to the direction of the expected explanation—it is the same in both years. Dr. Salinger also raises the spectre of omitted variables with respect to the Waldfogel analysis. Tr. at 2873–74 (Salinger). But there is no evidence that the inclusion of any particular additional independent variable would improve the explanatory power of the Waldfogel regression. Nor is there any evidence in the record that the independent variables in the Waldfogel regression are correlated within an important omitted variable thereby leading to an unreliable estimate of the regression coefficients for the included variables. Without such evidence, this criticism should not be overstated because an omitted variable criticism may always be raised, since there are an almost limitless number of potential variables that may be considered for inclusion in any model of some complexity. SP PFF at ¶186.

Having carefully considered the Waldfogel analysis and various criticisms of that analysis raised by the contending parties, we find the results of this regression analysis useful in two ways—(1) to, at least in some rough way, corroborate the augmented Bortz survey results and (2) to provide an independent reasoned basis for considering movement away from the augmented Bortz point estimate for the Devotional category toward, or even beyond, either boundary of the Bortz confidence interval for that category. First, we find that, when applied to all program minutes to match the scope of the programming covered by the Bortz surveys, and when the resulting shares are compared to Bortz survey results that have been augmented to match the scope of the systems covered by the regression analysis, Dr. Waldfogel's regression analysis coefficients produce comparable share numbers for all categories except Devotional. Second, to the extent that there is imprecision in the augmented Bortz estimates, the Waldfogel regression analysis may help to identify the most imprecise point estimates and suggest a direction in which they may be adjusted further to bring them in line with what is occurring where actual decisions have been implemented. In this case, the Waldfogel analysis suggests the augmented Bortz point estimates for the Devotional category cannot be corroborated and, further, the value of the Devotional coefficient points toward a lower share for this category (consistent with our further consideration of this category, *infra* at Section V (Conclusion and Award)). Tr. at 922, 924 (Waldfogel).

Analysis of the Program Suppliers' Evidence

Although much less useful than the Waldfogel regression for the reasons delineated below, the Gruen survey results advocated by the Program Suppliers cannot be totally disregarded. As we have previously noted, there are factors, other than subscriber growth considerations, which may also be at work in influencing the demand for distant signal stations and that the cable operator may be best positioned to address these other considerations in a hypothetical market setting dealing with bundles of signals encompassing different programming mixes. That is why we have found that, whatever its shortcomings, the Bortz survey focuses on the appropriate buyer in the hypothetical market—*i.e.*, the cable operator. Nevertheless, we recognize that one consideration facing cable operators, even in the subscription markets in which their cable systems may be exercising some degree of monopoly power,[17] is the impact of programming on subscription revenues. To that extent, the preferences of subscribers as to distant signals that appear as part of the bundle of cable stations they receive may provide some relevant information, particularly if a nexus may be established between subscriber demand for such distant signals and the programming on those distant signals that drives the demand. The Gruen survey attempts to shed some light on this limited issue. Unfortunately, although not persuading us to reject the survey altogether, the various inadequacies of the Gruen approach cause us to place little weight on its findings beyond the very general notion that the highest valued categories of programming identified by the Bortz survey as a group remain the highest valued categories of programming identified by the Gruen survey and the lowest valued categories of programming identified by the Bortz survey as a group remain the lowest valued categories of programming identified by the Gruen survey.

Among the design and execution problems afflicting the Gruen survey were the lack of analysis to determine whether there was a representative sampling of demographic groups, the absence of any gender analysis, the application of valuations to the entire household rather than the survey respondent, the lack of assurance that the distant signals in question were actually viewed, and, like the Bortz survey, the failure to make an adjustment for non-compensable programming on WGN America ("WGN–A"). DPFF at ¶ 185; Tr. at 3167–68 (Ratchford); Tr. at 1915 (Gruen). Though not rendering it totally useless, the narrow focus of the study (subscriber preferences) and the difficulties largely related to the design and execution of the survey, referenced hereinabove, detract from the utility of the Gruen results, except in some very general way that confirms the broad outlines of the Bortz findings. It should be noted that many of the difficulties identified with the survey are capable of repair in the future, so that, if properly executed, it may provide some better insight into subscriber tastes to the extent such tastes play some role in cable operators' demand for distant signals as part of their offerings. For example, one issue on which the Gruen survey attempted to acquire some better information was on the definition of "live team sports"—an issue that clearly was of concern to the Judges in the context of the Bortz study. *See,* for example, Tr. at 81–84, 100–101 (Trautman). Still, as derived for this proceeding, we find the Gruen survey results of only slight, very general usefulness.

[17] Just for purposes of clarity, when we say that a firm is exercising some degree of monopoly power, we mean that the firm has some influence over prices—that is, the market in which it participates is characterized by something less than perfect competition. In short, the firm may exercise market power that falls short of being a perfect monopoly, but does exercise sufficient market power to determine that it does not participate in a perfectly competitive market.

In addition to the Gruen survey, the Program Suppliers provided another quantitative study by Dr. George Ford on the question of relative value. Dr. Ford, in search of a market that would correspond to a hypothetical free market for the purchase and sale of the bundles of programming on distant signals, proposes a proxy for the direct observation of such a market. That proxy programming market was one that focused on local broadcast stations' purchases of exclusive broadcast rights in their own local markets.

We find that Dr. George Ford's advertising based model so far attenuated from the relevant hypothetical market as to offer no basis for reasonable estimates of the relative value of programming on distant signal stations. Moreover, questionable underlying assumptions and the methodological flaws plague the advertising based model. Finally, because we find no merit in this advertising market approach and only a slight, very general usefulness to the Gruen survey results, we reject Dr. George Ford's further suggestion of the marriage of the two approaches into a hybrid solution. *See* Ford WDT (PS Ex. 11) at 49–50.

Dr. George Ford's approach wholly ignores the value that may be ascribed to distant signal programming by cable operators (the buyers in the relevant hypothetical market) or even by cable subscribers (through their derived impact on demand). SP PFF at ¶¶ 423–24. Therefore, on that basis, a number of the professional economists who testified in this proceeding on the issue found the George Ford advertising based approach wanting in terms of providing any useful information. *See,* for example, Tr. at 229–30, 254–56 (Crandall); Tr. at 2344–46 (Crawford); Tr. at 2787–88 (Salinger); Tr. at 3060–61 (Calfee).

Furthermore, the George Ford advertising approach suffers from questionable assumptions underlying the basic tenants of his analysis or inaccurate assumptions leading to flawed adjustments of the results for particular categories of programming that do not admit of direct analysis in his approach. For example, Dr. George Ford assumes that the broadcast stations he analyzed would buy precisely the programming that was actually carried by cable systems on distant signals in 2004 and 2005. Tr. at 2199 (George Ford). But he offers no evidence to support his assertion that this is a "reasonable" assumption. Similarly, there are assumptions with respect to his determination of "prices" paid for programming on an advertising spot sales price on a "cost per thousand" or "CPM" basis that are not reasonable. As an example, he applied the CPM analysis to the Canadian programming category, even though none of the advertising data were for Canadian markets. SP PFF at ¶ 432. On the other hand, he assigns the average CPM to devotional programming even though the Devotional Claimants sell no advertising in their programs. Ford WDT (PS Ex. 11) at 35, 39 Table 6 and Johansen WDT (Devo. Ex. 2) at 7. Dr. George Ford further assumes that CTV programming did not air during prime time, resulting in no credit for Prime Time CPMs for such programming—an erroneous assumption based on the most persuasive evidence received in this proceeding. SP PFF at ¶¶ 460–61.

In short, we find that the George Ford advertising approach offers no helpful insight into the relevant hypothetical market or into the behavior of the relevant buyer in that hypothetical market—*i.e.*, the cable operator.

In addition, even the proponent of this approach admits that, at bottom, changes in relative market values calculated between 2004 and 2005 are driven principally by the changes in viewership shares that were reported in the underlying MPAA special study. Tr. at 2286–88 (George Ford). Yet, where cable systems do not sell advertising in connection with distantly retransmitted content, a valuation dependent on ad sales tied to viewing data is untenable. Clearly, this study fails to offer a reliable means of translating viewership shares to relative value if that is its aim.

Conclusion and Award

For all of the above reasons, the Judges conclude that the Bortz intervals set the appropriate parameters for evaluating their award with respect to the JSC, CTV, and the Program Suppliers.[18] Moreover, we do not find the Bortz estimates, either before or after various adjustments, to be so precise as to produce awards extending beyond a single decimal place. We deal with music separately as described *infra* at Section VI, and, therefore, divide the remainder among the JSC, CTV, Program Suppliers, Devotional Claimants, PTV and Canadian Claimants, using as our starting point the augmented Bortz survey shares as calculated by Ms. McLaughlin[19] which includes appropriate adjustments to the PTV share at SP PFF at ¶ 317; and then, we proceed to adjust these values further to reflect the differential impact of the alternative approach we take to valuing the Canadian Claimants' and Devotional Claimants' shares. *See infra* at Sections IV and V. Although we provide somewhat more to the Canadian Claimants than the Bortz interval suggests for the reasons discussed *infra* at Section IV (Conclusion and Award), the negative effect on the remaining categories is miniscule. At the same time we provide less to the Devotional Claimants than the Bortz interval would indicate, based on the impact of the Waldfogel regression and other considerations, including the suggested direction (though difficult to quantify magnitude) of the impact of the non-compensable programming issue, as discussed *supra* at Section III (Analysis of the Settling Parties' Evidence) and *infra* at Section V (Conclusion and Award). The lower Devotional Claimants' share is divided proportionately among JSC, CTV, and PTV. However, no portion of the reduced Devotional Claimants' share is awarded to the Program Suppliers, because the latter group's Bortz share, just like that of the Devotional Claimants, includes non-compensable programming. Therefore, we decline to extend the potentially small gain from the downward adjustment of the Devotional Claimants' share to the Program Suppliers so as to recognize the differential standing of the Program Suppliers as compared to JSC, CTV and PTV with respect to non-compensable programming. The effect of this approach is to recognize and make the equivalent of a directional adjustment in the Program Suppliers' share *relative* to those remaining categories of programming which are largely compensable.[20] However, the resulting

[18] Various arguments are made by some parties concerning whether or not the Judges must consider or require proof of changed circumstances, separate and apart from the estimates of relative value presented by the parties. We find, as did the 1998–99 CARP, that changed circumstances are embedded within the methodologies that provide reliable estimates of relative valuations and, therefore, have already been accounted for and are subsumed within the calculus of results. *See 1998–99 CARP Report* at 16, 31–2.

[19] Because Ms. McLaughlin's figures sum to slightly more than exactly 100%, we will adjust across the board to preserve the same relationships and to produce a final distribution of no more than exactly 100%.

[20] We recognize that this adjustment may not be precise. However, we agree with the Settling Parties that it would be reasonable to expect that some portion of the value assigned by Bortz survey respondents to Program Suppliers' programming was attributed to some non-compensable programming, even though there is no direct evidence in the record that delineates with specificity how much of the value attributed by Bortz survey respondents to Program Suppliers' programming categories was in fact attributable to non-compensable programming on WGN–A. *See supra* at 16–17 and SP PFF at ¶ 348, n.802. Furthermore, inasmuch as the Program Suppliers' programming likely involves non-compensable

positive effect on the remaining categories is small and does not place either the JSC shares or CTV shares or the share of the Program Suppliers substantially outside of its respective Bortz interval. Thus, with respect to JSC, CTV and the Program Suppliers, our award is consistent with the Bortz intervals—the strongest piece of evidence on these relative values submitted in this proceeding for our consideration—giving due consideration to the reasonability of adjustments to deal with acknowledged problems such as the undervaluation of PTV and Canadian programming.

Prior to adjusting downward for the Music Claimants' share, but after accounting for the respective shares of the Canadian Claimants and the Devotional Claimants, the shares of the Basic Fund for PTV, JSC, CTV and Program Suppliers as determined by the Judges are as follows:

	2004 (percent)	2005 (percent)
PTV	7.7	7.4
JSC	33.7	36.8
CTV	18.6	14.7
Program Suppliers	34.5	35.7

Because PTV does not participate in the 3.75% Fund, shares need only be calculated for the remaining participating claimants by adjusting the JSC, CTV, Program Suppliers, Canadian Claimants and Devotional Claimants Basic Fund shares upward to reflect PTV's non-participation. *Prior to adjusting downward for the Music Claimants' share,* but after accounting for the respective shares of the Canadian Claimants and the Devotional Claimants, the shares of the 3.75% Fund for PTV, JSC, CTV and Program Suppliers as determined by the Judges are as follows:

	2004 (percent)	2005 (percent)
JSC	36.7	40.0
CTV	20.3	16.0
Program Suppliers	37.6	38.9

IV. Canadian Claimants' Award

Unlike the other claimant groups, this is not the Canadian Claimants' first attempt to demonstrate to the Judges the relative marketplace value of their programming in a Phase I distribution proceeding. The Canadian Claimants litigated their distribution share *vis-à-vis* all the other claimants in Docket No. 2008–2 CRB CD 2000–2003, covering the royalty years 2000 through 2003. That proceeding, however, was unlike any other cable Phase I determination in the 32-plus year history of the section 111 statutory license. Instead of presenting us with competing methodologies and evidence as to the proper award for Canadian Claimants, and letting us determine relative marketplace value, the litigants restricted us, through two joint stipulations, to select one of two options: either the average of the 1998 and 1999 awards given the Canadian Claimants in the 1998–99 CARP decision, or the CARP's fee generated results—with slight modification—using 2000–03 data obtained from CDC. As described in our decision, 75 FR 26798 (May 12, 2010), we chose the latter option.

The details of the decision need not be repeated here, but there is one aspect that is worthy of reemphasis. We did not determine that the fee generation methodology used by the 1998–99 CARP, nor the modified version proposed by the Canadian Claimants, was the method to determine relative marketplace value of Canadian programming. 75 FR at 26802 ("It very well may be that there are other methods or other evidence that best represent *the* relative marketplace value of Canadian Claimants' programming as well as the programming of other claimant groups. Such is not the case in this proceeding, where the parties have presented us with only two choices. The Judges, therefore, do not opine as to what may be the best means of determining the relative marketplace value of Canadian Claimants' programming, or other claimant groups' programming, in future proceedings.") (emphasis in original). No alternative methodology to determine relative marketplace value was presented. The Canadian Claimants, however, argue in this proceeding that our 2000–03 decision was an "affirmation" of the fee generation methodology to determine their award and that the decision, coupled with the 1990–92 and 1998–99 CARPs' use of fee generation for Canadian Claimants' awards, "solidifies the deference owed and the high standard that must be overcome to challenge fee generation as a viable indication of relative market value." CCG PCL at ¶ 30. This argument is plainly wrong. We sided with the Canadian Claimants' presentation in the 2000–03 proceeding because we were given only two choices and the other claimant groups failed to demonstrate that "the fee generation approach is so arbitrary, so meritless that it is without probative value with respect to determining the Canadian Claimants' royalty share." 75 FR at 26804. Fee generation, as used in the 2000–03, 1998–99, or 1990–92 proceedings is not given overarching weight in this proceeding. In order for it to be adopted in this proceeding, the Canadian Claimants must demonstrate that it is the *best* means of determining Canadian programming's relative marketplace value.

Analysis of the Evidence

As they have done in prior proceedings, the Canadian Claimants urge us to determine their award on the basis of a fee generation methodology they have developed. We discussed in detail in the 2000–03 proceeding the origin and operation of fee generation, and how it was applied by the 1998–99 CARP. *See* 75 FR at 26800–03. Using full-year data obtained from CDC, the Canadian Claimants demonstrated that distant Canadian broadcast signals generated 4.15% of the total Basic Fund royalty fees paid by U.S. cable systems in 2004 and 4.36% of the fees paid for 2005. For the 3.75% Fund, Canadian distant signals generated 3.50% of the 2004 royalties and 3.23% of the 2005 royalties.

In years past, the Canadian Claimants' fee generation approach would stop at this juncture. However, beginning with the 2000–03 proceeding, the Canadian Claimants performed additional computations to address two "problem" facets of the section 111 royalty payment scheme. The first difficulty occurs in analyzing royalties paid by cable operators in the Basic Fund. Under the statutory scheme, royalties are paid on a sliding scale of percentages of gross receipts obtained by cable systems for the privilege of retransmitting broadcast stations. Coupled with an additional factor that cable systems that carry no distant signals pay the same amount as if they had carried one distant signal (the so-called "minimum fee"), it is not possible to determine precisely at what royalty rate the cable system paid for the Canadian signal (or any other distant signal, for that matter). To attempt to address this, Jonda Martin, president of CDC, performed what she described as a "Min/Max" analysis, whereby she calculated royalties from cable systems as if they had paid for the Canadian distant signal at the first DSE value, and as if they had paid for it at the last DSE

programming as does that of the Devotional Claimants, fairness demands that both these parties' shares should be impacted *relative* to the shares of the Settling Parties whose programming is largely compensable. Despite our lack of precision in our adjustment, the direction of the adjustment is correct and the magnitude of the impact on the Settling Parties' shares, though positive, is relatively small.

value. Martin WRT (CCG Ex. CDN–R–1) at 4. The purpose of this analysis was an attempt to demonstrate that the Canadian Claimants' selection of the mid-point of these royalties as actual royalties paid was a reasonable exercise. Calfee WRT (CCG Ex. CDN–R–3) Appendix B at 8.

A similar exercise was performed for the 3.75% Fund. Under the section 111 scheme, one cannot determine which signals are paid for at the 3.75% "nonpermitted" rate when more than one carried distant signal could have been identified as a Basic Fund "permitted" signal. Ms. Martin calculated cable system royalties as if cable systems paid for Canadian distant signals at the 3.75% "nonpermitted" rate, and at the basic "permitted" rate, once again in an effort to demonstrate that the selection of the mid-point for 3.75% Fund royalties paid was reasonable. Martin WRT (CCG CDN–R–1) at 5, Table 3.

Armed with Basic and 3.75% Fund fee generated royalties for 2004 and 2005, the Canadian Claimants next sought to provide the division of royalties among the program categories contained on Canadian distant signals. This was done, as it had been in the prior proceeding, by Drs. Gary Ford and Debra Ringold, who conducted a constant sum survey of large cable systems carrying distant Canadian signals in an effort to determine what value they attached to the Canadian programming (as opposed to JSC and Program Supplier programming, the only other two types of programming appearing on Canadian distant signals) contained on the Canadian distant signals. The results, presented by Dr. Ringold, showed a purported value of 59.94% for 2004 and 60.37% for 2005. Thus, of the fees generated by Canadian signals for 2004 and 2005, 59.94% and 60.37%, respectively, were attributable to Canadian programming.

The Canadian Claimants' calculations do not, however, end there. This is because the Canadian Claimants urge us to follow the distribution methodology adopted by the 1998–99 CARP for parties whose royalties were determined by means other than using their Bortz survey results. This 16-step process results in a requested award to Canadian Claimants of 2.365% of the Basic Fund and 1.586% of the 3.75% Fund for 2004,[21] and 2.499% of the Basic Fund and 1.308% of the 3.75% Fund for 2005. CCG PFF & PCL Appendix A at 14. In the event that the Judges do not follow the 1998–99 CARP's distribution methodology, Canadian Claimants urge awards of 2.515% of the Basic Fund and 1.656% of the 3.75% Fund for 2004, and 2.665% of the Basic Fund and 1.365% of the 3.75% Fund for 2005. *Id.* at Appendix B, 3–4.

The Settling Parties contend that they have made significant improvements from prior proceedings to the results yielded by the Bortz survey and urge adoption of particular "augmented" point estimates for Canadian Claimants. First, they submit that the survey itself has been improved by increasing the number of large cable systems carrying a Canadian signal to 11 (18% of the total) in the 2004 Bortz survey and 13 (25.5% of the total) in the 2005 survey. SP PFF at ¶ 326. Second, to account for the exclusion from the survey of cable systems that carried only Canadian and/or PTV distant signals,[22] they offer the testimony of economist Linda McLaughlin, who purports to mathematically compute the values the 2004 and 2005 Bortz surveys would *likely* have found had they not excluded these systems. These "augmented" Bortz results produce a Canadian Claimants' royalty share of 0.5% for 2004 and a range of 1.5% to 1.8% for 2005. McLaughlin WDT (SP Ex. 6) at 11, Chart 4. Third, the Settling Parties accept the observation of Dr. Gary Ford, a Canadian Claimants witness, that one large cable system which carried a distant Canadian signal, Comcast of Washington IV, was improperly excluded from the 2004 Bortz results due to a clerical error. SP PFF at ¶¶ 330–31. Finally, the Settling Parties accept the results of the Ford/Ringold constant sum surveys, whereby Dr. Ringold testified that 59.94% of 2004 Canadian signals and 60.37% for 2005 were attributable to Canadian programming.[23]

The Settling Parties conclude that the Canadian Claimants' award should be determined by multiplying their augmented Bortz survey results for 2004 and 2005 by the Ford/Ringold constant sum survey results for Canadian programming. This yields a distribution of 1.2% for both the 2004 Basic and 3.75% Funds, and 1.0% of the Basic Fund and 1.1% of the 3.75% Fund for 2005.

The Waldfogel regression analysis, discussed *supra*, yielded an estimated royalty share of 2.92% for Canadian Claimants. SP PFF at ¶ 179. Not surprisingly, the Settling Parties do not advocate use of the Waldfogel number as the Canadian Claimants' award. Nevertheless, in Dr. Waldfogel's view, his regression share compares favorably to the Settling Parties' augmented Bortz shares for Canadian Claimants, more so when the Dr. Gary Ford adjustment to the augmented results is included. SP PFF at ¶¶ 180–81.

The Gruen subscriber survey yielded 0.8% for 2004 and 1.8% for 2005, respectively. Gruen WDT (PS Ex. 8) at 23, Table 3. The survey did not distinguish between the Basic Fund or the 3.75% Fund. Program Suppliers dispute use of the Ford/Ringold constant sum survey as the means for determining the division of royalties among the categories of programming contained on Canadian distant broadcast signals, but do not offer an independent basis for making such distinctions. *See,* PS Disputed CCG PFF & CCL at ¶¶ 82–83.

Conclusion and Award

Unburdened by the attendant limitations of the last proceeding, the Judges are free to determine distribution awards for 2004 and 2005 that best reflect the relative marketplace value of Canadian broadcast programming retransmitted by cable systems. We do not rely solely upon fee generation in general nor the specific fee generation methodology offered by the Canadian Claimants.

Our declination from use of fee generation to determine relative marketplace value stems from the Canadian Claimants' inability to demonstrate that the relationship between royalties generated by the section 111 license for Canadian signals and the overall hypothetical marketplace value of programming in this proceeding is, in the words of the Canadian Claimants' own witness, Dr. Calfee, more than "rough," "far from perfect," and "crude."[24] The wobbly relationship between the two does not mean, as the other parties in this proceeding would have it, that we are precluded from utilizing the evidence of fee generation in shaping our award. 75 FR 26798, 26805 (May 12, 2010). What it does mean, and what we were unable to consider in the prior proceeding, is that other evidence of relative marketplace value presented by the parties should be considered. *See, id.* at

[21] The Canadian Claimants do not have a claim to Syndex Fund royalties.

[22] As previously noted, the Bortz survey excludes the responses of cable systems carrying only Canadian and/or PTV signals because they presumably can respond by only giving 100% value to Canadian and/or PTV programming, to the exclusion of all other program categories. SP PFF at ¶ 313.

[23] The Settling Parties accept 60% for both years. SP PFF at ¶ 336.

[24] Indeed, on the most important relative marketplace value question, the Canadian Claimants did not supply any additional testimony or support beyond the assertions of Dr. Calfee from the prior proceeding.

26820–03 (Judges' discussion of the checkered history of acceptance of fee generation in section 111 distribution proceedings).

The augmented Bortz data presented by the Settling Parties attempts to correct for prior primary criticisms; in sum, that it is does not sufficiently measure the particular circumstances of smaller claimants such as Canadian Claimants. Ms. McLaughlin's efforts to correct for cable systems excluded from the survey because they only carry a distant Canadian signal do somewhat ameliorate the under-representation of Canadian signals in the overall survey results.[25] But, consistent with our earlier expressed concerns about the Bortz survey, there are still not enough cable systems carrying distant Canadian signals among the respondents. As a result, small adjustments to the data result in proportionately enormous increases in distribution shares. For example, when the omitted Seattle, Washington, cable system data is included in the augmented 2004 results, it produces more than a three-fold increase in the distribution share. Whether the survey sample needs to be tripled in size to be accurate, as Dr. Gary Ford suggests, is debatable, but improved response rates are necessary before the survey can be considered the best marker of relative marketplace value.

We conclude that the augmented Bortz results, with the Dr. Gary Ford 2004 adjustment and the application of the Ford/Ringold survey, understate the value of Canadian programming and, therefore, represent the floor for establishing the Canadian Claimants' award. Our determination on this point is bolstered by the results of the Waldfogel regression analysis, which values Canadian programming at a higher level for both years and, to a lesser extent, the Gruen survey which yields an appreciably higher result for 2005.

Having determined the floor of the award, we turn to the weight that should be accorded the fee generation approach offered by the Canadian Claimants. We focus our attention on a "straight" fee generation approach, described in Appendix B of the Canadian Claimants' proposed findings, and not the fee generation methodology employed by the 1998–99 CARP. The CARP's approach applied to an evidentiary record, and a relationship of the parties, considerably different from this proceeding, and therefore is neither controlling nor useful here.

The Canadian Claimants' fee generation numbers for the Basic Fund are 2.515% for 2004 and 2.665% for 2005, and for the 3.75% Fund are 1.656% for 2004 and 1.365% for 2005. CCG PFF & PCL at Appendix B. We discussed above that fee generation is not persuasive as the best method for determining relative marketplace value because of the Canadian Claimants' failure to firmly link the relationship between section 111 royalties to that value. The question is whether fee generation tends to overstate or understate the value. We believe the answer is the former. The Canadian Claimants applied their fee generation methodology to royalties collected from all large cable systems in the United States, even though many, if not most, of those systems are not permitted by the section 111 license to retransmit Canadian broadcast stations. The inclusion of all royalties, rather than just those from cable operators in the "Canadian zone," inflates Canadian Claimants' numbers. Therefore, the Judges determine that the Canadian Claimants' fee generation numbers represent the ceiling for their award.[26]

Having determined a floor and a ceiling for the Canadian Claimants' award, the "zone of reasonableness" is framed. *National Ass'n of Broadcasters* v. *Librarian of Congress*, 146 F.3d 907, 918–19 (DC Cir.1998) (citing *National Ass'n of Broadcasters* v. *Copyright Royalty Tribunal*, 772 F.2d 922, 926 (DC Cir. 1985)). The Canadian Claimants' final awards are as follows (prior to accounting for the Music Claimants' share):

Year	Basic fund	3.75% fund (percent)	Syndex fund (percent)
2004	2.0	1.5	0
2005	2.0	1.2	0

V. Devotional Claimants' Award

The Devotional Claimants have not participated in a Phase I distribution proceeding since the 1990–92 CARP proceeding. DPCL at ¶ 102. The Devotional Claimants reached a settlement with the other Phase I parties regarding their share to the 1998–99 cable royalties and therefore did not participate in the 1998–99 CARP proceeding. *See* Tr. at 1368 (Opening Statement); SP PFF at p. 29 (Introduction and Summary).

Analysis of the Evidence

Devotional Claimants have consistently supported the JSC's cable operator valuations of the program categories throughout the history of their participation in these distribution proceedings. *Id.* Their position in this proceeding is no different: In their view, the Bortz survey continues to represent the best evidence of the relative marketplace value of the various program categories. 5/10/10 Tr. at 35 (Closing Argument). Accordingly, they argue that they are entitled to the shares afforded them by the 2004 and 2005 Bortz surveys and thus are seeking an award of 7% of the Basic Fund for each of 2004 and 2005 and 7.3% of the 3.75% Fund for each year.[27] DPCL at ¶¶ 106–107.

Devotional Claimants argue that such an increase is warranted for several reasons. First, they note that previous awards were based primarily on the Nielsen data, not the Bortz survey. 5/10/10 Tr. at 43 (Closing Argument). If the Judges find the Bortz survey acceptable in this proceeding, then their shares

[25] The 2004 inclusion of the Seattle, Washington, signal discussed by Dr. Gary Ford does as well.

[26] The Settling Parties renew their argument, made in the 2000–03 proceeding, that it would be an error of law for us to adopt the Canadian Claimants' fee generation methodology as applied to the royalties collected from all large cable systems in the U.S., as opposed to only those in the Canadian zone. SP PCL at ¶ 30. We were not persuaded by the argument, particularly given the fact that fee generation had been applied to all large cable systems in the 1998–99 proceeding and had been found acceptable by the Register of Copyrights, Librarian of Congress and the United States Court of Appeals for the District of Columbia Circuit. 75 FR 26798, 26805 (May 12, 2010). In any event, we need not reconsider the argument here because we are not adopting the Canadian Claimants' fee generation approach as the method for determining their award.

[27] Devotional Claimants assert that after taking into account the Music Claimants' award, their Bortz shares fall into a reasonable range of 5.8%–8.5% and that the 7% and 7.3% they request fall within that range. DPCL at ¶¶ 106–107. The requested 3.75% Fund share is adjusted only to reflect the fact that PTV does not have any claim to the 3.75% Fund. DPFF & PCL at p. 7 (Introduction and Summary). Devotional Claimants do not seek a share of the Syndex Fund. *Id.* at ¶ 107.

should increase. Second, since the 1990–92 proceeding, their average shares under the Bortz surveys have nearly doubled from an average of 3.9 in the 1990–92 surveys to an average of 7.2 in 2004–2005. DPCL at ¶ 104. According to Devotional Claimants, such an increase constitutes "changed circumstances" thus requiring "a significant repositioning" of the Devotional Claimants' relative shares of the 2004–2005 cable royalty funds. DPFF at ¶ 17; *see also* DPCL at ¶ 103. Third, the Devotional Claimants assert that their 2004–2005 Bortz Survey results have been corroborated by Dr. Gruen's cable subscriber survey, which was introduced for the first time in this proceeding, and attributed a share to the Devotional Claimants of 7.3% in 2004 and 8.19% in 2005. DPFF at ¶ 190; *see also* Tr. at 2787 (Salinger).

Fourth, Devotional Claimants attribute the dramatic increase in their Bortz shares since the 1990–92 proceeding in part to an evolution in devotional programming over time, 5/10/10 Tr. at 44–45 (Closing Argument), and an increase in viewer avidity and loyalty. Brown WDT (Devo. Ex. 3) at 8. The evolution of programming consists of new additions in children's programming, *e.g.*, cartoons, animated programming, and a greater emphasis on counseling, healing, and interpersonal relationships. DPFF at ¶ 146.

The increase in loyalty and avidity for devotional programming is premised on the testimony of Dr. William Brown. Brown WDT (Devo. Ex. 3) at 8–18; Tr. at 1405–1411 (Brown) (Dr. Brown identified eight factors that, in his view, demonstrated increased value to devotional programming: (1) Desire to avoid increased sex and violence on television; (2) increased desire for more moral and spiritual content on television; (3) hostility of intellectual elite toward religious faith, *i.e.*, "culture wars"—more progressive views that man can answer all problems versus a more traditional value of looking to God for answers; (4) distrust of the news media; (5) desire for political awareness; (6) technology growth and competition; (7) threat of radical Islam and the wars in Afghanistan and Iraq; and (8) important demographic changes resulting in greater ethnic diversity).

The Settling Parties argue that Devotional Claimants are not entitled to receive their Bortz shares and should instead receive the same awards they received in the 1990–92 proceeding, namely, 1.19% of the Basic Fund and 0.91% of the 3.75% Fund for each of the 1990–92 cable royalties. SP PFF at ¶ 673. They contend that as in the 1990–92 proceeding, Devotional Claimants have not provided evidence of any price at which Devotional Claimants sold their programming nor did they provide evidence constituting a change in circumstances since the 1990–92 proceeding. *Id.* In other words, according to the Settling Parties, Devotional Claimants have not met their burden by failing to "provide any evidence in this proceeding about what their share of distant signal programming should be." 5/10/10 Tr. at 109, 111 (Closing Argument).

The Settling Parties also point to the large amount of non-compensable devotional programming contained on WGN–A, which they view as inappropriately increasing the Bortz survey responses. In their view, these inflated results were confirmed by the results of the Waldfogel regression analysis, *see supra* at Section III (Analysis of the Settling Parties' Evidence), which produced a zero value for devotional programming, thereby further justifying Devotional Claimants' receipt of the same award as received in the 1990–92 proceeding.

The Canadian Claimants propose a method for addressing the non-compensable programming issue:

> 2004: 7.8% (Bortz) × 60% (WGN carried) × 10.1% (WGN compensable) + 7.8% (Bortz) × 40% (non-WGN) × 100% (non-WGN compensable) = 3.593%
>
> 2005: 6.6% (Bortz) × 60% (WGN carried) × 9.8% (WGN compensable) + 6.6% (Bortz) × 40% (non-WGN) × 100% = 3.028%.

CCG PCL at ¶ 128.

Although Canadian Claimants argue that 3.593% and 3.028% most likely should be the upper boundary of Devotional Claimants' awards, they concede that Devotional Claimants "may be entitled to more in this proceeding than as prior proceedings based on their higher results on the Bortz survey compared to 1998 and 1999." *Id.* at ¶ 130.

Conclusion and Award

The Devotional Claimants seek 7% of the Basic Fund and 7.3% of the 3.75% Fund for 2004 and 2005. For the reasons stated below, we decline to give the Devotional Claimants their Bortz point estimate results and award them 3.5% of the Basic Fund and 3.8% of the 3.75% Fund for the period.

As discussed previously, we direct our consideration to the Bortz survey confidence intervals, rather than the point estimates offered by the Devotional Claimants. This results in a range of 7.1% to 8.5% for 2004 and a range of 5.8% to 7.4% for 2005. *See* SP PFF at ¶ 132. However, there are two factors that warrant a downward adjustment in the relative value of devotional programming: the matter of the amount and significance of non-compensable devotional programming contained on WGN–A during the period, and the results of the Waldfogel regression analysis.

WGN–A was the most widely carried distant signal by cable systems during 2004 and 2005, SP PFF at ¶ 343, and a full 90% of the devotional programming contained on the WGN–A signal was non-compensable under the section 111 license. Ducey WDT at 6; Tr. at 565 (Ducey). A decided shortcoming of the Bortz survey was its handling of compensable programming versus non-compensable programming since the survey respondents were not made aware of the issue and therefore could not confine their responses to only compensable programming. Although none of the witnesses were able to quantify the likely impact of non-compensable programming on the Bortz results, Mr. Trautman and Ms. McLaughlin each recognized that an adjustment was necessary. Tr. at 195 (Trautman); *see also,* Tr. at 170 (Trautman) (cable operators "don't make any such adjustment [for non-compensable programming] in the responses * * * and that some adjustment needs to be made in these proceedings to account for that fact"); Tr. at 474–76 (McLaughlin) (non-compensable programming resulted in "extra value" to Devotional Claimants that "you would want to take out"). The Judges determine that, given the widespread carriage of WGN–A among the cable systems measured by Bortz, and the predominant volume of non-compensable devotional programming contained on that signal,[28] the Bortz results likely significantly overstate the relative value of devotional programming during the 2004–05 period.

The likelihood of overstatement is confirmed by the results of the Waldfogel regression analysis. As noted previously, Dr. Waldfogel's regression coefficients do provide some additional useful, independent information about how cable operators may view the value of adding distant signals based on the programming mix on such signals. In the case of devotional programming, his results trend in the extreme, suggesting a zero value. *See supra* at Section III (Analysis of the Settling Parties' Evidence). While this is certainly not the case, at a minimum, his results

[28] Nearly 50% of Form 3 cable systems carried WGN–A as their only distant signal and approximately 70% of Form 3 systems carried WGN–A as one of their distant signals. *See* SP PFF at ¶ 343.

suggest that the Bortz results are too high and therefore require a downward adjustment.

None of the testimony offered by Devotional Claimants supports sustaining the Bortz survey point estimates, nor counsels against a downward adjustment. The testimony offered regarding growth of devotional programming and avidity and loyalty of devotional viewers was anecdotal in nature and comprised largely of unsupported opinion. *See, Digital Performance Right in Sound Recordings and Ephemeral Recordings, Final rule and order, in Docket No. 2005–1 CRB DTRA ("Webcasting II"),* 72 FR 24084, 24095 n.30 (May 1, 2007) (anecdotal testimony not persuasive). Devotional Claimants did not offer any survey results or data supporting these contentions, and we do not have sufficient evidence upon which to base any conclusions or adjustments.

After taking into account the adjustments just discussed, we determine that Devotional Claimants are entitled to the following awards (prior to accounting for the Music Claimants' share):

Year	Basic Fund	3.75%
2004	3.5	3.8
2005	3.5	3.8

VI. Music Claimants' Award

We now turn to Music Claimants. Music is not a stand-alone category but rather permeates all other program categories. During closing arguments the Judges posed the question whether the Music Claimants' share should be taken off of the top and the Claimants appear in general agreement that it should. 5/10/10 Tr. at 5–6, 31, 91, and 145–46 (Closing Argument).

Analysis of the Settling Parties' Evidence

To develop a benchmark for assessing the relative value of music in the distant signal marketplace for 2004 and 2005, the Settling Parties presented William P. Zarakas, an economist.[29] Mr. Zarakas developed a music ratio conceptually similar to the ratio proffered by JSC witness Dr. George Schink in the 1998–99 CARP proceeding.[30] Under the Schink ratio, music license fees were divided by the sum of music license fees and broadcast rights payments (*i.e.*, total payments made by the stations and networks in the over-the-air broadcast market for the rights to broadcast the programs aired on such stations). SP PFF at ¶¶ 350 and 374. The Schink ratio was not designed specifically to measure music's value in the distant signal market, the relevant market in this proceeding, but rather was based on industry-wide television broadcast licensing fees and rights payments in the over-the-air broadcast market. *Id.* at ¶ 375. Indeed, the Schink ratio included music license fees and broadcast rights payments by the "Big 3" networks (ABC, CBS and NBC), even though that programming is not compensable under section 111 of the Copyright Act. Moreover, no weighting was applied to the Schink ratio in the 1998–99 CARP proceeding to account for the difference between the mix of station types retransmitted on distant signals and the stations that generally make up the entire broadcast television market. *Id.*

Although Mr. Zarakas determined that the Schink ratio was a reasonable method to assess the relative value of music, he concluded that the ratio inputs would need to be changed to enable the ratio to provide a more useful benchmark for assessing the relative market value of music in this proceeding. *Id.* at ¶¶ 375–376. In particular, Mr. Zarakas excluded from his ratio music license fees and broadcast rights payments for Big 3 network programming, which are not compensable under section 111 of the Copyright Act. Moreover, he concluded that "the market for retransmitted distant signals by cable system operators differs from the local broadcast television market in terms of the mix of programming transmitted." SP PFF at ¶ 391. Therefore, he weighted the music ratio that he developed using distant signal subscriber instances for each different category of television stations in an effort to reflect the relative importance of the various stations actually carried by cable system operators and received by subscribers as distant signals during 2004 and 2005. *Id.* at ¶ 376.

To form the numerator of his ratio, Mr. Zarakas used television "blanket license" fee data that the PROs provided.[31] These fees were agreed to by each PRO and the Television Music License Committee ("TMLC") (an industry committee of local television broadcasters) for all local stations in the broadcast market for their local (*i.e.*, non-Big 3 network) programming.[32] SP PFF at ¶ 369 and 377. The Settling Parties contend that the blanket license fees are the most comprehensive, accurate data in the record and are the only data that values all music use in local broadcast markets. *Id.* at ¶ 377. The Settling Parties further contend that, in the absence of the compulsory license, cable systems would most likely acquire blanket licenses from the PROs for the music that they represent in the open market, as the TMLC and the Univision network do currently. *Id.* at ¶ 381. Mr. Zarakas included local broadcast station blanket PRO license fees of $195.5 million in 2004 and $186 million in 2005. To those totals he added the blanket license fees that Univision paid, which include license fees for local and nonlocal programming,[33] to sum $200.8 million for 2004 and $191.7 million for 2005. These sums constituted the numerator in the music ratio and one component of the denominator. *Id.* at ¶ 383.

As discussed above, Mr. Zarakas used blanket license fees negotiated between

[29] In addition to Mr. Zarakas, the Settling Parties also presented the testimony of certain other witnesses who testified about the value of music in programming generally. Based on testimony from these witnesses the Settling Parties contend that "[t]here is substantial qualitative evidence * * * that music's contribution to the overall television entertainment experience has increased over the past ten years." SP PFF at p. 35 (Introduction and Summary). Absent quantitative corroboration, we are unable to credit significantly anecdotal and subjective opinion evidence. *See Webcasting II,* 72 FR at 24095 n.30 (May 1, 2007).

[30] Dr. Schink derived his data from a U.S. Census Bureau Report. *1998–99 CARP Report* at 84.

[31] Mr. Zarakas identified two data sources that provide information concerning music license fees for 2004 and 2005: (1) Music blanket local television license fee data provided by the PROs; and (2) actual music license fee expenditures made by the broadcast stations. Zarakas WDT (SP Ex. 27) at ¶ 31. After 1998, individual data points for music license and broadcast rights payments were no longer available from the U.S. Census Bureau. *Id.* at n.17. Mr. Zarakas chose to use the blanket license fee data available from the PROs because he concluded that such negotiated fees provide strong evidence of the market value of the music licenses to the local broadcast stations and are the only available measures of total market-based prices. *Id.* at ¶¶ 32–33.

[32] For a negotiated annual fee, a blanket license grants the licensee unlimited use of all music in the PRO's repertoire. SP PFF at ¶ 366. The local television industry includes, among others, stations that are affiliated with the Big-3 networks with respect to non-network programming. The Big 3 networks pay separate music license fees to license music they use in their respective network programming. Zarakas WDT (SP Ex. 27) at ¶ 34 and n.19. Television stations that are affiliated with the non-Big 3 networks, with one exception, pay music license fees for stations and network programming. The Univision network pays a blanket license fee that covers all the programming for the stations that Univision owns. *Id.* at n.21.

[33] The fees that Univision paid totaled $5.31 million in 2004 and $5.72 million in 2005. Zarakas WDT (SP Ex. 27) at n.21. Mr. Zarakas includes the Univision blanket license fees in a category of the numerator called "other," which totals $14.51 million in 2004 and $15.16 million in 2005. In that category he also includes blanket license fees for off-air and small stations. *Id.* at ¶ 34, Table 2. It is unclear what portion of the fees in the "other" category is attributable to those off-air and small stations. It is noteworthy, however, that Mr. Zarakas excludes small and "unlicensable" stations in calculating an important component of the denominator regarding broadcast rights payments. *See* Zarakas WDT (SP Ex. 27) at ¶ 36.

the PROs and the TMLC as the numerator for his music ratio. We agree with the Settling Parties that the blanket license fees provide a useful starting point in determining the relative marketplace value of music in the over-the-air market. *See also infra* at Section VI (Analysis of the Program Suppliers' Evidence). As such, we find that the use of blanket license fees both in the numerator of the music ratio and as the first component of the denominator is not misplaced. The other components of the denominator, discussed below, are more problematic.[34]

The second component of the Zarakas denominator seeks to estimate broadcast rights payments. Mr. Zarakas divides these payments into three categories: (1) Payments local television stations make for non-network programming; (2) payments made for non-Big 3 network programming; and (3) payments to local stations for programs they produce themselves. *Id.* at ¶ 385.

Mr. Zarakas extrapolated payments local television stations make for non-network programming from the Television Financial Report, which NAB and Broadcast Cable Financial Management Association[35] publish annually (known as the "NAB Survey").[36] The NAB Survey provides an annual average of television station expenditures for broadcast rights. Zarakas WDT (SP Ex. 27) at ¶ 36. Mr. Zarakas then calculated the total number of stations that were operating in the U.S. in 2004 (1,372) and 2005 (1,371). He then excluded "several" of these stations for 2004 and 2005 because he determined that those stations were unlikely to have been included in the NAB Survey, largely because they were too small. He then multiplied the remaining number of stations (1,187 for 2004 and 1,192 for 2005) by the average annual expenditures from the NAB Survey to estimate the total broadcast rights expense for this component for 2004 and 2005 ($2.015 billion and $2.029 respectively). Zarakas WDT (SP Ex. 27) at ¶¶ 36–37.

However, the Settling Parties provided no evidence that would bolster the accuracy of the NAB Survey numbers (*e.g.*, what was the sample size of the respondent group and what methodology was used in the survey to ensure that it accurately represented the respondents' expenditures). Moreover, Mr. Zarakas' methodology for narrowing the number of stations to which the average expenditure number was applied appears on less firm footing. These weaknesses, which could have been easily remedied, diminish the weight we ascribe to Mr. Zarakas' ratio.

Although network programming on the Big 3 networks is not compensable under section 111 of the Copyright Act, network programming on FOX, WB, UPN and other non-Big 3 networks is compensable. The NAB Survey referenced above, however, does not estimate such programming expenditures. As a proxy, Mr. Zarakas used total programming expenses data from SNL Kagan, which the Settling Parties represent is a "recognized source of economic information for the television broadcast industry." SP PFF at ¶ 388.[37] SNL Kagan data did not separate broadcast rights payments from other categories of program expenses, and Mr. Zarakas did not believe he had a principled basis for determining the percentage of the programming expenses that were attributable to broadcast rights expenses. Therefore, he included the entire amount of program expenses in this component of the denominator. Zarakas WDT (SP Ex. 27) at ¶ 40. The totals were $3.254 billion for 2004 and $3.550 billion for 2005. *Id.* at ¶ 39, Table 4.

While Mr. Zarakas' decision to include all program expenses in this component of the denominator may have been a conservative approach on his part, this limitation diminishes the precision of the measurement. Another drawback of the SNL Kagan data: It is derived from a different source than the one that conducted the NAB Survey. Using multiple data sources in the same denominator creates a potential risk of methodological inconsistency, a weakness that was made worse by the fact that the Settling Parties did not present witnesses from either SNL Kagan or those that conducted the NAB Survey, which would have allowed an on-the-record examination of their respective methodologies so that the claimants could probe their comparability.

Mr. Zarakas was unable to use market transactions to value locally produced programming, such as local news and locally produced public affairs shows. According to Mr. Zarakas, such stations do not typically sell the broadcast rights or otherwise measure the equivalent value of such rights. Zarakas WDT (SP Ex. 27) at ¶ 41. Therefore, he estimated the number by relying on the CARP's determination of the various claimants' shares of the Basic Fund in the 1998–99 cable royalty distribution proceeding. Zarakas WDT (SP Ex. 27) at ¶ 42. In particular, he calculated the relative value that the CARP assigned to locally produced programming (using CTV's share in 1998 and 1999 as a proxy) compared to the combined local commercial television station non-network programming and non-Big 3 network programming (using the combined JSC, Program Suppliers, and Devotional Claimants' shares in 1998 and 1999 as a proxy). He then took this relative value from the 1998–99 proceeding and applied it to the relative value in this proceeding of broadcast rights in locally produced programming compared to broadcast rights payments in these other types of programming. *Id.* This multiplier (0.185, Zarakas WDT (SP Ex. 27) at ¶ 43) was used to derive an average factor (1.185, Zarakas WDT (SP Ex. 27) at ¶ 46 and Table 6), which Mr. Zarakas then used to develop an estimated value of broadcast rights for locally produced programming in this proceeding (approximately $975 million for 2004 and $1.03 billion for 2005). *Id.* at ¶ 46 and Table 7.[38]

Use of the various claimants' shares from the 1998–99 proceeding seems to be a haphazard attempt to guesstimate a material component of the denominator of the music ratio. Such ad hoc extrapolation diminishes our confidence in the Zarakas ratio.

When all components of the denominator were combined, Mr. Zarakas determined that the estimated value of broadcast rights payments were approximately $6.2 billion in 2004 and $6.6 billion in 2005. Zarakas WDT (SP Ex. 27) at ¶ 47. He then added the blanket music license fees to each of these totals to derive a grand total denominator of $6,445.4 billion for 2004 and $6,803.6 billion for 2005. *Id.* at ¶ 49

[34] Given the lack of evidence in the record to the contrary, for purposes of our analysis of Mr. Zarakas' music ratio denominator we assume that the four components he has proposed to include in the denominator represent the total of programming expenditures in the over-the-air market.

[35] The Broadcast Cable Financial Management Association Web site indicates that its name has since been changed to Media Financial Management Association (*http://www.bcfm.com/index.aspx?PageID=338*).

[36] The NAB reports music license fees paid to PROs based on a survey of television stations. Zarakas WDT (SP Ex. 27) at n.18. By 2004, the U.S. Census Bureau no longer reported actual expenditures on music license fees by the television broadcasters as it did in the 1998 Annual Survey of Communication Services. *Id.*

[37] According to SNL Kagan's Web site, SNL Kagan integrates online research, data and projections in real time for the media and communications industry. *http://www.snl.com/Sectors/Media-Communications/.*

[38] Mr. Zarakas multiplied the factor by the broadcast rights payments for local commercial television station non-network programming and non-Big 3 network programming, calculated in the previous two components of the denominator, "to form a complete estimate of broadcast rights payments applicable to the Music Ratio." Zarakas WDT (SP Ex. 27) at ¶ 47.

and Table 8. Dividing the numerator by the denominator yields a relative market value of music of 3.1% for 2004 and 2.8% for 2005. Zarakas WDT (SP Ex. 27) at ¶ 60.

The unadjusted Zarakas percentages attempt to estimate the relative value of music in the over-the-air market. Mr. Zarakas states, however, that the unadjusted percentages are "misleading in the distant signal market because the composition of signals is different in the distant signal market compared to the over-the-air market." Tr. at 1158 (Zarakas). Mr. Zarakas contends that "the relative value of music in the distant signal market should take into account differences in the programming mix between the local and distant signal markets." Zarakas WDT (SP Ex. 27) at ¶ 51.[39] As a result, Mr. Zarakas adjusts his over-the-air percentages in an effort to make them more comparable to the target distant signal market by accounting for the relative number of distant subscribers associated with three categories of television stations (*i.e.*, Big 3 networks, non-Big 3 networks, and independent stations). Zarakas WDT (SP Ex. 27) at ¶ 54–57 and Tables 9–12.[40] Applying this adjustment, Mr. Zarakas concludes that the relative value of music was 5.2% (from the unadjusted 3.1%) in 2004 and 4.6% (from the unadjusted 2.8%) in 2005. Zarakas WDT (SP Ex. 27) at ¶ 61. *See also* SP PFF at ¶ 392 and Table 12. In other words, the adjusted percentages represent increases of approximately 67.7% and 64.3% over the respective unadjusted percentages. Under either the adjusted or the unadjusted numbers, Mr. Zarakas concluded that the relative market share of music declined from 2004 to 2005 (a decline of approximately 9.7% for the unadjusted percentages compared to a decline of approximately 11.5% for the adjusted percentages).

The over-the-air market and the distant signal market may well differ in ways that could impact the relative values of music across those markets. On the record before us, however, it is not clear why those differences, if any, would translate into a variation in the market value of music of the order that Mr. Zarakas contends. In other words, given that music permeates all other programming categories, what factors make the use of music over 60% more valuable relative to other programming categories in the distant signal market than it is in the over-the-air market? The Settling Parties offer little justification for Mr. Zarakas' comparability adjustment, noting only that "the market for retransmitted distant signals by cable system operators differs from the local broadcast television market in terms of the mix of programming transmitted." SP PFF at ¶ 391, *quoting* Zarakas WDT (SP Ex. 27) at 25.[41] We do not mean to suggest that a comparability adjustment is unnecessary. Nor do we suggest that an adjustment that uses subscriber instances should be dismissed out of hand. We find, however, that the Settling Parties did not fully establish the differences in valuation that the comparability adjustment is meant to address or the efficacy of the specific adjustment that Mr. Zarakas proposes. Therefore, we cannot place full weight on Mr. Zarakas' comparability-adjustment.

Analysis of the Program Suppliers' Evidence

Program Suppliers retained John R. Woodbury, PhD, a consultant, as an expert to rebut Mr. Zarakas' presentation. Dr. Woodbury questioned Mr. Zarakas' use of blanket license fees as a means for estimating the relative share of music, stating that "there is no reason to believe that the use of blanket license fees is in fact a more accurate and reliable measure of the actual music rights payments made by broadcast stations than the payments actually recorded by the PROs." Woodbury WRT (PS Ex. 14) at ¶ 12. He noted that "to the extent that stations opt for a direct license rather than the blanket license, the payments made by the broadcast stations in the aggregate to the PROs will be less than the negotiated fee amounts used by Mr. Zarakas." *Id.* at ¶ 14. Dr. Woodbury opined that "[a]t best, those blanket license fees are an upper bound on the actual payments made by broadcast stations * * *" *Id.* at ¶ 13. However, while the blanket fee data does not include fees that a copyright owner receives when it enters into a direct license with a broadcaster, the Settling Parties' evidence suggests that the difference between the negotiated blanket fee and the actual license fees paid, including direct license fees, is not significant. SP PFF at ¶ 382.

Dr. Woodbury also questioned the Zarakas comparability adjustment discussed above. He contended that Mr. Zarakas offered no justification for using subscriber instances to weigh station types. Tr. at 3298 (Woodbury) and Woodbury WRT (PS Ex. 14) at ¶ 25. He surmised that Mr. Zarakas did so because he assumed that the number of music performances on a distant signal is related to the number of subscribers that have access to that signal. Dr. Woodbury stated that there is no reason to believe that this is the case. *Id.* Dr. Woodbury noted that

> it seems reasonable to think that subscriber viewership [a method that the TMLC uses to allocate blanket license fees across stations] might be related to the number of music performances of a particular show on a distant signal, but that has no relationship—no obvious relationship to the fraction of subscriber instances accounted for by a particular distant signal on a particular cable system * * *. The viewership of any distant signal on a cable system can differ for lots of reasons, even if the two systems have the same number of subscribers.

Tr. at 3299 (Woodbury).[42]

Dr. Woodbury contended that a better approach would have been to use the actual music rights payments that ASCAP and BMI received from broadcast stations and networks (*i.e.*, over-the-air market participants) for 2004 and 2005 and divide those numbers by the total rights payments, which the Bureau of Census reported for 2004 ($11,710 million) and 2005

[39] Mr. Zarakas reasons that although "[t]he local over-the-air market is broadcast to anyone with a television set within range of transmission * * * the market for distant signals on a cable system is dependent upon both the portfolio of signals a cable system operator elects to retransmit and upon the subscription choices made by the cable system operator's customers." Zarakas WDT (SP Ex. 27) at ¶ 50.

[40] Mr. Zarakas' adjustment requires a multiple-step process: (1) Determine the relative numbers of distant subscribers by television station category (Zarakas WDT (SP Ex. 27) at ¶ 54 and Table 9); (2) convert those relative subscriber numbers into weights for each television station category by excluding educational, non-U.S. and low-power television stations from the distant subscriber totals (Zarakas WDT (SP Ex. 27) at ¶¶ 56–57 and Table 10); (3) determine the percentage of blanket license fees attributed to each television station category (Zarakas WDT (SP Ex. 27) at ¶ 59 and Table 11); and (4) apply the weights in step 2 to the percentages in step 3 to derive weighted percentages. Zarakas WDT (SP Ex. 27) at ¶ 60 and Table 12.

[41] *See also* Tr. at 1158 (Zarakas) ("[C]opyrighted content that's paid for by the local stations or the equivalent value of local programming, would be 3.1 percent * * *. But the 3.1 [percent] is somewhat misleading in the distant signal market because the composition of signals is different in the distant signal market compared to the over-the-air market.").

[42] Dr. Woodbury also questioned Mr. Zarakas' treatment of WGN as an independent station rather than a WB affiliate for purposes of assigning a percentage music royalty due to the carriage of WGN. The Settling Parties represent that the distant signal market is dominated by WGN America, an independent station that does not retransmit any network programming and accounts for approximately half of the distant signal subscriber instances. SP PFF at ¶ 391. Dr. Woodbury contends that the "effect of this reclassification appears to have dramatically increased the weight on the percentage music rate of independent stations because WGN is apparently one of the most widely—if not the most widely—carried distant signal[s]." Woodbury WRT (PS Ex. 14) at ¶ 29 (footnote omitted).

($12,036).[43] Dr. Woodbury stated that for 2004 the total music rights payments received by the PROs were approximately $239 million for 2004 and $234 million for 2005. Dividing these numbers by the Census data yields 2.04% for 2004 and 1.94% for 2005. Woodbury WRT (PS Ex. 14) at ¶ 22. Dr. Woodbury conceded that "[t]he approach that I have adopted * * * may to some extent understate the actual overall percentage, but my approach is tied to the underlying reality of what stations actually pay for music rights." *Id.* at ¶ 23. Indeed, Dr. Woodbury conceded that he excluded direct license fees from his numerator but not from his denominator, which had the effect of understating his music rights ratios. Tr. at 3335 (Woodbury). Moreover, Dr. Woodbury conceded that the Census data he used to compile his ratios were outdated in a way that resulted in his ratios being understated compared to their value when using the revised Census data. *Id.* at 3327–28. He also conceded that his numerator included payments by commercial stations but that his denominator included payments by both commercial and non-commercial stations, which could have lowered his ratios. *Id.* at 3344–45.

Dr. Woodbury acknowledged that there are differences between the over-the-air market and the distant signal market, but he made no effort to adjust for those differences. *Id.* at 3347–48. Given the acknowledged flaws in Dr. Woodbury's approach, we place substantially less weight on his proposed estimates of the Music Claimants' shares compared to the weight ascribed to the Zarakas methodology. However, even the latter cannot be fully adopted by the Judges as offered.

Conclusion and Award

Despite the caveats discussed hereinabove, we find that the Zarakas ratio is useful in identifying the ceiling for a zone of reasonableness for determining the relative market value of music in the distant signal market for 2004 and 2005. This ceiling must lie below Zarakas' 5.2% adjusted ratio for 2004 and his 4.6% adjusted ratio for 2005, due to the previously noted weaknesses with respect to his ratios and his comparability adjustment. We are persuaded that the Zarakas adjusted ratios may more likely somewhat overstate rather than understate the relative value of music. On the other hand, the floor for the zone of reasonableness clearly must exceed by some substantial margin the 2.04% that Dr. Woodbury offered for 2004 and the 1.94% he calculated for 2005, in recognition of the flaws in the methodology and data on which he relied and his own admission that his ratios likely understated the relative value of music.

Within this zone of reasonableness as established by the record, we are persuaded by the greater weight we accord the Zarakas adjusted ratios as compared to the Woodbury alternative ratios, that the relative value of music lies closer to the former than the latter. That is, a value close to the upper boundary is more strongly supported than one close to the lower boundary. We find that value is 4% for 2004. We are comforted as to the reasonableness of this value in light of its congruence with the share received by the Music Claimants in their last litigated award.[44]

We further find that the relative value of music for 2005 is 3.6%. That is because the zone of reasonableness has been shifted somewhat below the 2004 range by the evidence as discussed hereinabove. The major contending parties recognize this shift in their alternative proposals. For example, the Settling Parties' proposed shares for 2005 concede that the relative market value of music decreased from 2004 to 2005. This movement is evident both in the unadjusted and the adjusted Zarakas percentages between 2004 and 2005. Zarakas WDT (SP Ex. 27) at 31, Table 12. After rounding to the nearest single decimal place,[45] the 2004 award is found to decline in 2005 by 0.4—a decline on the order of 10%.[46] That is, an award of 4% in 2004 must necessarily correspond to an award of 3.6% in 2005. Both awards remain within the respective ranges which we have previously identified as setting the parameters of a zone of reasonableness for each award year.

The 4.0% award for 2004 and the 3.6% award for 2005 apply to the Basic Fund as well as the 3.75% Fund and the Syndex Fund for each of the respective award years. We take this approach because all the proposals provide a uniform award for these funds and no evidence was presented in opposition.[47] The awards for the other claimant groups will be calculated net of the Music Claimants' awards.

The Music Claimants' final awards are as follows:

Year	Basic fund (percent)	3.75% fund (percent)	Syndex fund (percent)
2004	4.0	4.0	4.0
2005	3.6	3.6	3.6

VII. Final Awards

After adjusting downward for the Music Claimants' share (the equivalent of taking the Music Claimants' share "off the top"), the respective shares of the Basic Fund determined by the Judges are as follows:

	2004 (percent)	2005 (percent)
Music Claimants	4.0	3.6

[43] Dr. Woodbury did not include per-program license fees for SESAC because, he represents, SESAC did not offer a per-program license to local stations in 2004 and 2005. Woodbury WRT (PS Ex. 14) at ¶ 20.

[44] In the 1998–99 proceeding, the CARP awarded the Music Claimants 4.0% for the Basic Fund, the 3.75% Fund and the Syndex Fund. The Librarian adopted the CARP's determination. *Distribution of 1998 and 1999 Cable Royalty Funds, Final order, in Docket No. 2001–8 CARP CD 98–99*, 69 FR 3606, 3620 (January 26, 2004).

[45] We do not find the ratio evidence presented either before or after adjustments to be so precise as to warrant awards beyond a single decimal place.

[46] With respect to the Zarakas ratios, the decline from 2004 to 2005 is larger for the adjusted ratio than for the unadjusted ratio. Having found hereinabove that the upper boundary of the zone of reasonableness for the music award lies below the Zarakas adjusted ratio, a slightly less than proportionate adjustment from 4% (*i.e.*, less than that indicated by the decline in the adjusted Zarakas ratio of 11.5%) is appropriate because the amount of variance between the adjusted and unadjusted ratios shrinks as the amount of adjustment decreases toward the limit of an unadjusted ratio. We further note, that even applying the calculated change in the Zarakas unadjusted ratio from 2004 to 2005 to the 4% 2004 award (*i.e.*, a decline in the unadjusted Zarakas ratio of 9.7%), after rounding to the nearest single decimal, the resulting 2005 award (3.6%) would be the same as if we had applied a changed value as high as 11.2%.

[47] As the CARP noted in the 1998–99 proceeding, "[i]n past proceedings, Music has always received the same net award for each fund." *1998–99 CARP Report* at n.60. In that proceeding, no evidence was adduced in the proceeding to award a difference between the three funds.

	2004 (percent)	2005 (percent)
Canadian Claimants	1.9	1.9
Devotional Claimants	3.4	3.4
PTV	7.4	7.1
JSC	32.3	35.4
CTV	17.9	14.2
Program Suppliers	33.1	34.4

Similarly, *adjusting downward to account for the Music Claimants' share,* the respective shares of the 3.75% Fund determined by the Judges are as follows:

	2004 (percent)	2005 (percent)
Music Claimants	4.0	3.6
Canadian Claimants	1.4	1.2
Devotional Claimants	3.7	3.7
JSC	35.3	38.6
CTV	19.5	15.4
Program Suppliers	36.1	37.5

We agree with the Settling Parties that because only Music Claimants and Program Suppliers participate in the Syndex Fund and for the reasons provided *supra* at Section VI (Conclusion and Award), Music Claimants should receive 4.0% of the Syndex Fund for 2004 and 3.6% of the Syndex Fund for 2005. As a result, the respective shares of the Syndex Fund determined by the Judges are as follows:

	2004 (percent)	2005 (percent)
Music Claimants	4.0	3.6
Program Suppliers	96.0	96.4

VIII. Order of the Copyright Royalty Judges

Having fully considered the record and for the reasons set forth herein, the Copyright Royalty Judges order that the 2004 and 2005 cable royalties shall be distributed according to the following percentages:

2004 DISTRIBUTION

Claimant group	Basic fund (percent)	3.75% fund (percent)	Syndex fund (percent)
Music Claimants	4.0	4.0	4.0
Canadian Claimants	1.9	1.4	0
Devotional Claimants	3.4	3.7	0
PTV	7.4	0	0
JSC	32.3	35.3	0
CTV	17.9	19.5	0
Program Suppliers	33.1	36.1	96.0

2005 DISTRIBUTION

Claimant group	Basic fund (percent)	3.75% fund (percent)	Syndex fund (percent)
Music Claimants	3.6	3.6	3.6
Canadian Claimants	1.9	1.2	0
Devotional Claimants	3.4	3.7	0
PTV	7.1	0	0
JSC	35.4	38.6	0
CTV	14.2	15.4	0
Program Suppliers	34.4	37.5	96.4

So ordered.

Dated: July 21, 2010.

James Scott Sledge,

Chief Copyright Royalty Judge.

William J. Roberts, Jr.,

Copyright Royalty Judge.

Stanley C. Wisniewski,

Copyright Royalty Judge.

Dated: July 21, 2010.

James Scott Sledge,

Chief, U.S. Copyright Royalty Judge.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 2010–23266 Filed 9–16–10; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–110)]

NASA Advisory Council; Information Technology Infrastructure Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting for the Information Technology Infrastructure Committee of the NASA Advisory Council (NAC).

DATES: Tuesday, September 28, 2010, 8 a.m.–5:30 p.m., Local Time. Meet-Me-Number: 1–877–613–3958; #2939943.

ADDRESSES: NASA Ames Conference Center, 500 Severyns Avenue, Building 3, Ballroom, NASA Research Park, Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Tereda J. Frazier, Executive Secretary for the Information Technology Infrastructure Committee, National Aeronautics and Space Administration Headquarters, Washington DC 20546, (202) 358–2595.

SUPPLEMENTARY INFORMATION: The topics of discussion for the meeting are the following:

- NASA IT Summit Post Mortem Briefing.
- NASA's Chief Technology Officer Briefing.

- Jet Propulsion Laboratory's Chief Technology Officer Briefing.
- IT Committee Work Plan Actions/ Assignments.
- Logistics.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that this meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Ames Conference Center and must state that they are attending the NASA Advisory Council Information Technology Infrastructure Committee meeting in the Ballroom. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., to Ms. Tereda J. Frazier, Executive Secretary, Information Technology Infrastructure Committee, NASA Advisory Council, at e-mail *tereda.j.frazier@nasa.gov* or by telephone at (202) 358–2595 by no later than September 20, 2010. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Ms. Tereda J. Frazier via e-mail at *tereda.j.frazier@nasa.gov* or by telephone at 202–358–2595. Persons with disabilities who require assistance should indicate this.

September 13, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–23237 Filed 9–16–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2010–0178; Docket No. 50–228; License No. R–98]

In the Matter of Aerotest Operations, Inc. (Aerotest Radiography and Research Reactor); Order Extending the Effectiveness of the Approval of the Indirect Transfer of Facility Operating License

I

Aerotest Operations, Inc., (Aerotest, the licensee) is the holder of Facility Operating License No. R–98 which authorizes the possession, use, and operation of the Aerotest Radiography and Research Reactor (ARRR) located in San Ramon, California, under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.21(c) for research and development purposes. Aerotest is a wholly owned subsidiary of OEA Aerospace, Inc., which is wholly owned by OEA, Inc. OEA, Inc., is a wholly owned subsidiary of Autoliv ASP, Inc., (Autoliv), which is owned by Autoliv, Inc.

II

The U. S. Nuclear Regulatory Commission's (NRC) Order dated July 6, 2010, consented to the indirect transfer of control of the above facility from its current owner, Autoliv to X-Ray Industries, Inc. (X-Ray), (together, the applicants), pursuant to 10 CFR 50.80. By its terms, the Order of July 6, 2010, would become null and void if the license transfer was not completed by September 13, 2010, unless upon application and for good cause shown, such date was extended by the Commission.

III

By letter dated September 3, 2010, Aerotest submitted a request for an extension of the effectiveness of the Order of July 6, 2010, such that the Order would remain effective through September 28, 2010. According to the submittal, "Aerotest, along with the Buyer and Seller (the "Parties") have diligently pursued necessary agreements from the U.S. Department of Energy ("DOE") and U.S. Department of Defense ("DoD") with regard to used nuclear fuel at the ARRR. However, such agreements have proved difficult to secure for reasons beyond the control of Aerotest and the other Parties.

Aerotest expects to be able to inform the NRC by September 17, 2010, of the date by which an agreement with the DOE and DoD on used nuclear fuel will be able to be completed. At that time, Aerotest expects to be able to identify a date by which all U. S. Government agreements will be in hand so that the transfer may be consummated. Therefore, Aerotest requests an extension until seven (7) business days after September 17, 2010 or until September 28, 2010. An extension of the Transfer Order until September 28, 2010 is expected to give Aerotest adequate time to identify how long an extension is needed to complete agreements on used nuclear fuel with DOE and DoD."

The applicant stated in its September 3, 2010, extension request that the transaction will not be completed by September 13, 2010.

The NRC staff has considered the submittal of September 3, 2010, request for extension, and has determined that good cause to extend the effectiveness of the Order of July 6, 2010, has been shown in that the delay in completing the transaction was not caused by the licensee.

IV

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C.2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the effectiveness of the Order of July 6, 2010, described herein be extended until October 15, 2010, subject to the conditions set forth in the July 6, 2010, Order, and subject to the following additional conditions:

A. No later than September 28, 2010, a description of the agreements the parties anticipate reaching with the U.S. Department of Energy and the U.S. Department of Defense regarding the ultimate fuel disposition shall be submitted in writing to the NRC Director, Division of Policy and Rulemaking. The September 28 submission shall also provide an estimated date for completion of the transfer.

B. The parties shall provide a written report to the NRC Director, Division of Policy and Rulemaking, on a weekly basis, progress made toward completion of the transfer.

It is further ordered that if the proposed transfer is not consummated by October 15, 2010, the Order of July 6, 2010. shall become null and void, unless upon application, on or before September 28, 2010, and for good cause shown, such date is further extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the submittal dated September 3, 2010, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102510500), which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland this 13th day of September, 2010. For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Director Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–23250 Filed 9–16–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0282]

Revised Draft Safety Culture Policy Statement: Request for Comments

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Issuance of revised Draft Safety Culture Policy Statement and notice of opportunity for public comment.

DATES: Comments are requested 30 days from the date of this *Federal Register* Notice. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to assure consideration of comments received on or before this date. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information including specific questions for which the NRC is requesting comment.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0282 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 *www.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. Additionally, 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–2010–0282. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

Mail comments to: Cindy K. Blady, Chief, Rules, Announcements, and Directives Branch (RADB), 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 RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Maria E. Schwartz or Catherine Thompson at the U.S. Nuclear Regulatory Commission, Office of Enforcement, Mail Stop O–4 A15A, Washington, DC 20555–0001 or by e-mail or telephone to *Maria.Schwartz@nrc.gov*, (301) 415–1888, or *Catherine.Thompson@nrc.gov*, (301) 415–3409.

SUMMARY: On November 6, 2009, the NRC published a draft policy statement," Safety Culture Policy Statement," in the **Federal Register** (FRN) (74 FR 57525; NRC ADAMS Accession Number ML093030375).[1] The Statement of Policy (SOP) contained in the FRN focuses on the interface of nuclear safety and security in a positive safety culture, and highlights the Commission's expectation that all licensees and certificate holders[2] establish and maintain a positive safety culture that protects public health and safety and the common defense and security when carrying out licensed activities. The FRN requested that interested persons provide comments within 90 days of its publication. On January 12, 2010, the comment period was extended to March 1, 2010 (75 FR 1656; ML100050288). As part of its outreach activities, the NRC held a Safety Culture Workshop in February 2010 that provided a venue for interested parties to provide comments on the draft safety culture policy statement. The additional goal of the workshop was for panelists representing a broad range of stakeholders to reach alignment on a common definition of safety culture and a high-level set of traits that describe areas important to a positive safety culture. The workshop panelists, with the assistance of the other workshop participants, developed both. Following the February workshop, the staff evaluated the public comments that were submitted in response to the November 2009 FRN. Additionally, the staff participated on panels and made presentations at various industry forums in order to provide information to stakeholders about the development of the safety culture policy statement and/or to obtain additional input and to ascertain whether the draft definition and traits developed at the workshop accurately reflect a broad range of stakeholders' views.

In its ongoing effort to continue this dialogue with stakeholders, the NRC is publishing this FRN containing the revised draft SOP for a 30-day public comment period. The revised draft SOP, including the revised definition and traits, is based on careful consideration of the Commission guidance in the October 2009 Staff Requirements Memorandum (SRM) for SECY–09–0075 (ML092920099), the NRC staff's evaluation of the public comments received on the November 2009 FRN, the revised definition and traits developed at the February 2010 workshop, and the outreach efforts the NRC staff has engaged in since February 2010.

The information contained in this FRN will be used to focus discussions at a public meeting the NRC is holding on September 28, 2010, at its Las Vegas, Nevada, hearing facility. Both this FRN and the September meeting are intended to provide additional opportunities for stakeholders to provide comments on the revised draft SOP, including the revised draft definition and traits.

I. Background

Previous Policy Statements

While the NRC has increased its attention on the importance of a positive safety culture, the agency has long recognized the importance of a work environment with a safety-first focus. In 1989, in response to an incident involving operators sleeping in the control room, the NRC issued a policy statement on the conduct of operations which describes the NRC's expectation that licensees place appropriate emphasis on safety in the operations of nuclear power plants. The "Policy Statement on the Conduct of Nuclear Power Plant Operations" (54 FR 3424; January 24, 1989) states the Commission's expectations of utility management and licensed operators with respect to the conduct of operations, noting that it applies to all individuals engaged in any activity which has a bearing on the safety of nuclear power plants. The Commission issued the policy statement to help foster the development and maintenance of a positive safety culture at these facilities.

[1] The Commission may use a policy statement to address matters relating to areas that are within NRC jurisdiction and are of particular interest to the Commission in order to guide staff's activities and to express its expectations; however, policy statements, unlike regulations/rules are not binding upon, or enforceable against, NRC or Agreement State licensees and certificate holders.

[2] The reference in the November 2009 FRN to "licensee and certificate holder" included licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, and applicants for a license, certificate, permit, authorization, or quality assurance program approval.

In 1996, the Commission published a policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" (61 FR 24336; May 14, 1996), to set forth its expectations that licensees and other employers subject to NRC authority establish and maintain safety-conscious work environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. This policy statement applies to the regulated activities of all NRC licensees and their contractors and subcontractors. A safety conscious work environment is an important attribute of a positive safety culture and is one of the safety culture characteristics in the initial draft safety culture policy statement. It is also one of the revised traits captured by the February 2010 workshop participants as an "Environment for Raising Concerns."

Events Underscoring the Importance of a Positive Safety Culture

The importance of a positive safety culture has been demonstrated by a number of significant, high-visibility events world-wide involving civilian uses of radioactive materials that have occurred in the 20-year period since the Commission published its 1989 policy statement. These events are not confined to a particular type of licensee or certificate holder as they occurred at nuclear power plants and fuel cycle facilities and during medical and industrial activities involving regulated materials. Because of their significance to public health and safety, the Commission has required the regulated entity involved to determine the underlying root causes of the problem and, in some instances, to commit to having a third-party assessment of its safety culture in order to establish appropriate corrective actions. These assessments have revealed that weaknesses in the regulated entities' safety culture were an underlying root cause of the problem or increased the severity of the problem. These root causes included, for example, inadequate management oversight of process changes, perceived production pressures, lack of a questioning attitude, and poor communications.

One such incident indicated the need for additional NRC efforts to evaluate whether it should increase its attention to reactor licensees' safety cultures. During a planned outage, a nuclear power plant licensee discovered a cavity caused by boric acid corrosion in the top of the reactor pressure vessel. In response to this serious deterioration, the NRC required the licensee to determine the underlying root causes of the problem. The licensee's evaluation identified that the root causes for the failure to take appropriate corrective actions included an inadequate safety culture and an emphasis on production over safety. NRC lessons learned from this incident indicated the need for additional NRC efforts to evaluate nuclear power plant licensees' safety cultures. In SRM–SECY–04–0111 (ML042430661), dated August 30, 2004, the Commission approved the staff's plan to enhance the Reactor Oversight Process (ROP) treatment of cross-cutting issues to more fully address safety culture. As part of this effort, the staff made important changes to the ROP to address Commission direction, including: (1) Enhancements to problem identification and resolution initiatives; (2) inspector training on safety culture; (3) establishment of processes for revising the ROP while involving stakeholders; (4) evaluation of safety culture at plants in the Degraded Cornerstone Column of the ROP Action Matrix; and (5) the treatment of cross-cutting issues to more fully address safety culture. Commission paper SECY–06–0122, dated May 24, 2006, (ML061320282) describes the NRC's safety culture activities at that time and the outcomes of those activities. On July 31, 2006, the agency issued Regulatory Issue Summary 2006–13, "Information on the Changes Made to the Reactor Oversight Process to More Fully Address Safety Culture," (ML061880341) to provide information to nuclear power reactor licensees on the revised ROP.

Increased Focus on Security Issues

Following the terrorist attacks of September 11, 2001, the Commission increased its focus on the security of regulated facilities whose operations can have an impact on public health and safety. The Commission issued orders enhancing security at these facilities. During the early years of implementation of these security enhancements, several violations of the Commission's security requirements were identified, in which the licensee failed to cultivate an effective safety culture in its security program. The most visible of these involved a culture of complacency involving security officers sleeping while on shift at a nuclear power plant. Most of these violations involved inadequate management oversight of security, lack of a questioning attitude within the security organization, inability to raise concerns about security issues, and inadequacy of training for security personnel. These issues prompted the Commission in SECY–09–0075 to direct the staff to evaluate "[w]hether publishing NRC's expectations for safety culture and for security culture is best accomplished in one safety/security culture statement or in two separate statements, one each for safety and security, while still considering the safety and security interfaces." Based on the staff's review and stakeholder feedback, the staff concluded that the Commission's expectations for safety culture should be published in one policy statement entitled, "A Safety Culture Policy Statement," but should emphasize that safety and security be treated in a balanced, commensurate with the significance, manner, within the overarching safety culture. Thus, while the term "security" is not included in the revised draft definition of safety culture, as the preamble to the traits points out, the traits of an effective safety culture should be balanced commensurate with their significance in ensuring that the security program is effectively implemented.

Additionally, one of the insights gained from the increased emphasis on security is the importance of incorporating security considerations into a safety culture and effectively managing the safety and security interface. An effective safety and security interface integrates safety and security activities so as not to diminish or adversely affect either. Capturing both safety and security activities under an overarching safety culture policy statement is important because, while many safety and security activities complement each other, there may be instances in which safety and security interests create competing goals. Mechanisms should be established to identify and resolve these differences.

II. Development of the Current Statement of Policy

Commission Direction

In February 2008, the Commission issued SRM–COMGBJ–08–0001 (ML080560476) directing the NRC staff to expand the Commission's policy on safety culture to address the unique aspects of security and to ensure the resulting policy is applicable to all licensees and certificate holders. The Commission posed several additional questions for the staff to answer including (1) whether safety culture as applied to reactors needs to be strengthened; (2) how to increase attention to safety culture in the materials area; (3) how stakeholder involvement can most effectively be used to address safety culture for all NRC and Agreement State licensees and

certificate holders, including any unique aspects of security; and (4) whether publishing NRC's expectations for safety culture and for security culture is best accomplished in one safety/security culture statement or in two separate statements while still considering the safety and security interfaces.

To address the Commission's direction, NRC staff reviewed domestic and international safety culture related documents, considered NRC lessons learned, and obtained wide ranging stakeholder input on questions related to the issues in the SRM. In February 2009, the NRC held a public workshop on the "Development of a Policy Statement(s) on Safety and Security Culture" in which a broad range of stakeholders participated, including a representative from the Agreement States (Meeting Summary: ML090930572). The 2009 workshop developed a draft definition and characteristics [3] of a positive safety culture. Additionally, mindful of the increased attention to the important role of security, the staff also sought input from the workshop participants on whether there should be a single safety culture policy statement or two policy statements addressing safety and security independently while considering the interface of both. The staff also sought input on the additional questions the Commission posed to the staff in SRM–COMGBJ–08–0001.

The staff provided its recommendations to the Commission in May 2009 in Commission paper SECY–09–0075, "Safety Culture Policy Statement" (ML091130068). Based on its review and stakeholder feedback, the staff (1) concluded that the NRC's oversight of safety culture as applied to reactors has been strengthened, is effective, and continues to be refined in accordance with the existing reactor oversight process (ROP) self-assessment process; (2) described actions taken and planned for increasing attention to safety culture in the materials area; (3) described actions taken and planned for most effectively utilizing stakeholder involvement to address safety culture, including any unique aspects of security, for all NRC and Agreement State licensees and certificate holders; and (4) developed one draft safety culture policy statement that acknowledges the equal importance of safety and security within the overarching safety culture.

In SRM–SECY–09–0075 (ML092920099), the Commission directed the staff to: (1) Continue to engage a broad range of stakeholders, including the Agreement States and other organizations with an interest in nuclear safety, to ensure the final policy statement presented to the Commission considers a broad spectrum of views and provides the necessary foundation for safety culture applicable to the entire nuclear industry; (2) make the necessary adjustments to encompass security within the statement; (3) seek opportunities to comport NRC terminology, where possible, with that of existing standards and references maintained by those that the NRC regulates; and (4) consider incorporating suppliers and vendors of safety related components in the safety culture policy statement.

February 2010 Workshop

The February 2010 workshop was part of the staff's efforts to further engage all NRC-regulated entities as well as the Agreement States, the Indian Tribes, and organizations and individuals interested in nuclear safety. The goals of the February workshop were to (1) provide an additional opportunity for comments on the November 2009 FRN and (2) develop a common definition of safety culture and a high-level set of traits describing areas important to a positive safety culture. The workshop participants represented a wide range of stakeholders regulated by the NRC and/or the Agreement states including medical, industrial, and fuel cycle materials users, and nuclear power reactor licensees, as well as the Nuclear Energy Institute (NEI), the Institute of Nuclear Power Operations (INPO), and members of the public. The workshop panelists reached alignment with input from the other meeting attendees on a common definition of safety culture and a high-level set of traits describing areas important to a positive safety culture.

Additional Outreach Activities

Following the February workshop, the staff evaluated the public comments that were submitted in response to the initial draft SOP. Additionally, the staff participated on panels and made presentations at various industry forums in order to provide information to stakeholders about the development of the safety culture policy statement and/or to obtain additional input and to ascertain whether the draft definition and traits developed at the workshop accurately reflect a broad range of stakeholders' views. These outreach activities included, for example, participation in a Special Joint Session on Safety Culture at the Health Physics Society Annual Meeting, and presentations on the development of the Safety Culture Policy Statement at the Annual Fuel Cycle Information Exchange, the Conference of Radiation Control Program Directors' Annual National Conference on Radiation Control, the Institute of Nuclear Materials Management's Annual Meeting, the 2nd NRC Workshop on Vendor Oversight for New Reactors, and the Organization of Agreement States Annual Meeting.

III. Statement of Policy

The purpose of this Statement of Policy is to set forth the Nuclear Regulatory Commission's expectation that individuals and organizations, performing or overseeing regulated activities involving nuclear materials, establish and maintain a positive safety culture commensurate with the safety and security significance of their activities and the nature and complexity of their organizations and functions. This applies to all licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, vendors, suppliers of safety related components, and applicants for a license, certificate, permit, authorization, or quality assurance program approval, subject to NRC authority. Additionally, it is the Commission's expectation that the Agreement States and other organizations interested in nuclear safety will support the development and maintenance of a positive safety culture, as articulated in this Statement of Policy, within their regulated communities.

The Commission defines Nuclear Safety Culture as the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment. The Commission considers nuclear safety and nuclear security issues to be equally important in a positive safety culture. Thus, as part of this collective commitment, organizations should ensure that personnel in the safety and security sectors have an appreciation for the importance of each, emphasizing the need for integration and balance to achieve optimized protection. Safety and security activities are closely intertwined, and it is critical that consideration of these activities be integrated so as not to diminish or adversely affect either. A safety culture that accomplishes this would include

[3] At the February 2010 workshop, the panelists referred to the characteristics (NRC term) or principles (INPO term) as traits. The term "traits" is used in the revised draft SOP and throughout this FRN and describes areas important to a positive safety culture.

all nuclear safety and security issues associated with NRC-regulated activities.

Individuals and organizations performing or overseeing regulated activities involving nuclear materials bear the primary responsibility for safely handling and securing these materials. The Commission, as the regulatory agency, has an independent oversight role that reviews the performance of those individuals and organizations through its inspection and assessment processes, including their performance as it relates to areas important to safety culture.

Experience has shown that certain personal and organizational traits are present in a positive safety culture. A trait, in this case, is a pattern of thinking, feeling, and behaving that emphasizes safety, particularly in goal conflict situations, *e.g.*, production vs. safety, schedule vs. safety, and cost of the effort vs. safety. It should be noted that although the term "security" is not expressly included in these traits, safety and security are the primary pillars of the NRC's regulatory mission. Consequently, consideration of both safety and security issues, commensurate with their significance, is an underlying principle of this Statement of Policy. The traits of a positive safety culture include, but are not limited to: (1) Leadership Safety Values and Actions in which leaders demonstrate a commitment to safety in their decisions and behaviors; (2) Problem Identification and Resolution in which issues potentially impacting safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance; (3) Personal Accountability in which all individuals take personal responsibility for safety; (4) Work Processes in which the process of planning and controlling work activities is implemented so that safety is maintained; (5) Continuous Learning in which opportunities to learn about ways to ensure safety are sought out and implemented; (6) Environment for Raising Concerns in which a safety conscious work environment is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment or discrimination; (7) Effective Safety Communication in which communications maintain a focus on safety; and (8) a Respectful Work Environment in which trust and respect permeate the organization. It is the Commission's expectation that all individuals and organizations, performing or overseeing regulated activities involving nuclear materials should take the necessary steps to promote a positive safety culture by fostering these traits as they apply to their organizational environments.

IV. Changes to the Initial Draft Statement of Policy

Like the initial draft SOP, the revised draft SOP begins by indicating to whom the policy applies as a general matter. In the initial draft SOP, licensees and certificate holders are listed; however, earlier in the FRN, there is a footnote indicating that throughout the document, the phrase "licensees and certificate holders" includes licensees, certificate holders, permit holders, authorization holders, etc. The revised draft SOP refers to "individuals and organizations, performing or overseeing regulated activities involving nuclear materials," which includes vendors and suppliers of safety-related components. Additionally, the revised draft SOP notes the Commission's expectation that the Agreement States and other organizations interested in the safe use of nuclear materials also develop and maintain a positive safety culture within their regulated communities as well.

The definition of safety culture in the initial draft SOP is based on the International Atomic Energy Agency (IAEA) definition of safety culture, modified to broaden its applicability to materials users and to include security. The definition of safety culture has been changed in the revised draft SOP to the definition that was developed during the February 2010 workshop. This definition is broad enough to apply to all individuals and organizations, performing or overseeing regulated activities involving nuclear materials. Additionally, the February 2010 workshop definition does not include the term "security." The revised definition resonated with the workshop panelists. Additionally, it was the preferred definition in the comments received on the initial draft policy statement and the comments received during several industry forums held after the February 2010 workshop. The initial draft SOP, like the revised draft SOP, discusses the importance of providing personnel in both the safety and security sectors with an appreciation for the importance of each. Both SOPs also discuss the importance of recognizing how closely intertwined safety and security activities are and the importance of integrating these activities so as not to diminish or adversely affect either. The initial draft SOP indicates areas that should receive the greatest attention as a matter of priority. The revised draft SOP is silent on this point because each entity should examine its specific regulated activities to determine the areas that should receive the greatest attention.

Both SOPs stress the fact that those entities that use or provide services related to the use of radioactive materials bear the primary responsibility for safely handling and securing such materials; however, the revised draft SOP, as noted above, expands those entities to include individuals and organizations performing regulated activities to support the ability of the Agreement States to apply this SOP to their licensees. Both SOPs also point out that the NRC, as the regulatory agency, has an independent oversight role of those individuals and organizations through their inspection and assessment processes including their performance as it relates to areas important to safety culture.

Based on responses to a question posed in the FRN containing the initial draft SOP, the revised draft SOP contains the traits (*i.e.*, descriptions of areas important to safety culture). The November 2009 FRN describes the traits in another section of the policy statement rather than in the actual Statement of Policy (SOP) section. The traits that are included in the revised draft SOP, while similar to those proposed by the NRC in the November 2009 FRN, are based on the traits developed by the February workshop panelists. Taking into consideration the public comments on the initial draft safety policy statement, the NRC staff revised the workshop traits to make them clearer but made no substantive changes. Additionally, the revised draft SOP contains a preamble to the traits explaining what is a trait, and a discussion of the use of the term "security" in the traits, noting that although not expressly included in the traits, consideration of both safety and security issues commensurate with their significance is an underlying principle of the SOP.

The initial draft SOP also refers to the scope of the Commission's responsibilities as well as how it carries out these responsibilities. This paragraph was removed from the revised draft SOP to avoid confusing the SOP with a regulation; rather, the SOP provides the Commission's expectations regarding the applicability of this statement to individuals and organizations, performing or overseeing regulated activities involving nuclear materials.

V. Evaluation of Public Comments

Sixty-six public comments were received on the initial draft policy

statement published in the November 2009 FRN. Several of the comments were statements of agreement on the information and/or draft SOP that was published in the November 2009 FRN. Although the NRC staff used these comments to validate work the staff had already completed, these comments did not require further clarification. Of the remaining public comments, most fell into one of three themes: (1) More guidance is needed on implementation issues; (2) should the term "security" be included in the definition and, if not, should there be a separate security policy statement; and, (3) how will the NRC use a policy statement (which is voluntary) to enforce implementation of safety culture.

(1) Implementation Comments

Several of the comments requested clarification on the NRC's plans to implement the SOP. After the Commission has approved the policy statement, the Commission will issue an SRM to provide direction to the staff regarding next steps. The NRC offices that are responsible for overseeing regulated activities will assess their inspection and oversight programs to determine whether (and if so, how) to revise their programs based on the Commission's direction. The Commission is aware that there are many different settings in which the policy statement will be implemented and that implementation will be more complex in some settings than others. For example, as discussed above, the NRC's Reactor Oversight Program (ROP) already addresses safety culture in the inspection of nuclear power reactors. In addition, the power reactor community has ongoing programs and activities in place for assessing safety culture and implementing improvement strategies. This may not be the case with other categories of regulated activities, such as industrial radiography and medical use of isotopes. Variants such as these will be factored into the agency's approach and schedule for implementing the policy statement.

(2) Security Comments

As noted above, the panelists at the February workshop aligned on a common definition of safety culture. That definition, however, differs from the draft definition proposed in the November 2009 FRN which defines safety culture as "that assembly of characteristics, attitudes, and behaviors in organizations and individuals which establishes that as an overriding priority, nuclear safety and security issues receive the attention warranted by their significance." The initial draft definition includes the terms "safety" and "security," underscoring the significance the Commission places on consideration of both within NRC's regulatory framework. In subsequent internal discussions and during the various outreach activities with stakeholders, the February workshop definition, which does not include the term "security", has been well received and thus, has been adopted in the revised draft SOP. The workshop definition is as follows: "Nuclear safety culture is the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment." Deletion of the term "security" was deliberate. The panelists believe that leaving it in the definition would cause unnecessary confusion, particularly for smaller regulated entities that do not have to consider the same security issues as a nuclear power plant or fuel processing facility, for example. Their position is that security, like radiation protection, safeguards, material control and accounting, physical protection, and emergency preparedness, falls under an overarching definition of safety and should not be singled out. These views on removing the term "security" from the definition were also expressed by several members of a stakeholder panel during the Safety Culture Commission Briefing on March 30, 2010 (ML100950527).

Likewise, the traits that are included in the revised draft SOP, while similar to those proposed by the NRC, do not include the term "security" wherever the term "safety" is used. In recognition of the importance the agency places on security in a post "9/11" environment, the staff developed a preamble to the traits which points out that while the term "security" is not expressly included in each of the traits, safety and security are the primary pillars of the NRC's regulatory mission.

Finally, unlike the initial draft safety culture policy statement, the revised traits are included in the revised draft SOP itself. The November 2009 FRN specifically asked whether commenters would prefer this approach. There was almost unanimous agreement that the traits should be included to clarify the SOP.

(3) Policy Statement vs. Regulation/Rule Comments

Because public comments reflected some misunderstanding regarding the Commission's use of a policy statement rather than a regulation or rule, the following clarification is offered: The Commission may use a policy statement to address matters relating to activities that are within NRC jurisdiction and are of particular interest and importance to the Commission. Policy statements help to guide the activities of the NRC staff and can express the Commission's expectations. The NRC's Enforcement Policy, for example, describes the policy and procedures the agency intends to follow in initiating and reviewing enforcement actions in response to violations of NRC requirements.

Policy statements are not regulations/rules and are not accorded the status of a regulation/rule within the meaning of the Administrative Procedure Act (Pub. L. 79–404), the primary goal of which is to ensure that agencies observe procedural due process (i.e., fairness), in conducting their regulatory and administrative affairs. For example, Agreement States that are responsible for overseeing materials licensees are not required to implement the elements of a policy statement because such statements, unlike NRC regulations, are not a matter of compatibility. Additionally, policy statements cannot be considered binding upon, or enforceable against, NRC or Agreement State licensees and certificate holders.

While the option to consider rulemaking exists, the NRC believes that, at this time, developing a policy statement is a more effective way to engage stakeholders.

Additional Recommendations Based on Public Comments

Based on its evaluation of the public comments, the NRC staff made several additional recommendations. These recommendations have been included in the revised draft SOP or are addressed elsewhere in this FRN.

- In SRM–SECY–09–0075, the Commission directed the staff to consider incorporating vendors and suppliers of safety related components in the safety culture policy statement. Although there is strong support for doing so, some stakeholders have raised implementation issues. While implementation issues (particularly in cases where such vendors and suppliers are outside of NRC jurisdiction) may be complicated, most comments indicated that vendors and suppliers of safety-related components should be developing and maintaining a positive safety culture in their organizations for the same reasons that NRC licensees and certificate holders should be doing so. Thus, the revised draft SOP indicates that it is applicable to vendors and suppliers of safety-related components.
- Because of the emphasis that the public comments place on strong

leadership, the NRC staff recommended moving the trait "Leadership Safety Values and Actions" to the top of the traits list to give it visual prominence.

• Several comments indicated that there should be a discussion of complacency in the SOP. Complacency can occur because of long term success and repetition. Although this is already indirectly addressed in the traits (e.g., Effective Safety Communication and Personal Accountability are traits that prevent complacency), the NRC staff recommended further discussion of complacency in the revised draft SOP. The NRC is asking for comments as to whether it is useful to add a discussion on this aspect of safety culture to the SOP.

VI. Questions for Which NRC Is Seeking Input

(1) The revised definition of Nuclear Safety Culture is: "Nuclear Safety Culture is the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment." Should this be retained, as currently written, or should it be revised?

(2) Does including the safety culture traits in the SOP itself clarify your understanding of what the Commission means by a positive safety culture? If not, what additional guidance do you think is needed?

(3) Does the revised draft SOP provide a clear statement of the NRC's expectations that the regulated community should maintain a safety culture that includes balanced consideration of safety and security? If not, what changes or additions should be made?

(4) Should a discussion regarding complacency be added to the SOP and/or to the traits that describe areas important to safety?

(5) In late August 2010, the Institute of Nuclear Power Operations (INPO) completed a validation study to assess the extent to which the factors that emerged from analyzing responses to a safety culture survey match the traits that were identified during the February 2010 workshop. Only individuals working at nuclear reactors participated in the survey.

The study provides general support for the traits developed at the workshop; however, the study provides a slightly different grouping. Under the validation study, there are nine traits: (1) Management Responsibility/Commitment to Safety; (2) Willingness to Raise Concerns; (3) Decision-making; (4) Supervisor Responsibility for Safety; (5) Questioning Attitude; (6) Safety Communication; (7) Personal Responsibility for Safety; (8) Prioritizing Safety; and (9) Training Quality. Four of these are consistent with the eight traits developed by the workshop participants, i.e., Management Responsibility is consistent with Leadership Safety Values and Actions; Willingness to Raise Concerns relates to Environment for Raising Concerns; Safety Communication relates to Effective Safety Communication; and Personal Responsibility for Safety is consistent with Personal Accountability. The remaining five traits identified in the study, i.e., Decision-making, Supervisor Responsibility for Safety, Questioning Attitude, Prioritizing Safety, and Training Quality, are not as closely related (although they are not completely dissimilar). This is new information. The NRC is seeking stakeholder comments on this information though the FRN and through the public meeting scheduled for September 28 in Las Vegas.

To ensure efficient consideration of your comments, if you are responding to a specific question, please identify it by number with your comment. When commenting, please exercise caution with regard to site-specific security-related information. Comments will be made available to the public in their entirety. Personal information such as your name, address, telephone number, and e-mail address will not be removed from your submission.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 10th day of Sept, 2010.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2010–23249 Filed 9–16–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Federal Cyber Service: Scholarship for Service (SFS) Registration Web Site

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Human Resources Solutions Division, offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0246, SFS Registration. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on April 19, 2010 at 75 FR 20400, allowing for a 60-day public comment period. One comment was received, and OPM provided a response. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until October 18, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESS: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The SFS Program was established by the National Science Foundation in accordance with

the Federal Cyber Service Training and Education Initiative as described in the President's *National Plan for Information Systems Protection*. This program seeks to increase the number of qualified students entering the fields of information assurance and computer security in an effort to respond to the threat to the Federal Government's information technology infrastructure. The program provides selected 4-year colleges and universities scholarship grants to attract students to the information assurance field. Participating students who receive scholarships from this program are required to serve a 10-week internship during their studies and complete a post-graduation employment commitment equivalent to the length of the scholarship or one year, whichever is longer. Approval of the webpage is necessary to facilitate the timely registration, selection and placement of program-enrolled students in Federal agencies.

Analysis

Agency: Office of Personnel Management, Human Resources Solutions Division.

Title: Scholarship for Service (SFS) Program Internet Site.

OMB Number: 3206–0246.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 630.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 630 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–23232 Filed 9–16–10; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2010–104; Order No. 530]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services 3 contract to the competitive product list. This notice addresses procedural steps associated with this filing.

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 **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On September 1, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) contract.[1] The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS contracts, and is supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Order No. 503, the Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the instant contract is in accordance with Order No. 86. The Postal Service relates that the instant contract is for the same mailer as in Docket No. CP2009–60. It states that the mailer's current contract was scheduled to terminate at the end of its one year term on August 31, 2010; however, it filed a Motion for Temporary Relief to extend the contract pending completion of the Commission's review of the successor contract.[3] The Commission granted an extension of the contract "until the sooner of the Commission's order on the successor contract or September 30, 2010."[4]

The term of the instant contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the contract and applicable annexes;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2) for the contract;
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contract fits within the Mail Classification Schedule language for GEPS. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contract from the baseline GEPS 3 agreement. *Id.* at 4–5. It states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contract's functional equivalency. *Id.* at 4. The Postal Service asserts that "[b]ecause the agreement incorporates the same cost attributes and methodology, the relevant characteristics of this GEPS contract are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.*

The Postal Service concludes that its filing demonstrates that this new GEPS 3 contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contract be included within the GEPS 3 product. *Id.* at 5.

II. Notice of Filing

The Commission establishes Docket No. CP2010–104 for consideration of matters related to the contract identified in the Postal Service's Notice.

[1] Notice of United States Postal Service of Filing A Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application For Non-Public Treatment of Materials Filed Under Seal, September 1, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

[3] Motion of the United States Postal Service for Temporary Relief, August 26, 2010 (Motion).

[4] Order Granting Motion for Temporary Relief, August 27, 2010.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than September 10, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010–104 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than September 10, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission,

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–23203 Filed 9–16–10; 8:45 am]

BILLING CODE 7710–FW–S

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12258 and #12259]

Iowa Disaster Number IA–00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1930–DR), dated 07/29/2010.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/01/2010 and continuing.

Effective Date: 09/09/2010.

Physical Loan Application Deadline Date: 09/27/2010.

Economic Injury (Eidl) Loan Application Deadline Date: 04/29/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The nc of the President's major disaster declaration for Private Non-Profit organizations in the State of Iowa, dated 07/29/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Henry.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–23281 Filed 9–16–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12312 and #12313]

Missouri Disaster #MO–00040

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Missouri dated 09/10/2010.

Incident: Severe Storms, Flooding, Flash Flooding, High Winds, Hail and Tornadoes

Incident Period: 06/12/2010 through 07/31/2010.

EFFECTIVE DATE: 09/10/2010.

Physical Loan Application Deadline Date: 11/9/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 6/10/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Holt, Marion.

Contiguous Counties:

Missouri: Andrew, Atchison, Lewis, Monroe, Nodaway, Ralls, Shelby.

Illinois: Adams, Pike.

Kansas: Doniphan.

Nebraska: Nemaha, Richardson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12312 B and for economic injury is 12313 O.

The States which received an EIDL Declaration # are Missouri; Illinois; Kansas; Nebraska.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 10, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–23282 Filed 9–16–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62896, File No. 4–518]

Joint Industry Plan; Notice of Filing and Order Granting Temporary Effectiveness of Amendment To Plan Establishing Procedures Under Rule 605 of Regulation NMS

September 13, 2010.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 608 of Regulation NMS,[2] notice is hereby given that on September 9, 2010, the BATS Y-Exchange, Inc. ("BYX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the national market system plan that establishes procedures under Rule 605

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

of Regulation NMS ("Joint-SRO Plan" or "Plan").[3] The amendment proposes to add BYX as a participant to the Joint-SRO Plan. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Joint-SRO Plan amendment, and to grant temporary effectiveness to the proposed amendment through January 18, 2011.

I. Description and Purpose of the Amendment

The current participants to the Joint-SRO Plan are the American Stock Exchange LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.), Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock Exchange℠), EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.), New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.). The proposed amendment would add BYX as a participant to the Joint-SRO Plan.

BYX has submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants. Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) Executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section 11(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint-SRO Plan amendment 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 4–518 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 4–518. 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 website (*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 website 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 4–518 and should be submitted on or before October 18, 2010.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

The Commission finds that the proposed Joint-SRO Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[4] Specifically, the Commission believes that the proposed amendment, which permits BYX to become a participant to the Joint-SRO Plan, is consistent with the requirements of Section 11A of the Act, and Rule 608 of Regulation NMS. The Plan establishes appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The proposed amendment to include BYX as a participant in the Joint-SRO Plan will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers.

The Commission finds good cause to grant temporary effectiveness to the proposed Joint-SRO Plan amendment, for 120 days, until January 18, 2011. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow BYX to become a participant in the Joint-SRO Plan. On August 13, 2010, the Commission granted the application of BYX for registration as a national securities exchange.[5] One of the conditions to operation of the BYX Exchange is participation in national market system plans, including the Joint-SRO Plan.[6] As a Plan participant, BYX would have timely information on the Plan procedures as they are formulated and modified by the participants. The Commission finds, therefore, that granting temporary effectiveness of the proposed Joint-SRO Plan amendment is appropriate and consistent with Section 11A of the Act.[7]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[8] and Rule 608 of Regulation NMS,[9] that the proposed Joint-SRO Plan amendment is approved for 120 days, through January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–23196 Filed 9–16–10; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1–5 under the Act (n/k/a Rule 605 of Regulation NMS). *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[4] In approving this proposed Joint-SRO Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] *See* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010).

[6] *Id.* at 51305.

[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62892; File No. SR–Phlx–2010–119]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Limitation of Exchange Liability

September 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 1, 2010 NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Rule 652, titled Limitation of Exchange Liability and Reimbursement of Certain Expenses, to require member organizations on the Exchange's trading floor to procure and maintain liability insurance.

The text of the proposed rule change is available on the Exchange's website at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, on the Commission's website at *http://www.sec.gov/*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 652 titled Limitation of Exchange Liability and Reimbursement of Certain Expenses to require member organizations conducting business on the Exchange's trading floor to procure and maintain liability insurance. The Exchange is proposing this amendment to limit the liability of the Exchange and obtain reimbursement for any action or proceeding brought against the Exchange.

Legal proceedings can significantly divert staff resources away from the Exchange's regulatory and business purposes. In addition, these proceedings often require the Exchange to secure outside counsel, a costly undertaking. The Exchange believes that establishing a rule that limits the Exchange's liability may reduce non merit-based or vexatious legal proceedings against the Exchange by member litigants and help protect against the Exchange's resources being unnecessarily diverted from regulatory and business objectives, thus strengthening the overall organization.

Specifically, the Exchange is proposing to require that member organizations located on the Exchange's trading floor procure and maintain liability insurance. The insurance would provide defense and indemnity coverage for the member organization, any person associated with the member organization and the Exchange for any action or proceeding brought, or claim made, to impose liability upon the member organization, associated person or the Exchange which results from the member organization's or associated person's conduct.

The Exchange has a physical trading floor where certain Exchange member organizations physically conduct their trading activities. The Exchange does not intend this amendment to provide relief associated with financial loss related to buying and selling securities. The insurance coverage is intended to provide coverage to the Exchange for its sole, concurrent, or contributory negligence or other wrongdoing connected to a claim arising from the member organization's or associated person's conduct.

The Exchange would require that the member organization name the Exchange as an additional insured on the insurance policy by endorsement. The Exchange would retain the same rights under the insurance coverage as the named insured. The Exchange would be entitled to the full policy limits. The member organization would be required to maintain insurance with a limit that is not less than $1,000,000 without erosion by defense costs.[5] The insurance would indicate that it is primary to any insurance maintained by the Exchange.[6]

Finally, each member organization located on the trading floor would be required to provide a certificate of insurance to be issued directly to the Exchange demonstrating the insurance was procured and is maintained. Each member organization would be required to furnish a copy of the insurance policy upon request as well.

The Exchange incurs cost related to the conduct of Exchange member organizations utilizing the Exchange's facilities on the trading floor to conduct business. The Exchange is seeking to shift the burden arising from actions or proceedings brought, or claims made, to impose liability on the Exchange back to the member organization.

The Exchange also proposes to expand the language in Rule 652 to apply the rule to individuals of the Exchange, specifically officers, directors and employees. The Exchange believes that this language serves to clarify that individuals serving as officers, directors or employees are also the subject of Rule 652.

The Exchange proposes to require members to procure such insurance by December 31, 2010.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by requiring member organizations physically located on the trading floor to procure and maintain insurance. The proposed amendment would assist the Exchange in limiting its resources [sic] which can be easily diverted to defending litigation claims.

The Exchange believes that member organizations that are physically located

[5] In other words, the $1,000,000 requirement would be in addition to legal costs.

[6] This requirement applies to the endorsement on the policy and would require coverage to be sought under the member's policy prior to any Exchange policy.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

on the Exchange's trading facilities are already subject to rules and procedures that are separate and apart from member organizations that are not located on the Exchange's trading floor. While the Exchange does have rules which govern a member organization's order and decorum while on the Exchange's trading floor, the Exchange believes that requiring such member organizations to also obtain insurance coverage to protect the Exchange from claims resulting from their own conduct is not an undue burden.

The Exchange's trading floor environment must be free from conduct that could distract or interfere with market activity as well as conduct which could deplete the Exchange's resources and divert staff when dealing with claims and litigation that results from the conduct of a member organization or associated person of that member organization. The Exchange believes that this proposal will conserve Exchange resources and provide additional coverage for member organizations as well because they are also subject to the coverage.

The Exchange believes that amending Rule 652 to add officers, directors and employees in addition to the Exchange serves to further clarify Rule 652 by making clear that the word Exchange includes such individuals.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–119. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2010–119 and should be submitted on or before October 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–23194 Filed 9–16–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62893; File No. SR–NASDAQ–2010–113]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

September 10, 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 September 7, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on September 7, 2010. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is modifying its fee for routing orders to the New York Stock Exchange ("NYSE") closing auction to reflect a change recently made by NYSE to the fee that it charges for orders executed in the auction.[3] As a result of the change, the fee charged by NASDAQ for DOT Orders for stocks priced at $1.00 or more that execute in the NYSE closing process as a "market-at-the-close" or "limit-at-the-close" order will increase from $0.0007 to $0.00085 per share executed. Similarly, for most "market-at-the-close" or "limit-at-the-close" orders executed at NYSE, NYSE has raised the fee from $0.0007 to $0.00085 per share executed.[4]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The change reflects an increase in the fee that NYSE charges to NASDAQ when it routes orders to the NYSE closing auction, and is equitably allocated to members based on their use of orders that route to NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–113 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–2010–113. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.[8] 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–2010–113 and should be submitted on or before October 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–23240 Filed 9–16–10; 8:45 am]

BILLING CODE 8010–01–P

[3] Securities Exchange Act Release No. 62826 (September 1, 2010) (SR–NYSE–2010–63).

[4] The exception is for stocks with a share price less than $1.00, for which NYSE formerly charged the lesser or [sic] $0.0007 per share executed or 0.3% of the transaction cost, and for which it will now charge the lesser of $0.00085 per share executed or 0.3% of the transaction cost. NASDAQ charges a uniform fee of 0.3% of the transaction cost for all routed orders for stocks with a share price of less than $1.00.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

[8] The text of the proposed rule change is available on the Commission's website at *www.sec.gov*.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62887; File No. SR–Phlx–2010–121]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Market Data Feeds

September 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule by establishing fees for a direct data product, PHLX Options Trade Outline ("PHOTO") market data product. The proposed fees would become effective on September 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish fees for the PHOTO market data product. PHOTO is a market data product offered by the Exchange that is designed to provide proprietary electronic trade data to subscribers. PHOTO is available as either an "End-of-Day" data product or an "Intra-Day" data product, as described more fully below. PHOTO is available to any person who wishes to subscribe to it, regardless of whether or not they are a member of the Exchange. The fees for the End of Day product and the Intra-Day product are uniform for all subscribers. PHOTO is available only for internal use and distribution by subscribers.

Data Included in PHOTO

PHOTO provides information about the activity of a particular option series during a particular trading session. PHOTO subscribers will receive the following data:

- Aggregate number of buy and sell transactions in the affected series;
- Aggregate volume traded electronically on the Exchange in the affected series;
- Aggregate number of trades effected on the Exchange to open a position; [3]
- Aggregate number of trades effected on the Exchange to close a position; [4]
- Origin of the orders involved in trades on the Exchange in the affected series during a particular trading session, specifically aggregated in the following categories of participants: Customers, broker-dealers, market makers (including specialists, Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs") [5] and Remote Streaming Quote Traders ("RSQTs") [6]), and professionals.[7]

[3] PHOTO will provide subscribers with the aggregate number of "opening purchase transactions" in the affected series. An opening purchase transaction is an Exchange options transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction. *See* Exchange Rule 1000(b)(24). PHOTO will also provide subscribers with the aggregate number of "opening writing transactions." An opening writing transaction is an Exchange options transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction. *See* Exchange Rule 1000(b)(25).

[4] PHOTO will provide subscribers with the aggregate number of "closing purchase transactions" in the affected series. A closing purchase transaction is an Exchange options transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction. *See* Exchange Rule 1000(b)(27). PHOTO will also provide subscribers with the aggregate number of "closing sale transactions." A closing sale transaction is an Exchange options transaction an Exchange options transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction. *See* Exchange Rule 1000(b)(26).

[5] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[7] The term "professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B–6, B-11 and F–5. Member organizations must indicate whether orders are for professionals. *See* Exchange Rule 1000(b)(14).

End of Day Product

The End-of-Day product includes the aggregate data described above representing the entire trading session. It is calculated during an overnight process after each trading session and is available to subscribers for download the following morning at approximately 7:00 a.m., ET.

The monthly subscriber fee for the End of Day product subscribers is $500.00.

Intra-Day Product

The Intra-Day product includes periodic, cumulative data for a particular trading session. The Intra-Day product is produced and updated every ten minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within 5 minutes of the conclusion of each 10 minute period. For example, subscribers to the Intra-Day product will receive the first calculation of intra-day data at 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:39 a.m. Subscribers will receive the next update at 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:49 a.m., and so forth. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots." The monthly subscriber fee for the Intra-Day product is $1,500.00.

PHOTO provides subscribers data that should enhance their ability to analyze option trade and volume data, and to create and test trading models and analytical strategies, The Exchange believes that PHOTO is a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of PHLX data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

"[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data."[10]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. PHOTO is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, "At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved."

PHLX believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a "due, fee or other charge imposed by the self-regulatory organization," the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees.

PHLX believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete.

Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or nonmembers, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the *United States Court of Appeals for the District of Columbia Circuit in NetCoaliton [sic]* v. *SEC*, No. 09–1042 (DC Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'"[11]

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX 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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoaltion [sic] court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive.

For the reasons discussed above, PHLX believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment.

Even in the absence of this important statutory change, however, PHLX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[11] NetCoaltion [sic], at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a by-product of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order recognizing and reacting to a posted order on a particular platform, the posting of the order would accomplish little.

Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'."[12] However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of aftermarket alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market. Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. For example, the Exchange notes that at least two other U.S. options exchanges offer a market data product that is substantially similar to PHOTO, which the PHLX must consider in its pricing discipline in order to compete for listings, trades, and the market data itself.[13]

[12] NetCoalition at 24.

[13] The International Securities Exchange, Inc. ("ISE") Open/Close Trade Profile and the ISE Open/Close Trade Profile Intra-Day contain substantially similar data to that included in PHOTO End of Day and PHOTO Intra-Day. *See* Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (SR–ISE–2007–70). The Chicago Board Options Exchange, Inc. ("CBOE") also offers similar market data. *See* Securities Exchange Act Release No. 55062 (January 8, 2007), 72 FR 2048 (January 17, 2007) (SR–CBOE–2006–88) (order

Continued

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including PHLX, NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Yahoo, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. PHLX and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson-Reuters.

The court in NetCoalition concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's NetCoalition order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. PHLX believes, however, that evidence not before the court clearly demonstrates that availability of depth data attracts order flow.

Competition among platforms has driven PHLX continually to improve its platform data offerings and to cater to customers' data needs. For example, PHLX offers front end applications such as its Top of PHLX Options ("TOPO") and TOPO Plus Orders data products to help customers utilize data.

For the foregoing reasons, PHLX 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 purpose of the Act.

granting approval to proposed rule change to codify a fee schedule for the sale of open and close volume data on CBOE listed options by Market Data Express, LLC).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–121 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–121. 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,[15] all subsequent amendments, all written statements

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml*.

[16] 17 CFR 200.30–3(a)(12).

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–Phlx–2010–121 and should be submitted on or before October 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23261 Filed 9–16–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62901; File No. SR–BATS–2010–024]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt BATS Rule 2.12, Entitled "BATS Trading, Inc. as Inbound Router" and To Make Related Changes

September 13, 2010.

Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it 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 Exchange proposes to adopt new BATS Rule 2.12, entitled "BATS Trading, Inc. as Inbound Router" and to make other related changes.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 13, 2010, the Commission approved the application of BATS Y–Exchange, Inc. ("BYX"), an affiliate of the Exchange, to register as a national securities exchange.[5] Included in the approved rules of BYX is BYX Rule 2.12, which governs the routing of orders by BYX's (and the Exchange's) affiliated broker-dealer, BATS Trading, Inc. ("BATS Trading") to BYX as inbound router in its capacity as a routing facility of the Exchange. The Exchange is proposing to adopt the same inbound routing rule, also numbered Rule 2.12, which will govern BATS Trading's status as an inbound router that sends orders to the Exchange in its capacity as a routing facility of BYX. Pursuant to proposed Rule 2.12, BATS Trading's inbound routing services from BYX to the Exchange would be subject to the following conditions and limitations:

(1) The Exchange must enter into (1) a plan pursuant to Rule 17d–2 under the Act with a non-affiliated self-regulatory organization ("SRO") to relieve the Exchange of regulatory responsibilities for BATS Trading with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (2) a regulatory services contract ("Regulatory Contract") with a non-affiliated SRO to perform regulatory responsibilities for BATS Trading for unique Exchange rules.

(2) The Regulatory Contract must require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which BATS Trading is identified as a participant that has potentially violated Exchange or Commission Rules, and requires that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which BATS Trading is identified as a participant that has potentially violated Exchange or Commission rules.

(3) The Exchange, on behalf of its parent company, BATS Global Markets, Inc., must establish and maintain procedures and internal controls reasonably designed to ensure that BATS Trading does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange.

The Exchange has proposed adoption of new Rule 2.12 on a pilot basis. The Exchange requests that this pilot period run concurrently with the twelve month period for BYX's receipt of inbound routes from the Exchange, which is set to expire one year after the commencement of operations by BYX. BYX currently plans to commence operations on October 15, 2010.

In addition to the adoption of an inbound routing rule, the Exchange proposes minor modifications to its existing rule applicable to BATS Trading's status as an outbound router. Specifically, Rule 2.11 currently states that BATS Trading will not engage in any business other than its outbound router function and any other activities it may engage in as approved by the Commission. The Exchange proposes to add acting as inbound router to the list of activities in which BATS Trading will engage.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 34–62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (order approving application of BATS Y–Exchange, Inc. for registration as a national securities exchange).

Finally, due to the adoption of Rule 2.12, the Exchange proposes to re-number existing Rule 2.12 as 2.13.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by implementing a rule to allow BATS Trading, Inc. to route orders to the Exchange in its capacity as an order routing facility of BYX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BATS–2010–024 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 No. SR–BATS–2010–024. 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 BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2010–024 and should be submitted on or before October 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23299 Filed 9–16–10; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62900; File No. SR–Phlx–2010–123]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a New FLEX Options Pilot Program

September 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on September 2, 2010, NASDAQ OMX PHLX LLC ("Phlx" 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 is filing with the Commission a proposal to replace the 150 contract FLEX minimum value pilot program with a new pilot program that eliminates minimum value sizes for equity-traded FLEX index options and FLEX equity options (together known as "FLEX Options").[3] The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition to FLEX Options, FLEX currency options are also traded on the Exchange. These flexible index, equity, and currency options provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices; and may have expiration dates within five years. *See* Rule 1079. FLEX currency options traded on the Exchange are also known as FLEX World Currency Options ("WCO") or Foreign Currency Options ("FCO"). The new pilot program proposed in this filing does not encompass currency options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Commentary .01 to Rule 1079 to replace the 150 contract FLEX minimum value pilot program with a new pilot program that eliminates minimum value sizes for FLEX Options for an opening transaction ("Pilot Program" or "Pilot"). The Pilot Program would end on March 28, 2011.

The rule changes proposed by the Exchange are similar to those in use by Chicago Board Options Exchange, Incorporated ("CBOE") and NYSE Amex LLC ("NYSE Amex").[4]

Rule 1079 deals with the process of listing and trading FLEX options on the Exchange. Rule 1079 states that the term "FLEX option" means a FLEX option contract that is traded subject to this rule. Rule 1079 permits the Exchange to list FLEX options on: Any index upon which options currently trade on the Exchange; any security which is options-eligible pursuant to Rule 1009; or any foreign currency which is options-eligible pursuant to Rule 1009 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange. Rule 1079 discusses, among other things: Opening FLEX options trading through the Request-for-Quote ("RFQ") process; quotes responsive to RFQs; trading parameters and procedures; and position and exercise limits for FLEX options.

Rule 1079(a)(8)(A) currently sets the minimum opening transaction value size in the case of a FLEX Option in a newly established (opening) series if there is no open interest in the particular series when an RFQ is submitted: (i) $10 million underlying equivalent value, respecting FLEX market index options, and $5 million underlying equivalent value respecting FLEX industry index options; [5] (ii) except as provided in Commentary .01, the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities, with respect to FLEX equity options; and (iii) 50 contracts in the case of FLEX currency options.[6]

Presently, under an existing pilot program in Commentary .01 to Rule 1079, the Exchange has reduced the minimum value size requirement of subparagraph (a)(8)(A)(ii) for an opening FLEX Equity transaction to the lesser of 150 contracts (previously 250 contracts) or the number of contracts overlying $1 million in underlying securities ("150 minimum value pilot program").[7] The Exchange proposes to replace the existing 150 minimum value pilot program with a new Pilot Program in Commentary .01 that eliminates the minimum value size requirements for FLEX Options.[8]

If, in the future, the Exchange proposes an extension of the new Pilot Program that establishes no minimum size, or should the Exchange propose to make the new Pilot Program permanent, the Exchange will submit, along with any filing proposing such amendments to the Pilot, a Pilot Program report that would provide an analysis of the Pilot Program covering the period during which the Pilot was in effect. This report would include: (i) Data and analysis on the open interest and trading volume in (a) FLEX equity options with opening transaction with a minimum size of 0 to 249 contracts and less than $1 million in underlying value; (b) FLEX index options with opening transaction with a minimum opening size of less than $10 million in underlying equivalent value; and (ii) analysis of the types of investors that initiated opening FLEX Options transactions (*i.e.*, institutional, high net worth, or retail). The report would be submitted to the Commission at least two months prior to the expiration date of the Pilot Program and would be provided on a confidential basis.

The Exchange notes that any positions established under this Pilot would not be impacted by the expiration of the Pilot. For example, a 10-contract FLEX equity option opening position that overlies less than $1 million in the underlying security and expires in January 2015 could be established during the Pilot. If the Pilot Program were not extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

The Exchange believes that the proposed Pilot Program would provide greater opportunities for traders and investors to manage risk through the use of FLEX Options, including investors that may otherwise trade in the unregulated over the counter ("OTC") market where similar size restrictions do not apply.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by eliminating a minimum size for FLEX transactions, which the Exchange believes would provide greater opportunities for traders and investors to manage risk through the use of FLEX Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[4] *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (order approving no minimum value pilot). NYSE Amex based its no minimum value pilot on the CBOE pilot. *See* Securities Exchange Act Release No. 62084 (May 12, 2010), 75 FR 28091 (May 19, 2010) (SR–NYSEAmex–2010–40) (notice of filing and immediate effectiveness).

[5] Market index options and industry index options are broad-based index options and narrow-based index options, respectively. *See* Rule 1000A(b)(11) and (12).

[6] The Exchange notes that CBOE has similar provisions in CBOE Rules 24A.4(a)(4)(ii)(A) and 24B.4(a)(5)(ii)(A). Unlike Phlx, however, CBOE does not trade currency options and does not discuss them in the noted CBOE rule sections.

[7] *See* Securities Exchange Act Release Nos. 57824 (May 15, 2008), 73 FR 29805 (May 22, 2008) (SR–Phlx–2008–35) (notice of filing and immediate effectiveness establishing the 150 minimum value pilot program); and 60627 (September 4, 2009), 74 FR 47032 (September 14, 2009) (SR–Phlx–2009–78) (notice of filing and immediate effectiveness extending the 150 minimum value pilot program).

[8] The Exchange is not aware of any significant compliance or enforcement issues pursuant to the 150 minimum value pilot program.

[9] 15 U.S.C. 78f(b).

[10] 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx has requested that the Commission waive the 30-day operative delay.

The Commission has considered Phlx's request to waive the 30-day operative delay. Because, however, the Commission does not believe, practically speaking, that a pilot should retroactively commence, the Commission is only waiving the operative delay as of the date of this notice for the reasons discussed below.[15] The Commission believes that waiving the 30-day operative delay to allow the commencement of the pilot as of the date of issuance of this notice of the proposed rule change is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change is substantially similar to a pilot that was previously approved by the Commission and is currently in existence for CBOE,[16] and to a pilot program that is currently in existence on NYSE Amex.[17] The Commission notes that these pilots were subject to full notice and comment in the **Federal Register**. The Commission received no comments on the NYSE Amex proposal, and only received comments that supported the CBOE proposal.[18] Further, the Exchange's proposal does not raise any new or novel issues that were not already considered in connection with the CBOE and NYSE Amex proposals. For these reasons, consistent with investor protection and the public interest, the Commission designates this pilot to be operative upon the date of issuance of this notice.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–123 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–123. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–123 and should be submitted on or before October 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23298 Filed 9–16–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] The Commission also notes that waiving the operative date as of the date of this notice is consistent with approval of CBOE's pilot, which allowed implementation as of the date of the Commission's approval order, and Amex's pilot, where the pilot was operative upon the date of issue of the notice.

[16] *See supra* note 4.

[17] *Id.*

[18] *Id.*

[19] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62897; File No. SR–CBOE–2010–083]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Complex Order Book

September 13, 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 September 9, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.53C, *Complex Orders on the Hybrid System,* to incorporate a provision related to option classes in which the electronic complex order book ("COB") is activated. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

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

CBOE Rule 6.53C governs the operation of the Exchange's electronic COB system. The purpose of this proposed rule change is to incorporate a provision to provide the Exchange with additional flexibility to determine the applicable matching algorithm [5] for option classes in which COB is activated. Currently, Rule 6.53C(c)(ii)(2) specifies that the allocation of complex orders within COB shall be pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs, and Rule 6.53C(iii)(3) specifies that the allocation of complex orders among market participants that submit orders or quotes to trade against the COB shall be pursuant to paragraph (c) of Rule 6.45A or Rule 6.45B, as applicable.

This filing proposes to provide the Exchange with additional flexibility regarding the allocation to permit the matching algorithm in effect for COB to be different from the matching algorithm in effect for the option class. Specifically, we are proposing that the Exchange may determine on a class-by-class basis which electronic matching algorithm shall apply to COB executions. Pursuant to Rule 6.53C.01, all pronouncements regarding COB matching algorithm determinations by the Exchange will be announced to CBOE Trading Permit Holders via Regulatory Circular.

The matching algorithm applied to COB for each option class will continue to be pursuant to Rule 6.45A or 6.45B, as applicable. Thus, the Exchange is not creating any new algorithms for COB, but is amending Rule 6.53C to provide the flexibility to choose an algorithm from among the existing algorithms to be applied to COB rather than simply defaulting to the algorithm in effect for an option class. All other aspects of COB pursuant to Rule 6.53C shall apply unchanged.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposed change would provide more flexibility for the Exchange to designate the matching algorithm for COB in a manner that is consistent with existing CBOE rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–083 on the subject line.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The matching algorithms include price-time, pro-rata, and the ultimate matching algorithm ("UMA") base priorities and a combination of various optional priority overlays pertaining to public customer priority, Market-Maker participation entitlements, small order preference, and market turner. *See* Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System,* and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System.*

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization submit to 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–083. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–083 and should be submitted on or before October 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23297 Filed 9–16–10; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0058]

Occupational Information Development Advisory Panel Meeting; Correction

AGENCY: Social Security Administration.

ACTION: Notice; correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of September 13, 2010, announcing an upcoming panel teleconference meeting of the Occupational Information Development Advisory Panel. The document contained an incorrect timeframe for the meeting.

FOR FURTHER INFORMATION CONTACT: The panel staff by any one of these three methods:

• *Mail:* Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, Operations Building, 3–E–26, Baltimore, Maryland 21235.

• *Fax:* (410) 597–0825.

• *E-mail: OIDAP@ssa.gov.*

Correction

In the **Federal Register** of September 13, 2010, in FR Doc. 2010–22711, on page 55625, in the second column, correct the **DATES** caption to read:

DATES: September 29, 2010, 10 a.m.–12 p.m. (EDT). Call-in number (866) 283–9791, Conference ID: 1482323, Leader/Host: Debra Tidwell-Peters.

Deborah Tidwell,

Designated Federal Officer.

[FR Doc. 2010–23206 Filed 9–16–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7174]

Culturally Significant Objects Imported for Exhibition Determinations: "Titian and the Golden Age of Venetian Painting: Masterpieces from the National Galleries of Scotland"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Titian and the Golden Age of Venetian Painting: Masterpieces from the National Galleries of Scotland," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, GA, from on or about October 16, 2010, until on or about January 2, 2011; at the Minneapolis Institute of Arts, Minneapolis, MN, from on or about February 6, 2011 to on or about May 1, 2011; at the Museum of Fine Arts, Houston, TX, from on or about May 21, 2011, to on or about August 14, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: September 9, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–23284 Filed 9–16–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7112]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

DATE: October 19, 2010 from 2 p.m. to about 5 p.m. (open to the public).

Location: The American Institute of Architects (Boardroom), 1735 New York Ave., NW., Washington, DC 20006.

Meeting agenda: The agenda of the meeting will include a review of the results of the April 2010 UPU Postal Operations Council, the major issues to arise at the November 2010 UPU Council of Administration and other subjects related to international postal and delivery services of interest to Advisory Committee members and the public.

Public input: Any member of the public interested in providing public input to the meeting should contact Ms.

[9] 17 CFR 200.30–3(a)(12).

Yvette White, whose contact information is listed below. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, e-mail or fax) prior to the close of business on October 12, 2010; written comments from members of the public for distribution at this meeting must reach Ms. White by letter, e-mail or fax by this same date. A member of the public requesting reasonable accommodation should make the request to Ms. White by that same date.

FOR FURTHER INFORMATION CONTACT: Yvette White Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044, *whiteym@state.gov*.

Dated: September 3, 2010.

Dennis M. Delehanty,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services.

Dated: September 3, 2010.

Dennis M. Delehanty,

Foreign Affairs Officer Department of State.

[FR Doc. 2010–23285 Filed 9–16–10; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Aviation Safety Subcommittee; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC): Aviation Safety Subcommittee; Notice of Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Aviation Safety Subcommittee, which will be held September 28, 2010, via teleconference. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The subcommittee will discuss issue areas identified for potential recommendations, the process of drafting recommendations, and develop a work plan for future meetings.

DATES: The meeting will be held on September 28, 2010, from 2 to 4 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held via teleconference. Call-in information will be provided to registered participants. (*See* below for registration instructions.)

Public Access: The meeting is open to the public. (See below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *www.regulations.gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Aviation Safety Subcommittee, the term "Aviation Safety" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its September 28, 2010, meeting, public comments must be filed by close of business on Friday, September 24, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of an FAAC Aviation Safety Subcommittee meeting taking place on September 28, 2010, from 2 to 4 p.m. Eastern Daylight Time, via teleconference. The subcommittee will—

1. Review the status of issue items.
2. Discuss the drafting of recommendations and report.
3. Develop a work plan for future meetings.

Registration

The telephone conference can accommodate up to 100 members of the public. Persons desiring to listen to the discussion must pre-register through e-mail to *FAAC@dot.gov*. The term "Registration: Safety Subcommittee" must be listed in the subject line of the message, and admission will be limited to the first 100 persons to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for video transmission, or for oral statements or questions from the public at the meeting. Minutes of the meeting will be posted on the FAAC Web site at *http://www.dot.gov/FAAC*.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on September 24, 2010.

FOR FURTHER INFORMATION CONTACT: Tony Fazio, Deputy Director, Office of Accident Investigation and Prevention, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC; telephone (202) 267–9612; *Tony.Fazio@FAA.gov*.

Issued in Washington, DC, on September 13, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–23205 Filed 9–16–10; 8:45 am]

BILLING CODE 4910–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2010–0033]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to reinstate the following information collections:

(1) Nondiscrimination as it Applies to FTA Grant Programs.

(2) Title VI as it Applies to FTA Grant Programs.

The collections involve FTA's Nondiscrimination and Title VI Programs. The information to be collected for the Nondiscrimination Program is necessary to ensure that any employee or applicant for employment is not discriminated against on the basis of race, color, creed, sex, national origin, age or disability. The information to be collected for the Title VI Program is necessary to ensure that service and benefits are provided nondiscriminatorily without regard to race, color, or national origin. The **Federal Register** notice with a 60-day comment period soliciting comments was published on June 23, 2010.

DATES: Comments must be submitted before October 18, 2010. A comment to

OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Nondiscrimination as it Applies to FTA Grant Programs (OMB Number: 2132–0540).

Abstract: All entities receiving federal financial assistance from FTA are prohibited from discriminating against any employee or applicant for employment because of race, color, creed, sex, national origin, age, or disability. To ensure that FTA's equal employment opportunity (EEO) procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that formulating, submitting, and implementing EEO programs should minimally increase costs for FTA applicants and recipients.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment. The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, age, or disability.

Estimated Total Annual Burden: 2,416 hours.

Title: Title VI as it Applies to FTA Grant Programs.

Abstract: Section 601 of Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." This information collection is required by the Department of Justice (DOJ) Title VI Regulation, 28 CFR Part 42, Subpart F (Section 42.406), and DOT Order 1000.12. FTA policies and requirements are designed to clarify and strengthen these regulations. This requirement is applicable to all applicants, recipients, and subrecipients receiving federal financial assistance. Experience has demonstrated that a program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights accomplish that objective while diminishing possible vestiges of discrimination among FTA grant recipients. FTA's assessment of this requirement indicated that the formulation and implementation of the Title VI program should occur with a decrease in costs to such applicants and recipients.

All FTA grant applicants, recipients, and subrecipients are required to submit applicable Title VI information to the FTA Office of Civil Rights for review and approval. If FTA did not conduct pre-award reviews, solutions would not be generated in advance and program improvements could not be integrated into projects. FTA's experience with pre-award reviews for all projects and grants suggests this method contributes to maximum efficiency and cost effectiveness of FTA dollars and has kept post-award complaints to a minimum. Moreover, the objective of the Title VI statute can be more easily attained and beneficiaries of FTA funded programs have a greater likelihood of receiving transit services and related benefits on a nondiscriminatory basis.

Estimated Total Annual Burden: 5,332 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; Attention: FTA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued On: September 13, 2010.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2010–23211 Filed 9–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2008–0257]

Pipeline Safety: Request for Special Permit and Availability of Draft Environmental Assessment

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Additional Comment Period on Texas Eastern Transmission Company's Request for a Special Permit; Availability of Draft Environmental Assessment.

SUMMARY: PHMSA is providing an additional public comment period regarding a special permit request from Texas Eastern Transmission, L.P., for relief from 49 CFR 192.112 and 192.620. PHMSA had previously provided notice of its intent to consider the special permit request and an opportunity for public comment on April 23, 2009 (74 FR 4296). PHMSA is also providing notice of the availability of a Draft Environmental Assessment prepared in relation to this request for a special permit. Also, since the April 23, 2009 **Federal Register** notice, Texas Eastern Transmission, L.P., has modified its special permit request to reduce the length of its pipeline that would be subject to the request. The request and all pertinent information are available at *http://www.Regulations.gov* in Docket No. PHMSA–2008–0257. We invite the public and all concerned to review these documents and provide comments.

DATES: Submit any comments regarding this special permit modification request and Draft Environmental Assessment by October 4, 2010.

ADDRESSES: Comments should reference the docket number for this special permit and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation,

Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* DOT Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2008–0257, at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*. Note: Comments are posted without changes or edits to *http://www.regulations.gov*, including any personal information provided.

Privacy Act Statement: Anyone can search the electronic form of comments received in response to 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.*). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000.

(65 FR 19477).

FOR FURTHER INFORMATION CONTACT: *General:* Kay McIver by telephone at (202) 366–0113; or, e-mail at *kay.mciver@dot.gov*.

Technical: Vincent Holohan by telephone at (202) 366–1933; or, e-mail at *Vincent.Holohan@dot.gov*.

SUPPLEMENTARY INFORMATION: PHMSA is reopening the comment period for 15 days from date of publication to allow for public review of documents recently added to the docket.

Authority: 49 U.S.C. 60118(c)(1) and 49 CFR 1.53.

Issued in Washington, DC on September 13, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–23287 Filed 9–16–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7165; FMCSA–2004–17984; FMCSA–2006–24783]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 15, 2010. Comments must be received on or before October 18, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2000–7165; FMCSA–2004–17984; FMCSA–2006–24783, using any of the following methods.

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

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

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

• *Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 10 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 10 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Robert L. Aurandt; Harry R. Brewer; Joseph H. Fowler; Kelly R. Konesky; Gregory T. Lingard; Hollis J. Martin; Kevin C. Palmer; Charles O. Rhodes; Gordon G. Roth; Daniel A. Sohn.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 10 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 33406; 65 FR 57234; 67 FR 57266; 69 FR 52741; 71 FR 53489; 69 FR 33997; 69 FR 61292; 71 FR 55820; 71 FR 32183; 71 FR 41310; 73 FR 65009) Each of these 10 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 18, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 10 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: September 10, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–23327 Filed 9–16–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Sale of Airport Property at Houlton International Airport, Houlton, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the Town of Houlton, Maine's request to sell (.73 acres) of Airport property. The property was acquired from the United States Government under Surplus Property Deed dated July 14, 1947. This property was sold to a fixed based operator. The request for release is to correct a compliance finding.

Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

The revenue generated from the disposal of airport property was used in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before October 18, 2010.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Douglas Hazlett, Town Manager, Telephone 207–532–7111 or by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: The following is a legal description of the property:

A certain parcel of land located at Houlton International Airport in Houlton, County of Aroostook and State of Maine and being more particularly described as follows: Commencing at a three-quarter inch (¾") iron pipe marking the southwest corner of Lot Seventeen (17) as shown on plan titled: "1984 Addition of Lots Numbered 1 through 20 at the Airport Industrial Park, Houlton, Maine", recorded in the Southern Aroostook Registry of Deeds in

Plan Book 36, Page 37, said corner marking the boundary between Lot Seventeen (17) and Sixteen (16) and being on the easterly right of way line of "C" Street; thence westerly on a course bearing South eighty-eight degrees thirty minutes fifty-one seconds West (S 88° 30′ 51″ W) for a distance of two hundred fifty-three and twenty-four hundredths (253.24) feet to a steel pin driven into the ground; said pin being known hereafter as the point of beginning of the herein described parcel of land; thence westerly on a course bearing North fifty-nine degrees twenty-six minutes twenty-three seconds West (N 59° 26′ 23″ W) for a distance of one hundred fifty and zero hundredths (150.00) feet to a steel pin driven into the ground; thence southerly on a course bearing South thirty degrees thirty-three minutes thirty-seven seconds West (S 30° 33′ 37″ W) for a distance of two hundred eleven and zero hundredths (211.00) feet to a steel pin driven into the ground; thence easterly on a course bearing South fifty-nine degrees twenty-six minutes twenty-three seconds East (S 59° 26′ 23″ E) for a distance of one hundred fifty and zero hundredths (150.00) feet to a steel pin driven into the ground; thence northerly on a course bearing North thirty degrees thirty-three minutes thirtyseven seconds East (N 30° 33′ 37″ E) for a distance of two hundred eleven and zero hundredths (211.00) feet to the point of beginning.

Issued in Burlington, Massachusetts on August 26, 2010.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 2010–22872 Filed 9–16–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Economic Recovery Advisory Board (the PERAB)

AGENCY: Departmental Offices.

ACTION: Notice of open meeting.

SUMMARY: The President's Economic Recovery Advisory Board will meet on October 4, 2010, in the White House Roosevelt Room, 1600 Pennsylvania Avenue, NW., Washington, DC, beginning at 2 p.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.whitehouse.gov/live.*

DATES: The meeting will be held on October 4, 2010 at 2 p.m. Eastern Time.

ADDRESSES: The PERAB will convene its next meeting in the White House Roosevelt Room, 1600 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements to the Advisory Committee by any of the following methods:

Electronic Statements

- Send written statements to the PERAB's electronic mailbox at *PERAB@do.treas.gov*; or

Paper Statements

- Send paper statements in triplicate to John Oxtoby, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Room 1325A, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, all statements will be posted on the White House Web site (*http://www.whitehouse.gov*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: John Oxtoby, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–2000.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, § 10(a), and the regulations thereunder, John Oxtoby, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the PERAB will convene its next meeting on October 4, 2010, in the White House Roosevelt Room, 1600 Pennsylvania Avenue, NW., Washington, DC, beginning at 2 p.m. Eastern Time. The meeting will be broadcast on the Internet via live webcast at *http://www.whitehouse.gov/live.* The purpose of this meeting is to continue discussion of the issues impacting the strength and competitiveness of the Nation's economy. The PERAB will provide information and ideas obtained from across the country to promote the growth of the American economy, establish a stable and sound financial and banking system, create jobs, and improve the long-term prosperity of the American people.

Dated: September 14, 2010.

Alastair Fitzpayne,

Deputy Chief of Staff.

[FR Doc. 2010–23289 Filed 9–16–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning reporting and record retention requirements for the Capital Magnet Fund (CMF).

DATES: Written comments should be received on or before November 16, 2010 to be assured of consideration.

ADDRESSES: Direct all comments to Capital Magnet Fund Manager, Community Development Financial Institutions 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 to (202) 622–7754. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Additional information about CMF may be obtained from the CMF page of the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CMF Program Awardee Reporting Form may also be obtained from the CMF Program page of the CDFI Fund's Web site. Requests for

any additional information should be directed to David Dworkin, Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–6355. This is not a toll free number.

SUPPLEMENTARY INFORMATION: *Title:* Capital Magnet Fund Reporting.

Abstract: The purpose of the CMF is to competitively award grants to certified CDFIs and qualified nonprofit housing organizations to finance affordable housing and related community development projects. The CMF was authorized in July of 2008 under Section 1339 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), and $80 million was appropriated for this initiative under the Consolidated Appropriations Act of 2010 (Pub. L. 111–117). Applicants submit applications and are evaluated in accordance with statutory requirements. Those successful applicants will receive an award and ultimately enter into an assistance agreement with the CDFI Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, including reporting and data collection requirements.

Current Actions: New collection.

Type of Review: Regular Review.

Affected Public: Certified and certifiable CDFIs and qualified nonprofit housing organizations.

Estimated Number of Respondents: 20.

Estimated Annual Time per Respondent: 10 hours per year.

Estimated Total Annual Burden Hours: 200 hours per year.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and will be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: Public Law 110–289.

Dated: September 9, 2010.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2010–23301 Filed 9–16–10; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Friday,
September 17, 2010

Part II

Federal Trade Commission

16 CFR Parts 801, 802, and 803
Premerger Notification; Reporting and Waiting Period Requirements; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802, and 803

RIN 3084-AA91

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to the Hart-Scott-Rodino ("HSR") Premerger Notification Rules (the "Rules"), the Premerger Notification and Report Form (the "Form") and associated Instructions in order to streamline the Form and capture new information that will help the Federal Trade Commission (the "Commission" or "FTC") and the Antitrust Division of the Department of Justice (the "Assistant Attorney General" or the "Antitrust Division") (together the "Antitrust Agencies" or "Agencies") conduct their initial review of a proposed transaction's competitive impact. Section 7A of the Clayton Act (the "Act") requires the parties to certain mergers or acquisitions to file with the Agencies and to wait a specified period of time before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the Antitrust Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation, pursuant to section 7 of the Act.

DATES: Comments must be received on or before October 18, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Invitation To Comment part of the "**SUPPLEMENTARY INFORMATION**" section below. Comments in electronic form should be submitted by using the following weblink: (*https://ftcpublic.commentworks.com/ftc/hsrformchanges*) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex Q), 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2252.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room 302, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-3100. E-mail: (*rjones@ftc.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of § 7A.

Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Rules, codified in 16 CFR Parts 801, 802 and 803, and the Form and its associated Instructions, codified at Part 803—Appendix. The Form is designed to provide the Commission and the Assistant Attorney General with the information and documentary material necessary and appropriate for an initial evaluation of the potential anticompetitive impact of significant mergers, acquisitions and certain similar transactions.

Over time, it has become clear to the Commission that certain items on the Form, intended to provide substantive information to aid the Agencies' review, are not as helpful as originally anticipated. As examples, Item 3(c) requires filing parties to provide overly detailed information regarding the number and classes of voting securities to be acquired and Item 5(a) requires the reporting of revenues by Department of Census base year, currently 2002,[1] which yields information that is typically too outdated to be of use to the Agencies. The Commission therefore proposes the deletion of these items on the Form, as well as the deletion or revision of several other items for similar reasons, as outlined below. The Commission proposes substantive and ministerial revisions, deletions and additions to streamline the Form and make it easier to prepare while focusing the Form on those categories of information the Agencies consider necessary for their initial review. The Commission also proposes amending certain Rules and parts of the Form and Instructions, as well as the addition of Items 4(d) and 7(d), in order to capture additional information that would significantly assist the Agencies in their initial review. Finally, minor changes are proposed to §§801.1, 801.15, 801.30, 802.4, 802.21, 802.52, 803.2 and 803.5, primarily to address minor omissions from the Commission's 2005 rulemaking involving unincorporated entities, and an amendment to §802.21 is proposed to remove the reference to the 2001 transition period.

It has also become apparent that the current Form does not solicit some information that would be useful to the Agencies in making an initial evaluation of a transaction's competitive impact. For instance, the Form does not require filing parties to provide current year revenues by the more detailed 10-digit North American Industry Classification System ("NAICS") product code, nor does it require revenue data for products manufactured outside of, but sold into, the United States. Moreover, the Form does not elicit sufficient information about ties between acquiring investment funds and other entities that are associated with these acquiring entities, which have holdings in the same line of business as the target. Thus, the Commission proposes to amend the Rules, the Form and the Instructions to require this and other helpful information, as discussed more fully below.

Substantive changes to the Rules, as well as improvements to the Instructions and Form, have been made on a number of occasions since the Premerger program began in 1978. For example, in 2001, the Rules and Form were significantly altered to accommodate the 2000 amendments to the HSR Act[2], as well as to implement some administrative changes that were proposed and that received public comment in 1994.[3] The Rules were also amended in 2005 to bring the treatment of non-corporate entities into line with the treatment of corporate entities.[4] The Form was revised in 2006 to accommodate the electronic filing option and to update some elements to make them more useful to the Agencies' initial analysis.[5] The Commission now seeks comment from the public on its current proposed amendments to the Rules, Form and Instructions.

[1] 70 FR 77312 (December 30, 2005).

[2] 66 FR 8680 (February 1, 2001).

[3] 59 FR 30545 (June14, 1994), *id.* at 46365 (Sept. 8, 1994) (extending comment period).

[4] 70 FR 11502 (March 8, 2005).

[5] 71 FR 35995 (June 23, 2006).

Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments pertinent to this rule review. Written comments must be received on or before October 18, 2010, and may be submitted electronically or in paper form. Comments should refer to "HSR Form Changes" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ," as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 C.F.R. 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 C.F.R. 4.9(c).[6]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://ftcpublic.commentworks.com/ftc/hsrformchanges*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it at (*https://ftcpublic.commentworks.com/ftc/hsrformchanges*) . If this document appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov*) to read the document and the news release describing it.

A comment filed in paper form should include the "HSR Form Changes" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex Q), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Statement of Basis and Purpose of the Proposed Amendments to the Rules and the Form

The Commission proposes ministerial changes in Items 1 through 3 in order to make the Form easier to use, as well as the revision or deletion of many items, such as Items 2(e), 3(b), 3(c), 4(a), 4(b), 5(a), 5(b)(i), 5(b)(ii), 5(d), 6(a), and 6(b), which currently ask for information that the Agencies no longer consider necessary for their initial review. The Commission also proposes amending certain Rules and parts of the Form and Instructions, such as Items 2(d), 5(b)(iii), 5(c), 6(c), 7 and 8 in order to capture additional information (such as current year revenues by 10 digit NAICS product code, including products manufactured outside of and sold into the United States, and entities associated with the acquiring person) that would significantly assist the Agencies in their review. The Commission also proposes the addition of Item 4(d), which would require filing parties to submit certain documents useful to the Agencies' substantive review of transactions, and Item 7(d), which would require filing parties to provide information on overlapping NAICS codes between associates of the acquiring person and the acquired entity(s) or assets.

The proposed changes will eliminate the least helpful information requests in the Form and add requests for information that will greatly enhance the Agencies' review. The Commission believes the proposed changes will make the premerger notification process more efficient, and will, on balance, reduce the overall burden of completing the Form. The modifications to the relevant Rules, as well as the changes to the Form and Instructions, are described more fully below.

Part 801—Coverage Rules

801.1(d)(ii) Associate

"Associate" in Item 7 Overlapping NAICS Codes and in Item 6(c) Minority Holdings

At present, an acquiring person is required to provide information in its notification with respect to all entities included within it at the time of filing. In some instances, particularly with families of investment funds, entities that are commonly managed with the acquiring person are not included because these "associated" entities are not controlled, as defined in §801.1(b) of the Rules, by the acquiring Ultimate Parent Entity ("UPE"). As a result, the Agencies do not receive the information they need to get a complete picture of potential antitrust ramifications of an acquisition.

In particular, Item 7 currently requires the person filing notification to identify, to its knowledge or belief, any 6-digit NAICS industry code in which it derives revenues and in which any other party to the acquisition also derives revenues (a NAICS "overlap"). The information provided in response to Item 7 enables the Agencies to compare the products and services in which the acquired entity(s) or assets derive revenues with the products and services in which the acquiring person and any entity it controls derives revenues.

Item 7 does not currently capture all relevant overlap information when an acquisition is being made by a limited partnership ("LP") that is one of a number of LPs managed by the same general partner. Even though the general partner typically manages the LP, that

[6] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 C.F.R. 4.9(c).

general partner often has the right to only a small percentage of the profits of the LP. The definition of control of any unincorporated entity[7] requires the right to 50 percent or more of the profits or 50 percent or more of the assets upon dissolution. Thus, the general partner often does not control the LP for HSR purposes, making the LP its own UPE. Yet, that same general partner often manages other LPs with holdings that derive revenues in the same NAICS code as the acquired entity(s) or assets. Because the general partner does not have HSR control over the acquiring LP and any other LPs of which it is the general partner, overlaps across entities under the effective control of the general partner are not currently captured in Item 7. This scenario frequently arises in the energy industry with Master Limited Partnerships, where potentially crucial overlaps among LPs with the same general partner may go undetected.

Current Item 7 also falls short when an acquisition is being made by an investment fund that is one of a family of investment funds under common management. The acquiring investment fund is generally either its own UPE or possibly controlled by a limited partner that, by law, cannot have an active role in the management of the fund. It is not unusual for another investment fund under common management with the acquiring investment fund to have holdings that derive revenues in the same NAICS code as the acquired entity(s) or assets.

The current Form may also fail to detect instances in which entities that are under common management with the acquiring person, but are not part of the same UPE (e.g., funds that are part of a family of investment funds), already have minority holdings of the acquired entity(s) or assets. While holders of five percent or greater minority interests in the acquired entity(s) are disclosed in response to Item 6(b), the Agencies may not be aware that one or more of such holders is under common management with the acquiring person.

In these instances, because the entities are under common management, requiring reporting of where these entities' holdings overlap with the acquired entity(s) or assets would provide a more complete and accurate picture of the competitive impact of the acquisition. The Commission believes that capturing this information in the manner proposed herein would allow for a more complete analysis of the competitive impact of these types of transactions without imposing substantial additional burden on the acquiring person. Based on past experience, only a relatively small percentage of all acquiring persons will fall into the categories that would cause this additional notification requirement.[8]

To capture this information on associated entities, the Commission proposes three changes. First, the term "associate" would be added in new §801.1(d)(2) to define entities that are under common management with the acquiring person, but are not under common HSR control with the acquiring person. Examples of such associates include, but are not limited to, general partners of a limited partnership, other partnerships with the same general partner, other investment funds whose investments are managed by a common entity or under a common investment management agreement, and investment advisers of a fund.

Second, the instructions to Item 7 would be amended as follows:

Item 7(a) would require reporting any 6-digit NAICS industry code in which the acquiring person, or any associate of the acquiring person, derives revenues and in which the acquired entity(s) or assets also derive revenues;

Item 7(b)(i) would require reporting the name of any entity(s) controlled by the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year and Item 7(b)(ii) would require reporting the name of any entity(s) controlled by an associate of the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year; and
Item 7(c) would require reporting the geographic information for any entity(s) controlled by the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year and Item 7(d) would require reporting the geographic information for any entity(s) controlled by an associate of the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year.

Third, the Commission also proposes amending Item 6(c) to require an acquiring person to report, based on its knowledge or belief, all its associates' holdings of voting securities and non-corporate interests of 5 percent or more and less than 50 percent in entities having 6-digit NAICS industry code overlaps with the acquired entity(s) or assets. The proposed changes to Item 6(c), as well as more details on the proposed changes to Item 7, are discussed more fully below.

Part 803–Transmittal Rules

As a result of the proposed changes to the Notification and Report Form and its Instructions, certain sections of Part 803 need to be amended in order to be consistent with the Form. Specifically, minor ministerial changes are required to §803.2.

Part 803—Appendix: Premerger Notification and Report Form

General Instructions

Item by Item

* * *

Fee Information

The 2001 revisions to the Form[9] expanded the Fee Information Item to obtain more information concerning electronic wire transfers ("EWT"), the preferred method of paying the HSR filing fee. The additional information concerning this method of payment, such as the Taxpayer Identification Number (or Social Security number for Natural Persons), is necessary under 31 U.S.C. §7701. Purely ministerial changes, such as repositioning and reformatting, are proposed in this section of the Form to make it easier to complete.

* * *

Privacy Act Statement

The Privacy Act Statement on the Form has been amended to reflect the change in civil penalties, effective on February 9, 2009, from a maximum of $11,000 per day to a maximum of $16,000 per day.[10]

Items 1-3

Items 1 through 3 require filing parties to supply basic information about the transaction and the parties to the transaction. The Commission proposes both ministerial and substantive changes to these items.

Item 1

Item 1 of the Form seeks information about the identity of the filing party, its contact information, whether it is an acquiring or acquired person or both, the definition of its fiscal year and what type of entity it is.

[7] 16 CFR § 801.1(b)(1)(ii).

[8] Investment funds often form limited partnerships to make acquisitions. For FY07, 445 of the 2,201 total transactions (20.2%) featured a limited partnership as an acquiring person that potentially would have had to report information on associates.

[9] 66 FR 8680 (February 1, 2001).

[10] 74 FR 857 (January 9, 2009).

The Commission proposes to reorganize Item 1 so that it is easier to complete. Item 1(a), for example, which currently asks for "Name and Headquarters address of person filing" would be amended to be consistent with Items 1(g) and 1(h) in specifically requesting line by line address information. In addition, Item 1(a) would ask for a website address to make it easier for the Agencies to learn more about the filing person, as well as to find information that might relate to the structure of the transaction described in Item 3(a). If a filer has several websites, it should use its best judgment as to which website would be the most relevant for Agency staff. It is understood that some parties may not have a relevant website to reference.

The Commission also proposes to revise Item 1(g), which currently asks for a contact person in case of questions or problems with the Form. PNO staff frequently finds it difficult to quickly reach the contact person to resolve any outstanding issues with a filing. To avoid unnecessary delay in processing the filing, the Commission proposes that filers provide a secondary contact person. The secondary contact information will only be used in the event the primary contact is unavailable or if the Agencies are specifically instructed by the parties to contact the secondary person. Given the time-sensitive nature of HSR filings and the problems that arise when information is incorrect or missing from the filing, having a second contact person is a reasonable safeguard that imposes minimal additional burden on the parties.

Item 2

Item 2 requires the reporting person to identify the ultimate parent entities of the parties in the transaction as well as to identify the type and value of the transaction. The Commission proposes minor, non-substantive format changes, such as repositioning and reformatting text, to Items 2(a), (b) and (c) to improve the readability of the Form. There are no proposed substantive changes to Items 2(a), (b) and (c).

Item 2(d)

As discussed below, the Commission proposes removing the obligation of parties to provide certain details pertaining to assets, non-corporate interests and voting securities of the acquired person held by the acquiring party prior and subsequent to the acquisition, including, for example, the classes of shares to be acquired. The percentage of voting securities and non-corporate interests held both prior to, and as a result of, the acquisition are necessary, however, for the Agencies to determine that the parties are correctly adhering to the Act and to conduct a substantive review of the transaction.

Thus, the Commission proposes to modify Item 2(d) to include the percentage and value of voting securities and non-corporate interests of the acquired person held prior to and as a result of the acquisition.[11] Item 2(d) will continue to require parties to identify the value of assets to be held as a result of the acquisition, and to provide the aggregate total value of the acquisition. Additionally, the Commission proposes reformatting Item 2(d) into an expanded table format for ease of use by the filer and the Agencies.

This approach is in line with the 2005 amendments to the Rules which require the reporting of acquisitions of control of unincorporated entities and reconcile, as much as possible, the Rules' treatment of unincorporated and incorporated entities. Several changes were made to the Form at that time to reflect the new reportability of these acquisitions.[12] The Commission inadvertently failed to amend Item 2(d) at that time to include a reference to non-corporate interests and proposes to do so now.

Item 2(e)

Item 2(e) was added to the Form in 2001 to request the name of the person(s) who performed any fair market valuation used to determine the total value of the transaction.[13] The reasoning was that the new tiered filing fee structure made the determination of the fair market value more important than had previously been the case, and identifying a contact person familiar with the fair market valuation methodology would benefit the Agencies in the event that a valuation question arose.

The 2001 rulemaking acknowledges that in the event of questions, the Agencies will likely contact the Item 1(g) contact person first. "Although the agencies would initially contact the person listed for that purpose in Items 1(g) and (h) should any questions arise regarding information supplied on the Form, this addition should help the parties and the agencies pinpoint who would be most knowledgeable on the issue of valuation."[14]

The additional information obtained by Item 2(e) has not proven to be useful. In all cases, the contact person in Item 1(g) and (h) has been the person contacted. The contact person, of course, can point the Agencies to the person who prepared the valuation, thus making the direct contact information in Item 2(e) unnecessary. In the interest of reducing the burden on the parties, as small as it may be in this instance, the Commission proposes to delete Item 2(e).

Item 3(a)

In Item 3(a), filing parties are required to provide information on the filing parties, the contours of the transaction, the amount and form of consideration, and the time line for closing. The Commission proposes to amend Item 3(a) to require that, in the case of acquisitions of voting securities or non-corporate interests, filing parties list the names of all issuers and non-corporate entities whose shares or interests are being acquired. In the case of asset acquisitions, filing parties would be required to describe the business the assets being acquired comprise. If there are additional filings, such as shareholder backside filings, associated with the transaction, filing parties would be required to list those, as well as any special circumstances that apply to the filing, such as whether part of the transaction is exempt under one of the exemptions found in Section 802. These amendments to Item 3(a) will facilitate the Agencies' review and, on balance, reduce the burden on filers because they will allow Items 3(b) and 3(c) to be eliminated as discussed below.

Item 3(b)

Item 3(b) requests a description of the assets to be acquired, a description of any assets previously acquired from the acquired person and currently held by the acquiring person, and a description of assets held by any unincorporated entities that are being acquired. The Agencies have found that much of this level of detail is not helpful in the initial review of the transaction. Given the proposed amendment to Item 3(a) to include a description of the assets being acquired in a transaction, the Commission proposes to delete Item 3(b).

Item 3(c)

Item 3(c) requires parties to provide a list and description of voting and non-voting securities to be acquired,

[11] The revised Item 2(d) contemplates an overall percentage of all classes of voting securities held in the target. Filing parties should use 16 C.F.R. §801.12 as necessary to calculate the appropriate percentage of all classes of voting securities. The percentage of non-corporate interests should reflect economic interests.

[12] 70 FR 11502 (March 8, 2005).

[13] 66 FR 8680 (February 1, 2001).

[14] *Id.*

including the classes, the rights of each class, the total number of outstanding shares post-acquisition, the shares to be acquired, each class of share to be held by each acquiring person, and the dollar value of the shares to be acquired. First added in 1978,[15] this item was amended in 1987 to eliminate the need for a detailed response when 100% of the voting securities of the acquired entity are being acquired, requiring only that parties provide the total dollar value of the transaction in these instances.[16]

The Commission has further determined that obtaining the detailed information currently required in Item 3(c) for acquisitions of less than 100% does not significantly aid the Agencies in their initial review. It has determined that it is sufficient for initial review purposes that the parties provide information as to the names of all issuers and non-corporate entities whose shares or interests are being acquired, and the percentage and value of voting securities of the acquired entity or interests in the non-corporate entity held by the acquiring person prior and subsequent to the transaction. As discussed above, such information will be required under the proposed revisions to Item 2(d) and Item 3(a) of the Form. The Commission thus proposes deleting Item 3(c).

Item 3(d)

The Commission proposes redesignating Item 3(d), which requires copies of all documents that constitute the agreement(s) between the parties, to Item 3(b) to reflect the proposed elimination of former Items 3(b) and 3(c). Further, the Commission proposes amending the Instructions to the Form for the new Item 3(b) to make clear that all Agreements Not to Compete are required to be submitted with the Form. The Instructions would specify that documents that constitute the agreement(s) (e.g., a Letter of Intent, Merger Agreement or Purchase and Sale Agreement) must be executed, while Agreements Not to Compete may be provided in draft form if that is the most recent version.[17] There are no proposed substantive changes to Item 3(d).

Items 4-6

Item 4

Item 4 seeks various documents, including some created in the ordinary course of business and some produced by the parties in connection with the current transaction. The Commission is proposing changes to reduce the burden of producing documents in response to Items 4(a) and (b). The Commission also proposes the addition of new Item 4(d) which would require filing parties to submit certain documents useful to the Agencies' substantive review of transactions.

Item 4(a) Documents filed with the United States Securities and Exchange Commission ("SEC")

Item 4(a) seeks materials submitted to the SEC, including a company's most recent proxy statement, its most recent 10-K filing, all 10-Q and 8-K filings made since the end of the period reflected in the most recent 10-K, any registration statement filed in connection with the transaction, and, if the acquisition is a tender offer, the Schedule TO. Inclusion of these documents under Item 4(a) was "intended to provide financial information about the reporting person, information about its operations and those of its subsidiaries, and occasionally about the reported transaction itself."[18]

The Commission initially required parties to provide paper copies of the required SEC filings. In doing so, the Commission stated that although the documents were available from the SEC, the Agency staff would be under severe time constraints in reviewing filings under the Act and that obtaining the required documents for each reporting person would be extremely time-consuming.[19] However, with the advent of the Internet and the SEC's EDGAR database, the Commission determined that staff could quickly and easily obtain the relevant information and that the provision by the parties of electronic links to the documents would be sufficient. Therefore, in 2005, the Commission amended the Form to allow filers to provide Internet links to the documents required in Item 4(a) and Item 4(b).[20]

A number of filers have taken advantage of this change and provide Internet links in Item 4(a). Because virtually all filings are still made in paper form, however, Agency staff cannot simply click on the link and be directed to the document. Rather, to use these links, staff must type out long web addresses. The length of these addresses increases the chance that either the filer or the Agency staff might enter an incorrect address and delay the processing of the filing.

In the meantime, the sophistication of the SEC website has increased and now provides for immediate access to all filed materials. Thus, the Commission now proposes further simplifying Item 4(a) by only requiring filers to provide a list of all entities within the person filing notification, including the UPE, that file annual reports (10-K or 20-F filings) with the SEC, and to provide the Central Index Key number (CIK)[21] for each entity. Such information will provide staff with sufficient information to find and review these documents easily.

Item 4(b) Annual Reports, Annual Audit Reports, and Regularly Prepared Balance Sheets

Item 4(b) requires parties to provide the most recent annual reports and annual audit reports of the person filing notification and of each unconsolidated United States issuer included within the person. The person filing must also provide, if different, the most recent regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within the person.

It is often challenging for filing parties to provide balance sheets, particularly where the filing person is a natural person or a foreign entity, as these balance sheets are not readily available. Typically, these balance sheets contain no substantive information on the filing party, and are merely a snapshot of the party's assets and liabilities. The Commission has determined, based on the Agencies' experience, that the information contained in the most recently prepared balance sheet is not useful beyond providing evidence, where necessary, that the party has sufficient assets to meet the size of person test.

Thus, the Commission proposes the elimination of Item 4(b)'s requirement to submit a company's most recent regularly prepared balance sheet. Parties must continue to provide the most recent annual report and/or audit report for the filing person and any unconsolidated U.S. issuers, because these reports are often quite useful in understanding the business of the filing person. In addition, the Commission proposes expanding the requirement to submit annual reports and/or audit reports to include any unconsolidated

[15] 43 FR 33450 (July 31, 1978).

[16] 52 FR 7066 (March 6, 1987). Note this was Item 2(c) at the time.

[17] If parties are filing on an executed Letter of Intent, they may also submit a draft of the definitive agreement. Note that transactions subject to §801.30 and bankruptcies under 11 USC §363 do not require an executed agreement or letter of intent.

[18] 46 FR 38710 (July 29, 1981).

[19] 43 FR 33450 (July 31, 1978).

[20] 70 FR 73369 (December 12, 2005).

[21] A Central Index Key or CIK number is a number given to an individual or company by the United States Securities and Exchange Commission. The number is used to identify the filings of a company, person or entity in several online databases, including EDGAR.

non-corporate U.S. entities. This proposed change will bring this item in line with other changes that attempt to reconcile the treatment of corporations and unincorporated entities.[22] For natural persons, the Commission proposes requiring the person to submit only the most recent annual report and/or audit report from the highest level entity(s) that the person controls. Personal balance sheets from natural persons would thus no longer be required.

As balance sheets will no longer be required, filing parties will have to be more cognizant of demonstrating that they meet the size of person test when applicable. If the annual report or annual audit report does not show sales or assets sufficient to meet the size of person test, and the size of person test is relevant given the size of the transaction, the parties must stipulate in Item 4(b) that the filing person meets the test.

The Commission believes that the proposed changes to Items 4(a) and 4(b) will reduce the burden of producing documents for filing parties.

Proposed Item 4(d): Additional Documents

Certain categories of documents typically created in the course of a transaction are quite useful for the Agencies' initial substantive analysis of transactions but are not always provided because parties have differing interpretations as to whether they are called for under current Item 4(c). The Commission thus proposes new Item 4(d) to enumerate these documents and require their submission with the Form.

Item 4(d)(i): Offering Memoranda

When a company is preparing to put itself up for sale, it will often draft or hire a third party to draft a confidential information memorandum that lays out the details of the company for prospective buyers. Such offering memoranda are extremely valuable to the Agencies in their initial review. Most parties already submit these along with their HSR Filings and proposed Item 4(d)(i), which would require filing parties to do so, should not create any additional burden for them or substantial additional burden for others. Under proposed Item 4(d)(i), offering memoranda must be submitted regardless of whether they were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. Any such study, survey, analysis or report will only be responsive to Item 4(d)(i) if it also contains some reference to the acquired entity(s) or assets.[23] If the seller circulates an existing presentation to provide an overview of the company to a prospective buyer(s), this type of document would be the equivalent of an offering memorandum for the purposes of Item 4(d)(i) and must be submitted. The Commission recognizes that without a date cutoff, a search for these documents could be extremely burdensome. Accordingly, the Commission proposes a limit of two years before the date of filing for documents responsive to this item. This proposed time frame is consistent with the specified "relevant time period"of two years as applicable to second requests in the 2006 merger process reforms.[24]

Item 4(d)(ii): Materials Prepared by Investment Bankers, Consultants or Other Third Party Advisors

Investment bankers, consultants or other third party advisors are often active at all stages of a transaction, generating due diligence, valuation and other broad categories of materials. Some of these materials contain competition-related content and can be invaluable to the Agencies in their initial review of the potential competitive impact of a transaction. Many parties already submit such competition-related third party materials along with their HSR Filings and proposed Item 4(d)(ii), which would require filing parties to do so, should not create substantial additional burden for them or substantial additional burden for others. Under proposed Item 4(d)(ii), studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors must be submitted if they were prepared for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. Any such study, survey, analysis or report will only be responsive to Item 4(d)(ii) if it also contains some reference to the acquired entity(s) or assets.[25] If such studies, surveys, analyses and reports are found in the files of any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions), they should be deemed to have been prepared for that individual. For the reasons state above, the Commission also proposes a limit of two years before the date of filing for documents responsive to this item.

Item 4(d)(iii): Documents Discussing Synergies and/or Efficiencies

Documents that discuss synergies and/or efficiencies likely to result from a transaction can be very useful in the Agencies' initial review. Proposed Item 4(d)(iii) would require filing parties to submit studies, surveys, analyses and reports evaluating or analyzing such synergies and/or efficiencies if they were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided in response to this item. As many filing parties already submit such documents, this item should present little additional burden for them or substantial additional burden for others.

The proposed instructions to Item 4(d) would read as follows:

Item 4(d) - Additional Documents

> For each category below, indicate (if not contained in the document itself) the date of preparation, and the name of the company or organization that prepared each such document.
> Item 4(d)(i): Provide all offering memoranda (or documents that served that function) that reference the acquired entity(s) or assets. Documents responsive to this item are limited to those produced up to two years before the date of filing.
> Item 4(d)(ii): Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors if they were prepared for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and that also reference the

[22] 70 FR 11502 (March 8, 2005).

[23] This requirement is intended to capture documents from both the buyer and the seller.

[24] See REFORMS TO THE MERGER REVIEW PROCESS (p.19) announced by then Chairman Deborah Platt Majoras on February 16, 2006. (*http://www.ftc.gov/os/2006/02/mergerreviewprocess.pdf*)

[25] This requirement is intended to capture documents from both the buyer and the seller.

acquired entity(s) or assets. Documents responsive to this item are limited to those produced up to two years before the date of filing.
Item 4(d)(iii): Provide all studies, surveys, analyses and reports evaluating or analyzing synergies and/or efficiencies if they were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided in response to this item.

Item 5

Item 5 requires persons to submit information regarding dollar revenues and lines of commerce with respect to operations conducted within the United States during a company's most recently completed year and the base year, currently 2002.[26] All filing persons must submit certain data at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), data must also be provided at the 7-digit product code level for the most recent year and at the 10-digit product code level for the base year.

The Item 5 reporting requirement was first based on Standard Industrial Classification ("SIC") codes, and at the time it was contemplated that such a reporting requirement would not be unduly burdensome. Reporting persons were presumed to compile yearly SIC-based data for submission to the Bureau of Census and, thus, would have such information readily available.[27] This presumption remained in place when SIC codes were supplanted by NAICS codes in 2001.[28]

Based on informal input from practitioners, it appears that filing parties generally do not rely on data compiled for previous Census requirements in responding to Item 5, either because they were never compiled or are no longer available. In fact, the appropriate NAICS codes and underlying revenues generally are determined by the parties when preparing the filing. Because the parties do not, as the Commission believed they would, reference previously compiled data, the burden of gathering this information is not as minimal as the Commission originally believed. This is particularly true for the base year requirement in Items 5(a) and 5(b)(i).

The incorporation of a base year in the Form was intended to provide context for the company's most recent year's revenues. The reasoning was that the Agencies would be able to see how much a given industry had grown in the span of time between the base year and the most current year. The base year was intended to coincide with the publication schedules of the quinquennial economic censuses and the Annual Survey of Manufacturers, publications that serve as the most readily available and reliable statistical sources of industry components and market universe to which individual company product and revenue data can be compared.

Even though the U.S. Economic Census occurs every five years, it can take as long as three years for the results to be published. Consequently, new base years are not adopted by the Commission until well after the relevant census occurred. For example, the current 2002 base year was not adopted by the Commission until the end of 2005.[29] The result is that parties are required to assemble data that may be as much as eight years old. This is often a difficult task, particularly in the case of assets acquired since the base year. Moreover, comparing current revenues of the parties to an economic universe that is at a minimum three and at a maximum eight years old is of minimal value to the Agencies in analyzing the potential competitive impact of a transaction. The Commission, therefore, proposes eliminating the base year reporting requirements in Items 5(a) and 5(b)(i).

Once the base year requirements are removed, Item 5(b)(ii), which requires a listing of revenues for products added or deleted between the base year and the most recent year, becomes moot. The Commission, therefore, also proposes deleting Item 5(b)(ii).

Item 5(b)(iii) requires parties to list dollar revenues by manufactured product class (7-digit) for the most recent year and Item 5(c) requires parties to submit revenues by non-manufacturing industry code (6-digit) for the most recent year. To provide the Agencies with a more accurate view of recent revenues, the Commission proposes to revise Item 5(b)(iii) by substituting the reporting of the more precise 10-digit product codes for manufactured products for the most recent year in place of the currently required 7-digit product classes. Based on informal input from practitioners, filing parties generally find these revenues to be far less burdensome to compile than base year revenues, and 10-digit product codes are typically prepared by the parties as part of the analysis of the transaction to identify potentially problematic overlaps. The Commission thus proposes that Item 5 be revised to have only one reporting section, proposed Item 5(a), where filing parties will list manufacturing revenues by 10-digit product codes and non-manufacturing revenues by 6-digit industry codes for the most recent year. The Commission believes this change will result in the Agencies getting more useful NAICS code information in Item 5 than they currently receive.

In addition, the Commission proposes the elimination of the million dollar minimum applicable to current Item 5(c). The million dollar minimum was based on the way filing persons reported non-manufacturing data to the Bureau of Census. As discussed above, filing parties may not rely on data compiled for Census in responding to Item 5, and, in fact, generally determine the appropriate NAICS codes in response to Item 5 at the time of filing. In addition, this million dollar minimum often creates confusion about whether there is a need to report an overlap in Item 7. For instance, if an acquiring person has less than $1 million in sales in a non-manufacturing NAICS industry code and does not report that code in the current Item 5(c), it still is required to report an overlap in Item 7 if the acquired person also derives revenue in that same non-manufacturing NAICS industry code; however, most filing parties do not indicate an overlap in Item 7 in this instance, assuming the million dollar minimum in Item 5(c) means there are essentially no revenues to report in that code. The elimination of the million dollar minimum would thus eliminate confusion for filing parties and ensure that the Agencies get this overlap information.

Occasionally a filing party will not have revenue to report in proposed Item 5. To speed review of the Form, the Commission proposes inserting a checkbox indicating "None" into the Form at Item 5 in the event the filing party has no Item 5 information to report. Parties checking the box will be required to provide a brief explanation for the lack of reportable Item 5 information. Explanations may include, but are not limited to, situations where:

1. An acquiring person is newly-formed in a transaction valued in excess of $200 million (as adjusted);

2. An acquiring person is foreign and has no sales in or into the U.S;

3. A filing person is a development stage company that has not yet generated sales; or

[26] 70 FR 77312 (December 30, 2005).

[27] 43 FR 33450 (July 31, 1978).

[28] 66 FR 35541 (July 6, 2001).

[29] 70 FR 77312 (December 30, 2005).

4. A filing person's holding is an exclusive license for intellectual property related to a product that has not yet gone into production.

Item 5 Foreign Manufactured Products

Section 803.2(c)(1) of the Rules instructs filing persons to provide information in response to Items 5, 7, and 8 "with respect to operations conducted within the United States." Filing persons are not required to submit NAICS code information on a detailed manufacturing basis for products they manufacture outside the United States even if they sell the products in the United States. For example, if a filing person manufactured a product in Canada, imported it into the United States, and sold that product at the wholesale or retail level, the filing person would report revenues derived from those sales in current Item 5(c) using a wholesale or retail 6-digit NAICS industry code. The filing person would not be required to identify the product it manufactured in Canada using the more detailed 10-digit manufacturing product codes that would have been required had the product been manufactured in the United States.

Absent NAICS code information at the manufacturing level, the Agencies have found it very difficult to determine whether a filing person that manufactures products outside the United States but sells them in the U.S. may be involved in manufacturing activities similar to those of another party to the transaction. As foreign imports and their effect on the nation's economy have increased, this information has become more important. Accordingly, the Commission believes that 10-digit NAICS product code information concerning products manufactured outside the U.S. that are sold in or into the U.S. at the wholesale or retail level would provide a more complete picture of the impact of the transaction at the initial review stage.

Consistent with other proposed changes to Item 5, the Commission proposes to modify the Form to require filing persons to identify the 10-digit NAICS product codes and revenues for each product they manufacture outside the U.S. and sell in the U.S. at the wholesale or retail level, or that they sell directly to customers in the U.S. Filing parties would include 10-digit NAICS product codes and revenues for such foreign manufactured products only for the most recent year in proposed Item 5(a). Sales made directly into the U.S. would be reported in a manufacturing code while sales made in to the U.S. through a wholesale operation within the same person would be reported in both manufacturing (transfer price) and wholesale or retail (sales price) codes.[30] This information will aid the Agencies in their initial review and, as the provision of the 10-digit NAICS information is based on the most recent year, it should not impose a significant additional burden on filing persons.

The Commission therefore proposes to revise the instructions to new Item 5(a) to read as follows:

> Item 5(a): Provide 6-digit NAICS industry data concerning the aggregate operations of the person filing notification for the most recent year in NAICS Sectors other than 31-33 (non-manufacturing industries) in which the person engaged and 10-digit NAICS product code data for each product code within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged, including revenues for each product manufactured outside the U.S. but sold in or into the U.S. Sales made directly into the U.S. should be reported in a manufacturing code. Sales made into the U.S. through a wholesale or retail operation within the same person should be reported in both manufacturing (transfer price) and wholesale or retail (sales price) codes. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry codes and 10-digit NAICS product codes may be provided if a statement describing the method of estimation is furnished.

In conjunction with this proposed change to Item 5, the Commission proposes deleting §803.2(c)(1) to remove the limitation to operations conducted within the U.S.

Item 5(d)

Item 5(d) requires filing parties to provide certain information with regard to the formation of a joint venture ("JV"), including the name and address of the JV in Item 5(d)(i); a description of the contributions that each person forming the JV has agreed to make in Item 5(d)(ii)(A); a description of any contracts or agreements related to the JV and a description of any credit guarantees or obligations applicable to the JV in Items 5(d)(ii)(B) and (C); the consideration which each person forming the JV will receive in Item 5(d)(ii)(D); the business in which the JV will engage in Item 5(d)(iii); and the expected source of the JV's revenues by NAICS code in Item 5(d)(iv).

Informal discussions with FTC and Antitrust Division staff have revealed that some of this information, such as the description of the contributions that each person forming the JV has agreed to make, the consideration which each forming person will receive, the business in which the JV will engage, and the source of the JV's revenues by NAICS code, is crucial to the Agencies' initial analysis of the joint venture's competitive impact; however, other parts of Item 5(d) are not as important to staff's substantive analysis of the JV. The name and the address of the JV, a description of any contracts or agreements whereby the JV will obtain assets or capital from sources other than the persons forming it (as opposed to the formation agreement), and a description of any credit guarantees or obligations applicable to the JV provide the Agencies with little helpful information for their initial review. The Commission therefore proposes to delete Item 5(d)(i) and Items 5(d)(ii)(B) and (C) from the Form.

The Commission also proposes to revise Item 5(d)(iv) to require information on the expected source of the JV's dollar revenues by 6-digit NAICS industry codes (non-manufacturing) and 10-digit NAICS product codes (manufacturing) to be consistent with the proposal to require 10-digit NAICS product codes for the most recent year in Item 5(a) as discussed above.

Finally, the Commission proposes redesignating Item 5(d) to Item 5(b) to reflect the proposed changes to this item and renumbering the subsections within Item 5(b).

Item 6(a) Entities within person filing notification

Item 6(a) requires information concerning entities within the party filing notification: the acquiring person must list all entities within it having total assets of $10 million or more, including foreign entities, and the acquired person must list all entities within the acquired entity, including foreign entities.

Over the course of thirty years, it has become clear that the value of such detailed information in Item 6(a) is limited. Compiling a list of the name and street address of every entity within a person, regardless of whether the entity has a nexus with the U.S., can be often quite burdensome for filing parties, particularly with respect to foreign addresses. The Commission thus proposes to limit the entities that must

[30] Reporting in this manner is in line with current practice when companies have both domestic manufacturing and wholesale or retail operations.

be listed in Item 6(a) to those located in the U.S. and those foreign entities that have sales in or into the U.S.[31] In addition, the Commission believes that identifying the street addresses of these entities is not necessary to the Agencies' initial premerger review and proposes limiting responses in Item 6(a) to a list of responsive entities with only city and state or city and foreign country designations.

Item 6(b) Shareholders of Person Filing Notification and Item 6(c) Holdings of Person Filing Notification

Item 6(b) of the Form currently requires the filing person to identify shareholders holding five percent or more of the voting securities of any entity included within the filing person (including the ultimate parent entity) having total assets of $10 million or more. For each shareholder, the filing person must list the issuer, the class, the number and the percentage of each class of voting securities held. Item 6(c) requires the filing person to list its minority voting stock holdings of five percent or more in any issuer having total assets of $10 million or more.

Items 6(b) and 6(c) are designed to obtain information to "alert the enforcement agencies to situations in which the potential antitrust impact of the reported transaction does not result solely or directly from the acquisition, but may arise from direct or indirect shareholder relationships between the parties to the transaction."[32] For example, Items 6(b) and 6(c) may reveal situations in which "a person known to be a competitor, customer or supplier of one of the parties is also a significant shareholder of the other party, or when the acquiring party holds stock in a competitor, customer or supplier of the acquired company, or vice versa."[33] Responses to these two items are very useful to the Agencies in their initial review and the Commission proposes several changes to them to give the Agencies an even clearer picture of the competitive impact of a given transaction, while in some ways reducing the scope of the required responses.

As noted above, the Commission amended the rules in 2005[34] to more closely align the treatment of unincorporated entities with the treatment of corporations, and the Commission now proposes amending Items 6(b) and 6(c) to include non-corporate interests to reflect this earlier change. Item 6(b) will not require a list of limited partners, as the limited partners have no control over the operations of the fund or the portfolio companies and the identity and investment level of limited partners is often highly confidential. Any general partner(s) would have to be listed in proposed Item 6(b), regardless of the percentage held, as these are entities that typically manage the limited partnership.

The Commission also proposes to limit the response to Item 6(b) to the acquired entity(s) and the acquiring entity(s) and its UPE (or in the case of natural persons, the top-level corporate or non-corporate entity(s) within that UPE), and not to require a response to Item 6(b) for any other entities included within, but not wholly owned by, the UPE. The additional detail regarding other included entities that is required in current Item 6(b) is not essential to the Agencies' initial review. Finally, the Commission proposes to eliminate the $10 million asset threshold from Item 6(b). This would require filing parties to provide the identities of shareholders or interest holders of the UPE and acquiring entity(s) regardless of the amount of assets held. This change will be of significant use to the Agencies in their initial review, especially in the case of newly formed entities. To know which investment funds hold interests in a newly formed entity, particularly when these funds are not associates of the filing person, will give the Agencies a better picture of the competitive impact of a given transaction.

Proposed Item 6(c)(i) would require filing parties to report their holdings of 5 percent or greater, but less than 50 percent, of the voting securities or non-corporate interests of an issuer or unincorporated entity. For the acquiring person, the response would be limited, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquired entity(s) or assets. For the acquired entity, the response would be limited, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquiring person. The Commission recognizes that it may be difficult for a filing person to determine in what NAICS codes an entity derives revenues if it does not control the entity. Therefore, the Commission proposes that if NAICS codes are unavailable, the filing person may report, based on its knowledge or belief, holdings in entities that have operations in the same industry as the acquired entity(s) or assets.[35] Furthermore, in Item 6(c), the Commission proposes the deletion of the seldom-exercised option to list the entity within the person filing that holds the securities.

Consistent with the other changes related to associated entities, the Commission also proposes amending Item 6(c) to require the acquiring person to include, based on its knowledge or belief, the minority holdings of its associates. Proposed Item 6(c)(ii) would require the filing person, based on its knowledge or belief, to report the holdings of its associates of 5 percent or greater, but less than 50 percent, of the voting securities or non-corporate interests of an issuer or unincorporated entity that derives revenues in the same 6-digit NAICS industry code as the acquired entity(s) or assets. The Commission recognizes that it may be difficult for an acquiring person to determine in what NAICS codes an entity derives revenues if it does not control the entity. Therefore, the Commission proposes that if NAICS codes are unavailable, the acquiring person may report, based on its knowledge or belief, holdings in entities that have operations in the same industry as the acquired entity(s) or assets.[36]

Accordingly, the Commission proposes to revise Items 6(b) and 6(c) of the Instructions to the Form to read as follows:

> Item 6(b) For the acquired entity(s) and for the acquiring entity(s) and its UPE or, in the case of natural persons, the top-level corporate or non-corporate entity(s) within that UPE, list the name and headquarters mailing address of each other person that holds (See §801.1(c)) five percent or more of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person. For limited partnerships, only the general partner(s), regardless of percentage held, should be listed.
> Item 6(c)(i) If the person filing notification holds five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an

[31] Under the proposal, it is permissible for a filing person to report all entities within it in response to Item 6(a).

[32] 43 FR 33450 (July 31, 1978).

[33] *Id.*

[34] 70 FR 11502 (March 8, 2005).

[35] Under the proposal, it would be permissible for a filing person to list all entities in which it has a reportable minority interest in response to Item 6(c)(i).

[36] Under the proposal, it would be permissible for an acquiring person to list all entities in which its associate(s) has a reportable minority interest in response to Item 6(c)(i)(ii).

unincorporated entity, the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year. The acquired entity should limit its response, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquiring person. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the filing person, should be listed. Holdings of issuers or unincorporated entities with total assets of less than $10 million, may be omitted. In responding to Item 6(c)(i), it is permissible for a filing person to list all entities in which it has a reportable minority interest.

Item 6(c)(ii) - **(Acquiring person only)** For each associate (see §801.1(d)(2)) of the person filing notification holding five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year, list, based on the knowledge or belief of the acquiring person, the top level associate, the issuer or unincorporated entity and percentage held. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. Holdings of entities with total assets of less than $10 million may be omitted. In responding to Item 6(c)(ii), it is permissible for the acquiring person to list all entities in which its associate(s) has a reportable minority interest.

Items 7-8

Item 7

The Commission proposes reorganizing Item 7 to make it more consistent with other items in the Form. The only proposed change to the substance of Items 7(a) and 7(b) is the requiring of information for associates, as discussed above.

In Item 7(b)(i) the Commission proposes that filing parties not only be required to list the name of each person that is a party to the acquisition that also derived dollar revenues in the 6-digit NAICS industry code but also, if different, the name of the entity(s) that actually derived those revenues. In Item 7(b)(ii), the acquiring person would be required to list the name of each associate of the acquiring person that also derived dollar revenues in the 6-digit industry and, if different, the name of the entity(s) that actually derived those revenues. Having the name of the entity(s), instead of just the UPE or associate, will be very useful to the Agencies and, as many filing parties already submit such information, this item should present little additional burden for them or substantial additional burden for others.

There are also some proposed changes to Items 7(c)(iv) and (v) and a proposed new Item 7(d).

Items 7(c)(iv) and (v) Geographic Market Information

For each overlap listed in Item 7(a) that falls within certain 6-digit NAICS industry codes, the parties are required to provide in Item 7(c)(iv) the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

Based on the Agencies' review of past transactions, the Commission has determined that the list of NAICS codes in Item 7(c)(iv) should be updated to include more detailed geographic market information for some industries not currently captured in Item 7(c)(iv) and to delete certain industries currently included in Item 7(c)(iv) for which this detailed geographic market information is not necessary. The Commission therefore proposes amending the list included in Item 7(c)(iv) to add the following NAICS codes.

Nonmetallic mineral mining and quarrying (2123)
Concrete (32732)
Concrete products (32733)
Industrial gases (32512)

The Commission proposes moving the following NAICS codes to Item 7(c)(v), which requires listing only the states in which establishments are located:

Furniture and home furnishings stores (442)

Electronics and appliance stores (443)
Recreational vehicle parks and recreational camps (7212)
Rooming and boarding houses (7213)
Personal and household goods repair and maintenance (8114)

Item 7 Overlaps

As discussed above, the Commission proposes to require the acquiring person to provide information in Item 7, based on its knowledge or belief, for any associates that derive revenues in the same 6-digit NAICS industry code as the acquired entity in Item 7. Accordingly, the Commission proposes to add new Item 7(d) in order to capture geographic market information regarding associates in the same manner as for the person filing notification. Within this item, the Commission proposes that the acquiring person be required to list separately the geographic information for each of its associates and, if different, for the entity(s) that actually derived the revenues. Having the geographic information broken out in this specific manner will be very useful to the Agencies as they conduct their initial review.

Item 8 Previous acquisitions

Item 8 requires the parties to identify certain previous acquisitions in each 6-digit industry code identified in Item 7(a). As noted above, the Commission amended the rules in 2005[37] to more closely align the treatment of unincorporated entities with the treatment of corporations, and the Commission now proposes amending Item 8 to include non-corporate interests to reflect this earlier change.

Other Proposed Ministerial Revisions to the Rules

Additionally, the Commission proposes revisions to certain rules that should have been included in the 2005 non-corporate rulemaking that sought to apply the Act as consistently as possible to all forms of legal entities[38] and other minor ministerial changes.

§ 801.1 Definitions

§ 801.1(a)(2) Entity

The proposed revision to §801.1(a)(2) would add "non-corporate entity" after "corporation" in the two parentheticals in its last sentence of this paragraph. The omission of this change from the non-corporate rulemaking meant that corporations controlled by foreign, federal, state or local governments, that are not themselves agencies of a government, are required to file notification in an acquisition that satisfies the jurisdictional requirements of the Act, while non-corporate entities

[37] 70 FR 11502 (March 8, 2005).
[38] *Id.*

making the same acquisition are not. This proposed amendment would correct this oversight by treating similarly all types of legal entities controlled by a government.

§ 801.1(b)(2) Control

§ 801.1(f)(1)(ii) Non-corporate interest

The proposed revision to §801.1(b)(2) would change the reference to "trusts described in paragraphs (c)(3) through (5) of this section" to "trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest". An example would be added to clarify that such trusts do not include business trusts in which persons have an equity interest that entitles them to profits or assets upon dissolution of the trust. In the change to the definition of control in the non-corporate rulemaking, the reference to paragraphs (c)(3) through (c)(5) inadvertently eliminated a class of trusts (e.g., family trusts) from the control rule. The intent of the change was to differentiate between traditional trusts that have beneficiaries, and business trusts that have unit holders with equity interests. What was intended was to classify the business trusts as non-corporate entities whose control is determined by rights to profits and assets upon dissolution of the business trust, as opposed to traditional trusts whose control is determined by the right to designate a majority of the trustees. By referencing paragraphs (c)(3) through (5), traditional trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest are not included in the definition of control. The trusts described in paragraphs (c)(3) through (5) are revocable and/or the settlor retains a reversionary interest in the trust. These trusts do not require a control definition because the settlor is already deemed to hold the assets of the trust. For the same reason, this change is also being applied to the definition of non-corporate interests in §801.1(f)(1)(ii).

Additionally, in 2005 the Commission amended the definition of control for an unincorporated entity to remove the reference to an individual exercising similar functions to a corporate director. However, it inadvertently failed to remove the same reference in Example 2 of §801.1(b)(2). This revision eliminates the reference to that alternative test of control for unincorporated entities from that example.

§ 801.10 Value of voting securities, non-corporate interests and assets to be acquired.

In 2005[39], the Commission stated that the value of an acquisition of non-corporate interests is determined in the same manner as determining the value of non-publicly traded voting securities. In order to clarify that acquisition price for non-corporate interests is the same as for voting securities, the Commission proposes to add non-corporate interests to paragraph (c)(2) of the rule.

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt

The Commission also proposes revising §801.15, which specifies the circumstances in which certain classes of assets and voting securities are held as a result of an acquisition. The change would add references to §7A(c)(3) and §802.30 to paragraph (a), in order to allow the intraperson exemption to have its intended effect. The Statement of Basis and Purpose for the original HSR rules explained the omission of §7A(c)(3) as follows:

> While voting securities acquired under a section 7A(c)(3) exemption are deemed held for purposes of later acquisitions of the same person's securities the later acquisitions are themselves exempt if prior to that transaction the acquiring person holds at least 50 percent of the outstanding voting securities of the acquired person. So long as the later acquisitions are exempt, it is not significant whether the voting securities acquired under the section 7A(c)(3) exemption are held.[40]

While this is true for acquisitions of voting securities of a parent issuer, it does not take into account the acquisition of voting securities of multiple subsidiaries of the same parent. For example, A already holds 50 percent of the voting securities of B1, while parent B holds the other 50 percent. A now intends to acquire the other 50 percent of B1 from B as well as 100 percent of the voting securities of B2, a wholly owned subsidiary of B. Neither acquisition satisfies the size of transaction test on its own, but the two acquisitions do if aggregated. The acquisition of the remaining 50 percent of B1's voting securities is exempt under §7A(c)(3); however, because that exemption is not referenced in §801.15, the exempt voting securities are deemed to be held as a result of the acquisition of B2's voting securities. Therefore, an acquisition is made reportable because of the aggregation of an exempt acquisition. This is certainly not the result that was intended.

The proposed addition of §7A(c)(3) to §801.15(a)(1) corrects this problem. The proposed addition of §802.30 to §801.15(a)(2) eliminates the same potential problem in an acquisition of non-corporate interests. Also, because acquisitions of non-corporate interests are exempted under §802.4 and §802.30, and will be exempt under §802.52 if these proposed rules are finalized, a reference to non-corporate interests is proposed in both paragraphs (a) and (b) of this section.

§ 801.30 Tender offers and acquisitions of voting securities from third parties

Two scenarios have come to light involving acquisitions of non-corporate interests that should invoke §801.30. In one case, the interests in an unincorporated entity were being acquired from its members where the entity was hostile to the acquisition and refused to file notification. Because §801.30 currently only covers voting securities acquisitions, the waiting period did not begin upon notification by the acquiring person and the unincorporated entity was able to block the acquisition indefinitely. This clearly thwarts the intent of §801.30, which prevents a hostile target from holding up a transaction by not filing. Even if the unincorporated entity had been willing to file notification, it is unclear how it could profess its good faith intent to consummate the acquisition in the affidavit required of non-§801.30 filers, since it was not a party to any agreement with the acquiror.

In the second scenario, publicly traded master limited partnership interests conferring control were being acquired on the open market. Because non-corporate interests are not included in §801.30, the partnership was at risk of failing to file and thereby delaying the deal because it did not receive the notification letter required by §803.5(a) in §801.30 transactions. Also, because there is no agreement in an open market purchase, the parties would be unable to attest to the execution of an agreement or letter of intent in the affidavit required of non-§801.30 filers. The proposed addition to §801.30 of a reference to non-corporate interests addresses both of these potential problems.

[39] 70 FR 11502 (March 8, 2005).

[40] 43 FR 33450 (July 31, 1978).

§ 802.4 Acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt

The last sentence in paragraph (a) of this exemption is intended to exclude the value of any non-controlling interest in a corporation or unincorporated entity, held by the acquired entity, in determining whether the $50 million (as adjusted) limitation on non-exempt assets is exceeded. This is intended to apply to acquisitions of both voting securities and non-corporate interests, as the title of the rule and the Statement of Basis and Purpose accompanying its introduction made clear.[41] However, the phrase "not included within the acquired issuer" could be interpreted to mean that the exemption only applies to acquisitions of voting securities because unincorporated entities are not issuers. Although the PNO informally interprets this language to apply the intent of the rule to non-corporate entities, this proposed amendment adds unincorporated entities to the language of the rule to make it clear.

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold (as adjusted)

Section 802.21 permits an acquiring person that filed for an acquisition at a given threshold, to make additional acquisitions up to, but not exceeding, the next threshold, for five years, without a further filing. When the Commission changed from percentage-based notification thresholds to notification thresholds that matched the tiered filing fee thresholds, a new paragraph was added to this section to advise how to address transactions where the original acquisition was made under the old thresholds and the acquiring person was now acquiring additional voting securities after the effective date of the rule change introducing the new thresholds, but within five years of the termination of the waiting period for the original acquisition.[42] As it has now been over five years from the end of the waiting period on any filing made using the old notification thresholds, this paragraph is unnecessary and is accordingly removed.

§ 802.52 Acquisitions by or from foreign governmental corporations

Section 802.52 exempts acquisitions if the ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and the acquisition is of assets located within that foreign state or of voting securities of an issuer organized under the laws of that state. This means that an acquisition of non-corporate interests of an entity organized under the laws of the foreign state but with assets outside that foreign state would not be exempted. In order to treat acquisitions of corporate and unincorporated entities consistently, the Commission proposes to change the title of the rule to "Acquisitions by or from foreign governmental entities", and to add non-corporate interests to paragraph (b) of the rule.

§ 803.2 Instructions applicable to Notification and Report Form

Section 803.2(b) provides guidance on how the Form is to be completed by acquiring and acquired persons. In the case of acquired persons, the response is limited, as laid out in §§803.2(b)(1)(ii), (iii), and (iv), to assets, voting securities or non-corporate interests being acquired in the transaction. §803.2(b)(2) provides further guidance on completing the Form and refers to §§803.2(b)(1)(ii) and (iii). This part of §803.2(b) should also include a reference to paragraph (b)(1) (iv). The Commission proposes to correct this omission in §803.2(b)(2) accordingly.

Section 803.2(c)(1) limits the responses to Items 5, 7 and 8 to information with respect to operations conducted within the United States. Because the proposed changes to these Items would now require some reporting with respect to operations conducted outside of the United States, it is proposed that §803.2(c)(1) be removed.

Additionally, minor ministerial changes to §803.2(e) are required to conform to the proposed changes discussed above.

§ 803.5 Affidavits required

With the proposed change to §801.30 adding non-corporate interests, §803.5(a) needs to be revised to incorporate a reference to non-corporate interests as well. The proposed revision to §803.5(a) would add the terms "non-corporate interests" and "unincorporated entity" where applicable.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to trigger a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, these proposed amendments are intended to reduce the burden of the premerger notification program. Further, none of the proposed rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501-3521, requires agencies to submit "collections of information" to the Office of Management and Budget ("OMB") and obtain clearance before instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The existing information collection requirements in the HSR rules and Form have been reviewed and approved by OMB under OMB Control No. 3084-0005. The current clearance expires on May 31, 2013. Because the rule amendments proposed in this NPR would change existing reporting requirements, the Commission is submitting a Supporting Statement for Information Collection Provisions ("Supporting Statement") to OMB.

Increase or decrease in filings due to proposed ministerial changes in filing requirements

The proposed amendments are primarily changes to the information reported on the Notification and Report Form and do not affect the reportability of a transaction. Most of the proposed ministerial changes to the rules are clarifications (e.g., the change to §802.4) or new procedures (e.g., the change to §801.30), which also would have no effect on reporting obligations. One proposed amendment could theoretically produce an increase in filings. The definition of "entity" in §801.1(a)(2) is being modified to include non-corporate entities engaged in commerce that are controlled by a government. The definition currently includes only corporations engaged in commerce. Another proposed amendment could theoretically produce

[41] *Id.*

[42] 66 FR 8680 (February 1, 2001).

a decrease in filings. The proposed amendment to the aggregation rules in §801.15 would eliminate the unintended effect of requiring aggregation when exactly 50 percent of multiple subsidiaries have been acquired and additional voting securities of the same person are newly being acquired. The Commission believes that any increase or decrease in filings as a result of the proposed ministerial amendments would be negligible. Thus, the same number of filings projected for fiscal year 2010 in the prior Supporting Statement submitted to OMB and appearing in the associated **Federal Register** notice[43] will be used in the instant burden hour calculations.

Reduced time collecting data for and preparing the Form

Premerger Notification Office staff canvassed eight practitioners from the private bar to estimate the projected change in burden due to the proposed amendments to the Form. All are considered HSR experts and have extensive experience with preparing HSR filings for the types of transactions that are most likely to be affected by the proposed changes.

Many of the proposed changes would significantly reduce burden for all filers. Others would increase burden, particularly for acquiring persons that are private equity funds and master limited partnerships. The consensus of those canvassed was that, on average, burden for collecting and reporting would decrease approximately five percent. Thus, 37 hours (rounded to the nearest hour) will be allocated to non-index filings.[44] [(Current estimate, 39 hours[45]) x (1-.05) = 37.05 hours.]

Net Effect

The proposed Form changes only affect non-index filings which, for FY 2010, the FTC projects will total 841. Assuming an average of 37 hours per filer, and combining this revised calculation with the preceding calculations for index filings and estimates of transactions requiring more precise valuations results in a revised cumulative total of 32,037 hours.[46] This is a decrease of 1,261 hours from the prior estimate of 33,298 hours[47] for the current rules. Applying the revised estimated hours, 32,037, to the previous assumed hourly wage of $460 for executive and attorney compensation,[48] yields $14,737,000 (rounded to the nearest thousand) in labor costs, a decrease of $580,000 from the prior estimate of $15,317,000. The proposed amendments presumably will impose minimal or no additional capital or other non-labor costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the HSR Rules and the corresponding Notification and Report Form.

The Commission invites comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on the proposed reporting requirements subject to Paperwork Reduction Act review by OMB should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at OMB is subject to delay due to heightened security precautions.

List of Subjects in 16 CFR Parts 801, 802 and 803

Antitrust.

■ For the reasons stated in the preamble, the Federal Trade Commission proposes to amend 16 CFR parts 801, 802 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend §801.1 by revising paragraphs (a)(2) and (b)(2), revising example 2 to paragraph (b), adding example 5 to paragraph (b), redesignating paragraph (d) as (d)(1), revising newly designated (d)(1), adding new paragraph (d)(2), and revising paragraph (f)(1)(ii) to read as follows:

§ 801.1 Definitions.

* * * * *

(a) * * *

(2) *Entity.* The term *entity* means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules: *Provided, however,* that the term entity shall not include any foreign state, foreign government, or agency thereof (other than a corporation or non-corporate entity engaged in commerce), nor the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation or non-corporate entity engaged in commerce).

(b) * * *

(2) Having the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts that are irrevocable and/or in

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[43] 75 FR 27558 (May 17, 2010).

[44] *Id.* Clayton Act sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant Attorney General. Thus, parties must submit copies of these "index" filings, but completing the task requires significantly less time than non-exempt transactions that require "non-index" filings.

[45] *Id.*

[46] This is determined as follows: [(841 non-index filings x 37 hours) + (22 transactions requiring more precise valuation x 40 hours) + (20 index filings x 2 hours)]

[47] The preceding estimate, detailed further at 75 FR 8992 - 8993, was calculated as follows: [(841 non-index filings x 1/2 incorporating Item 4(a) and Item 4(b) documents by reference to an Internet link) x (39 hours less one hour saved this way)] + [(841 non-index filings x 1/2 at 39 hours)] + (22 transactions requiring more precise valuation x 40 hours) + (20 index filings x 2 hours)] = 33,298 hours. The reduction within this prior calculation for time saved when incorporating Item 4(a) and Item 4(b) documents by reference to an Internet link would be mooted by the proposed changes. The proposals would further reduce time to complete the Form, and are factored into the estimated five percent reduction stated above.

[48] *Id.*

which the settlor does not retain a reversionary interest, the trustees of such a trust.

Examples: * * *

2. A statutory limited partnership agreement provides as follows: The general partner "A" is entitled to 50 percent of the partnership profits, "B" is entitled to 40 percent of the profits and "C" is entitled to 10 percent of the profits. Upon dissolution, "B" is entitled to 75 percent of the partnership assets and "C" is entitled to 25 percent of those assets. All limited and general partners are entitled to vote on the following matters: the dissolution of the partnership, the transfer of assets not in the ordinary course of business, any change in the nature of the business, and the removal of the general partner. The interest of each partner is evidenced by an ownership certificate that is transferable under the terms of the partnership agreement and is subject to the Securities Act of 1933. For purposes of these rules, control of this partnership is determined by paragraph (b)(1)(ii) of this section. Although partnership interests may be securities and have some voting rights attached to them, they do not entitle the owner of that interest to vote for a corporate "director" as required by § 801.1(f)(1) of this section. Thus control of a partnership is not determined on the basis of either paragraph (b)(1)(i) or (2) of this section. Consequently, "A" is deemed to control the partnership because of its right to 50 percent of the partnership's profits. "B" is also deemed to control the partnership because it is entitled to 75 percent of the partnership's assets upon dissolution.

* * *

5. A is the settlor of an irrevocable trust in which it does not retain a reversionary interest in the corpus of the trust. A is entitled under the trust indenture to designate four of the eight trustees of the trust. A controls the trust pursuant to § 801.1(b)(2) and is deemed to hold the assets that constitute the corpus of the trust. Note that the right to designate 50 percent or more of the trustees of a business trust that has equity holders entitled to profits or assets upon dissolution of the business trust does not constitute control. Such business trusts are treated as non-corporate entities and control is determined pursuant to § 801.1(b)(1)(ii).

(d)(1) *Affiliate.* An entity is an affiliate of a person if it is controlled, directly or indirectly, by the ultimate parent entity of such person.

(2) *Associate.* For purposes of Items 6(c) and 7 on the Form, an associate of an acquiring person shall be an entity that is not an affiliate of such person but:

(i) Has the right, directly or indirectly, to manage, direct or oversee the affairs and/or the investments of an acquiring entity (a "managing entity"); or

(ii) Has its affairs and/or investments, directly or indirectly, managed, directed or overseen by the acquiring person; or

(iii) Directly or indirectly, controls, is controlled by, or is under common control with a managing entity; or

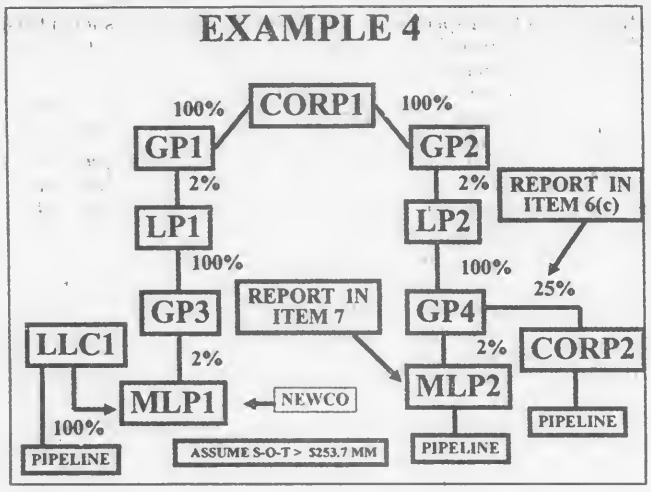
(iv) Directly or indirectly, manages, directs or oversees, is managed by, directed by or overseen by, or is under common management with a managing entity.

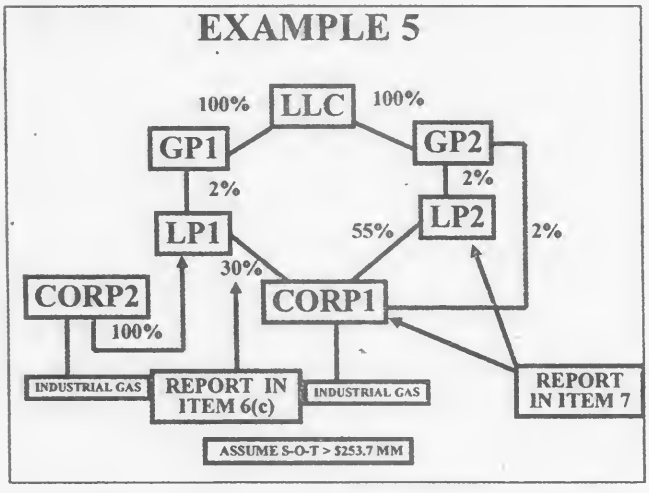
Examples to §801.1(d):

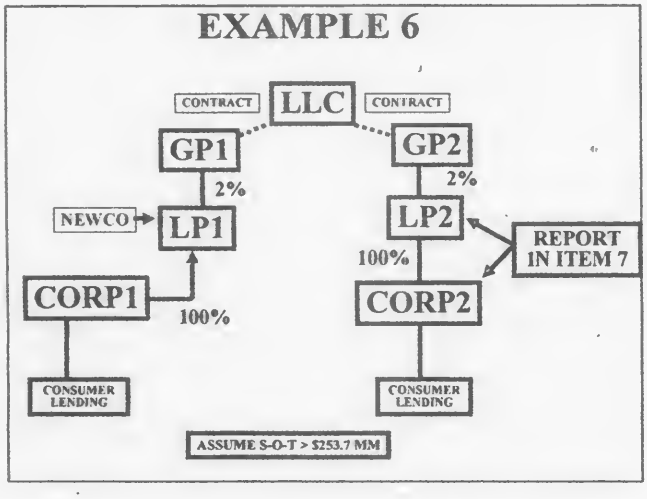
1. ABC Investment Group has organized a number of investment partnerships. Each of the partnerships is its own ultimate parent, but ABC makes the investment decisions for all of the partnerships. One of the partnerships intends to make a reportable acquisition. For purposes of Items 6(c) and 7, each of the other investment partnerships, and ABC Investment Group itself are associates of the partnership that is the acquiring person. In response to Item 6(c), the acquiring person will disclose any minority holdings of its own, or of any of these associates, in any other entity that generates revenues in any of the same codes as the acquired entity in the reportable transaction. In Item 7, the acquiring person will indicate whether there are any NAICS code overlaps between the acquired entity in the reportable transaction, on the one hand, and the acquiring person and all of its associates, on the other.

2. XYZ Corporation is its own ultimate parent and intends to make a reportable acquisition. Pursuant to a management contract, Fund MNO has the right to manage the affairs of XYZ Corporation. For the HSR filing by XYZ Corporation, Fund MNO is an associate of XYZ, as is any other entity that either controls, or is controlled by, or manages or is managed by Fund MNO or is under common control or common management with Fund MNO.

3. EFG Investment Group has the contractual power to determine the investments of PRS Corporation, which is its own ultimate parent. Natural person Mr. X, who is not an employee of EFG Investment Group, has been contracted by EFG Investment Group as its investment advisor. When PRS Corporation makes an acquisition, its associates include (i) EFG Investment Group, (ii) any entity over which EFG Investment Group has investment authority, (iii) any entity that controls, or is controlled by, EFG Investment Group, (iv) Natural person Mr. X, (v) any entity over which Natural person Mr. X has management authority, and (vi) any entity which is controlled by Natural person Mr. X, directly or indirectly.







4. CORP1 controls GP1 and GP2, the sole general partners of private equity funds LP1 and LP2 respectively. LP1 controls GP3, the sole general partner of MLP1, a newly formed master limited partnership which is its own ultimate

parent entity. LP2 controls GP4, the sole general partner of MLP2, another master limited partnership that is its own ultimate parent entity and owns and operates a natural gas pipeline. In addition, GP4 holds 25% of the voting securities of CORP2, which also owns and operates a natural gas pipeline.

MLP1 is acquiring 100% of the membership interests of LLC1, also the owner and operator of a natural gas pipeline. MLP2, CORP2 and LLC1 all derive revenues in the same NAICS code (Pipeline Transportation of Natural Gas). All of the entities under common management of CORP1, including GP4 and MLP2, are associates of MLP1, the acquiring person.

In Item 7 of its HSR filing, MLP1 would identify MLP2 as an associate that has an overlap in pipeline transportation of natural gas with LLC1, the acquired person. Because GP4 does not control CORP2 it would not be listed in Item 7, however, it would be listed in Item 6(c)(ii) as an associate that holds 25% of the voting securities of CORP2. In this example, even though there is no direct overlap between the acquiring person (MLP1) and the acquired person (LLC1), there is an overlap reported for an associate (MLP2) of the acquiring person in Item 7. Also, while the acquiring person (MLP1) has no holdings, the holdings of an associate (GP4) of the acquiring person is reported in Item 6(c)(ii).

5. LLC is the investment manager for and ultimate parent entity of general partnerships GP1 and GP2. GP1 is the general partner of LP1, a limited partnership that holds 30% the voting securities of CORP1. GP2 is the general partner of LP2, which holds 55% of the voting securities of CORP1. GP2 also directly holds 2% of the voting securities of CORP1. LP1 is acquiring 100% of the voting securities of CORP2. CORP1 and CORP2 both derive revenues in the same NAICS code (Industrial Gas Manufacturing).

All of the entities under common management of the managing entity LLC, including GP1, GP2, LP2 and CORP1 are associates of LP1. In Item 6(c)(i) of its HSR filing, LP1 would report its own holding of 30% of the voting securities of CORP1. It would not report the 55% holding of LP2 in Item 6(c)(ii) because it is greater than 50%. It also would not report GP2's 2% holding because it is less than 5%. In Item 7, LP1 would identify both LP2 and CORP1 as associates that derive revenues in the same NAICS code as CORP2.

6. LLC is the investment manager for GP1 and GP2 which are the general partners of limited partnerships LP1 and LP2, respectively. LLC holds no equity interests in either general partnership but manages their investments and the investments of the limited partnership by contract. LP1 is newly formed and its own ultimate parent entity. It plans to acquire 100% of the voting securities of CORP1, which derives revenues in the NAICS code for Consumer Lending. LP2 controls CORP2, which derives revenues in the same NAICS code. All of the entities under the common management of LLC, including LP2 and CORP2, are associates of LP1. For purposes of Item 7, LP1 would report LP2 and CORP2 as associates that derive revenues in the NAICS code that overlaps with CORP1. Even though the investment manager (LLC) holds no equity interest in GP1 or GP2, the contractual arrangement with them makes them associates of LP1 through common management.

7. Corporation A is its own ultimate parent entity and is making an acquisition of Corporation B. Although Corporation A is operationally managed by its officers and its investments, including the acquisition of Corporation B, are managed by its directors, neither the officers nor directors are considered associates of A.

8. Limited partnership A is an investment partnership that is making an acquisition. LLC B has no equity interest in A, but has a contract to manage its investments for a fee. LLC B has an investment committee comprised of twelve of its employees that makes the actual investment decisions. LLC B is an associate of A but none of the twelve employees are associates of A, as LLC B is a managing entity and the twelve individuals are merely its employees. Contrast this with example 3 where a managing entity, EFG, is itself managed by another entity, Mr. X, who is thus an associate.

(f) * * *

(1) * * *

(ii) *Non-corporate interest.* The term "non-corporate interest" means an interest in any unincorporated entity which gives the holder the right to any profits of the entity or in the event of dissolution of that entity the right to any of its assets after payment of its debts. These unincorporated entities include, but are not limited to, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, cooperatives and business trusts; but these unincorporated entities do not include trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest and any interest in such a trust is not a non-corporate interest as defined by this rule.

* * * * *

■ 3. Amend § 801.10 by revising paragraph (c)(2) to read as follows:

§ 801.10 Value of voting securities, non-corporate interests and assets to be acquired.

* * *

(c) * * *

(2) *Acquisition price.* The acquisition price shall include the value of all consideration for such voting securities, non-corporate interests or assets to be acquired.

* * * * *

■ 4. Amend § 801.15 by revising the heading, introductory text, and paragraphs (a) and (b) to read as follows:

§ 801.15 Aggregation of voting securities, non-corporate interests and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of determining the aggregate total amount of voting securities, non-corporate interests and assets of the acquired person held by the acquiring person under Section 7A(a)(2) and § 801.1(h), none of the following will be held as a result of an acquisition: a) Assets, non-corporate interests or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under—

(1) Sections 7A(c) (1), (3), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.30, 802.31, 802.35, 802.52, 802.53, 802.63, and 802.70 of this chapter;

(b) Assets, non-corporate interests or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under Section 7A(c)(9) and §§ 802.3, 802.4, and 802.64 of this chapter unless the limitations contained in Section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

* * * * *

■ 5. Amend § 801.30 by revising the heading and paragraph (a)(5) to read as follows:

§ 801.30 Tender offers and acquisitions of voting securities and non-corporate interests from third parties.

(a) * * *

(5) All acquisitions (other than mergers and consolidations) in which voting securities or non-corporate interests are to be acquired from a holder or holders other than the issuer or unincorporated entity or an entity included within the same person as the issuer or unincorporated entity;

* * * * *

PART 802–EXEMPTION RULES

■ 6. The authority citation for part 802 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 7. Amend § 802.4 by revising paragraph (a) introductory text to read as follows:

§ 802.4 Acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt.

(a) An acquisition of voting securities of an issuer or non-corporate interests in an unincorporated entity whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act pursuant to § 7A(c) of the Act, this part 802, or pursuant to § 801.21, is exempt from the reporting requirements if the acquired issuer or unincorporated entity and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than $50 million (as adjusted). The value of voting or non-voting securities of any other issuer or interests in any non-corporate entity not included within the acquired issuer or unincorporated entity does not count toward the $50 million (as adjusted) limitation for non-exempt assets.

* * * * *

■ 8. Amend § 802.21 by removing paragraph (b) and its three examples.

■ 9. Amend § 802.52 by revising the heading and paragraph (b) introductory text to read as follows:

§ 802.52 Acquisitions by or from foreign governmental entities.

(b) The acquisition is of assets located within that foreign state or of voting securities or non-corporate interests of an entity organized under the laws of that state.

* * * * *

PART 803–TRANSMITTAL RULES

■ 10. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 11. Amend § 803.2 by revising paragraph (b)(2) introductory text, removing paragraph (c)(1), redesignating paragraph (c)(2) as (c), and revising paragraph (e) to read as follows:

§ 803.2 Instructions applicable to Notification and Report Form.

* * *

(b) * * *

(2) For purposes of item 7 of the Notification and Report Form, the acquiring person shall regard the acquired person in the manner described in paragraphs (b)(1) (ii), (iii) and (iv) of this section.

* * *

(e) A person filing notification may instead provide:

(1) A cite to a previous filing containing documentary materials required to be filed in response to item 4(b) of the Notification and Report Form, which were previously filed by the same person and which are the most recent versions available; except that when the same parties file for a higher threshold no more than 90 days after having made filings with respect to a lower threshold, each party may instead provide a cite to any documents or information in its earlier filing provided that the documents and information are the most recent available;

(2) A cite to an Internet address directly linking to the document, only documents required to be filed in response to item 4(b) of the Notification and Report Form. If an Internet address is inoperative or becomes inoperative during the waiting period, or the document that is linked to it is incomplete, or the link requires payment to access the document, upon notification by the Commission or Assistant Attorney General, the parties must make these documents available to the agencies by either referencing an operative Internet address or by providing paper copies to the agencies as provided in § 803.10(c)(1) by 5 p.m. on the next regular business day. Failure to make the documents available, by the Internet or by providing paper copies, by 5 p.m. on the next regular business day, will result in notice of a deficient filing pursuant to § 803.10(c)(2).

* * * * *

■ 12. Amend § 803.5 by revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(1)(iii), and (a)(1)(vi) to read as follows.

§ 803.5 Affidavits required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, or attached as part of the electronic submission, attesting that the issuer or unincorporated entity whose voting securities or non-corporate interests are to be acquired has received notice in writing by certified or registered mail, by wire or by hand delivery, at its principal executive offices, of:

* * *

(ii) The fact that the acquiring person intends to acquire voting securities or non-corporate interests of the issuer or unincorporated entity;

(iii) The specific classes of voting securities or non-corporate interests of the issuer or unincorporated entity sought to be acquired; and if known, the number of voting securities or unincorporated interests of each such class that would be held by the acquiring person as a result of the acquisition or, if the number of voting securities is not known in the case of an issuer, the specific notification threshold that the acquiring person intends to meet or exceed; and, if designated by the acquiring person, a higher threshold for additional voting securities it may hold in the year following the expiration of the waiting period;

* * *

(vi) The fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the act.

* * * * *

BILLING CODE 6750–01–S

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Notification and Report Form ("the Form") is required to be submitted pursuant to §803.1(a) of the premerger notification rules, 16 CFR Parts 801-803 ("the Rules").

These instructions specify the information which must be provided in response to the items on the Form. The completed Form, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice ("the Agencies").

The term "documentary attachments" refers to materials supplied in response to Item 3(b), Item 4 and to submissions pursuant to §803.1(b) of the Rules.

Persons providing responses on attachment pages rather than on the Form must submit a complete set of attachment pages with each copy of the Form.

Information

The central office for information and assistance concerning the Rules and the Form is:

Premerger Notification Office
Federal Trade Commission, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
phone: (202) 326-3100 - e-mail: HSRHelp@hsr.gov

Copies of the Form, Instructions and Rules as well as materials to assist in completing the Form are available at www.ftc.gov/bc/hsr. An electronic version of the Form is available at www.hsr.gov and may be used for the direct electronic submission of filings or to generate a print version of the Form for paper copy submission.

Definitions

The definitions and other provisions governing this Form are set forth in the Rules, 16 CFR Parts 801-803. The governing statute ("the Act"), the Rules, and the Statement of Basis and Purpose for the Rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) 48 FR 34427 (July 29, 1983), 61 FR 13688 (March 28, 1996), 66 FR 8693 (February 1, 2001), 70 FR 4994 (January 31, 2005), 70 FR 11513 (March 8, 2005), 70 FR 73369 (December 12, 2005), 70 FR 77312 (December 30, 2005), 71 FR 2943 (January 18, 2006), and Pub. L. No. 106-533, 114 Stat. 2762. See www.ftc.gov/bc/hsr for copies of these materials.

Affidavit

Attach the affidavit required by §803.5 to the Form. If filing electronically, submit an electronic version of the affidavit as attachment 1.

The language found in 28 U.S.C. §1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the affidavit.

For acquisitions to which §801.30 does not apply, the affidavit must attest that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of the person filing notification to complete the transaction.

For acquisitions to which §801.30 does apply, the affidavit must also attest that the issuer whose voting securities or the unincorporated entity whose non-corporate interests are to be acquired has received notice; the identity of the acquiring person and the fact that the acquiring person intends to acquire voting securities of the issuer or non-corporate interests of the unincorporated entity; the specific notification threshold that the acquiring person intends to meet or exceed if an acquisition of voting securities; the fact that the acquisition may be subject to the Act, and that the acquiring person will file notification under the Act; the anticipated date of receipt of such notification by the Agencies; and the fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the Act.

Acquiring persons in transactions covered by §801.30 are required to also submit a copy of the notice served on the acquired person pursuant to §803.5(a)(3).

In the case of a tender offer, the affidavit must also attest that the intention to make the tender offer has been publicly announced.

An affidavit is **not** required of an acquired person in a transaction covered by §801.30. (See §803.5(a)).

Responses

Each answer should identify the item to which it is addressed. Attach separate additional sheets as necessary in answering each item. Each additional sheet should identify, at the top of the page, the item to which it is addressed. Voluntary submissions pursuant to §803.1(b) should also be identified.

For electronic filings, all items are automatically identified within the Form. Electronic attachments and endnotes may be appended to the Form for any item.

Enter the name of the person filing notification as reported in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any item fully, give such information as is available and provide a statement of reasons for non-compliance as required by §803.3. If exact answers to any item cannot be given, enter best estimates and indicate the sources or bases of such estimates. All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars. Estimated data should be followed by the notation, "est." For electronic filings, add an endnote with the notation, "est." to any item where data is estimated.

Year

All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) Data

The Form requests dollar revenues and lines of commerce for non-manufactured and manufactured products with respect to operations conducted within the United States and for products manufactured outside of the United States and sold into the United States. Filing persons must submit data at the 6-digit NAICS national industry code level to reflect non-manufacturing revenues. To the extent that dollar revenues (see §803.2(d)) are derived from manufacturing operations (NAICS Sectors 31-33), filing persons must submit data at the 10-digit NAICS product code levels.

References

In reporting information by 6-digit NAICS industry code, refer to the most recent *North American Industry Classification System - United States* published by the Executive Office of the President, Office of Management and Budget. In reporting information by 10-digit NAICS product code, refer to the most recent *Numerical List of Manufactured and Mineral Products* published by the Bureau of the Census. Information regarding NAICS is available at www.census.gov.

Thresholds

Filing fee and notification thresholds are adjusted annually pursuant to Section 7A(a)(2) of the Clayton Act based on the change in gross national product, in accordance with Section 8(a)(5). The current threshold values can be found at www.ftc.gov/bc/hsr.

Limited Response

Information need not be supplied regarding assets, non-corporate interests, or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See §803.2(c)(1)). The acquired person should limit its response in the case of an acquisition of assets, to the assets being sold, in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) whose non-corporate interests are being acquired, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such acquired entities. Separate responses may be required where a person is both acquiring and acquired. (See §§803.2(b) and (c)).

Filing

Filers have three options:

(1) Complete and return **ONE** original and **ONE** copy (with one notarized original affidavit and certification and one set of documentary attachments) of the Notification and Report Form ("Form") to:

Premerger Notification Office
Federal Trade Commission, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Also, **THREE** copies (with one set of documentary attachments) should be sent to:

Director of Operations, Antitrust Division,
Department of Justice,
950 Pennsylvania Avenue, N.W., Room #3335
Washington, D.C. 20530.

(For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004);

(2) Complete the electronic version of the Form and submit the completed Form with all electronic attachments as directed at www.hsr.gov; or

(3) Complete the electronic version of the Form and submit it electronically as directed at www.hsr.gov, while providing the documentary attachments in paper copy to the FTC and DOJ as in Option 1 above. Note that for Option 3, the attachments must be listed on the attachments page of the Form and classified as "paper to follow".

If one or both delivery sites are unavailable, the Agencies may announce alternate sites for delivery through the media and, if possible, at www.ftc.gov/bc/hsr and www.hsr.gov.

ITEM BY ITEM

Fee Information

The fee for filing the Notification and Report Form is based on the aggregate total amount of assets and voting securities to be held as a result of the acquisition:

Value of assets or voting securities to be held	Fee Amount
greater than $50 million (as adjusted) but less than $100 million (as adjusted)	$45,000
$100 million (as adjusted) or greater but less than $500 million (as adjusted)	$125,000
$500 million or greater (as adjusted)	$280,000

For current thresholds and fee information, see www.ftc.gov/bc/hsr.

Amount Paid

Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges. Where an explanatory attachment is required, include in your explanation any adjustments to the acquisition price that serve to lower the fee from that which would otherwise be due. If there is no acquisition price or if the acquisition price may fall within a range that straddles two filing fee thresholds, state the transaction value on which the fee is based and explain the valuation method used. Include in your explanation a description of any exempt assets, the value assigned to each, and the valuation method used.

Payer Identification

Provide the 9-digit Taxpayer Identification Number (TIN) of the acquiring person and, if different from the filing person, the TIN of

the payer(s) of the filing fee. A payer or filing person who is a natural person having no TIN must provide the name and social security number (SSN) of the payer. If the payer or filing person is a foreign person, only the name of the payer and the name of the filing person, if different, need be supplied.

Method of Payment

Check the box indicating the method of fee payment. If paying by electronic wire transfer (EWT), provide the name of the financial institution from which the EWT is being sent and the confirmation number.

To insure filing fees paid by EWT are attributed to the appropriate payer filing notification, the payer must provide the following information to the financial institution initiating the EWT:

The Department of Treasury's ABA Number: 021030004;
and
The Federal Trade Commission's ALC Number: 29000001.

If the name used to transmit the EWT differs from the filer's name, provide the filer's name. If the confirmation number is unavailable at the time notification is filed, provide this information by letter within one business day of filing.

When submitting an EWT, all payers should include a contact person and a phone number in the Comment Field.

If paying by certified check or money order, send the payment to the Premerger Notification Office at the address above.

Corrective Filing

Put an X in the appropriate box to indicate whether the notification is a corrective filing being made for an acquisition that has already taken place in violation of the statute. See http://www.ftc.gov/bc/hsr/postconsumfilings.shtm for more information on how to proceed in the case of a corrective filing.

Cash Tender Offer

Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Bankruptcy

Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or a debtor-in-possession for a transaction that is subject to section 363(b) of the Bankruptcy Code (11 USC §363).

Early Termination

Put an X in the "yes" box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by §7A(b)(2) of the Clayton Act and on the FTC web site, www.ftc.gov. Note that if *either* party requests early termination, it may be granted and published.

Transactions Subject to International Antitrust Notification

If, to the knowledge or belief of the filing person at the time of filing, a non-U.S. antitrust or competition authority has been or will be notified of the proposed transaction, list the name of each such authority and the date or anticipated date of each such notification. Response to this item is voluntary.

ITEM 1

Item 1(a)

Provide the name, headquarters address and website (if one exists) of the person filing notification. The name of the person is the name of the ultimate parent entity.

Item 1(b)

Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See §801.2).

Item 1(c)

Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity, natural person, or other (specify).

Item 1(d)

Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(e)

Put an X in the appropriate box to indicate if the Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to §803.2(a), or if the Form is being filed pursuant to §803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) of the Form.

Item 1(f)

If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the assets, voting securities or non-corporate interests of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interests held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see §801.1(b)).

Item 1(g)

Provide the name and title, firm name, address, telephone number, fax number and e-mail address of the primary individual to contact and a backup contact regarding the Form. (See §803.20(b)(2)(ii)).

Item 1(h)

Foreign filing persons provide the name, firm name, address, telephone number, fax number and e-mail address of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See §803.20(b)(2)(iii)).

ITEM 2

Item 2(a)

Give the names of all ultimate parent entities of acquiring and acquired persons that are parties to the acquisition, whether or not

they are required to file notification. If not required to file, note as non-reportable.

Item 2(b)

Put an X in all the boxes that apply to this acquisition.

Item 2(c)

(Acquiring person only) Put an X in the box to indicate the highest threshold for which notification is being filed (see §801.1(h)): $50 million (as adjusted), $100 million (as adjusted), $500 million (as adjusted), 25% (if value of voting securities to be held is greater than $1 billion, as adjusted), or 50%. The notification threshold selected should be based on **voting securities only** that will be held as a result of the acquisition.

Note that the 50% notification threshold is the highest threshold and should be used for any acquisition of 50% or more of the voting securities of an issuer, regardless of the value of the voting securities (e.g. an acquisition of 100% of the voting securities of an issuer, valued in excess of $500 million (as adjusted) would cross the 50% notification threshold, not the $500 million (as adjusted) threshold.

Item 2(d)

Item 2(d)(i)

State the value of voting securities already held (see §801.10).

Item 2(d)(ii)

State the percentage of voting securities already held (see §801.12).

Item 2(d)(iii)

State the total value of voting securities to be held as a result of the acquisition (see §801.10).

Item 2(d)(iv)

State the total percentage of voting securities to be held as a result of the acquisition (overall voting power; see §801.12).

Item 2(d)(v)

State the value of non-corporate interests already held (§801.10).

Item 2(d)(vi)

State the percentage of non-corporate interests already held (economic interests).

Item 2(d)(vii)

State the total value of non-corporate interests to be held as a result of the acquisition (see §801.10).

Item 2(d)(viii)

State the total percentage of non-corporate interests to be held as a result of the acquisition (economic interests).

Item 2(d)(ix)

State the value of assets to be held as a result of the acquisition (see §801.10).

Item 2(d)(x)

State the aggregate total value of voting securities, assets and non-corporate interests of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§801.10, 801.12, 801.13, and 801.14).

ITEM 3

Item 3(a)

Briefly describe the transaction, indicating whether assets, voting securities, or non-corporate interests (or some combination) are to be acquired. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification, and the names of any acquired issuers or non-corporate entities. In an asset acquisition, provide a brief description of the business the assets to be acquired comprise. Also indicate what consideration will be received by each party. In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction. If there are additional filings, such as shareholder backside filings, associated with the transaction, list those, as well as any special circumstances that apply to the filing, such as whether part of the transaction is exempt under one of the exemptions found in Section 802.

If the voting securities or non-corporate interests are to be acquired from a holder other than the issuer or non-corporate entity (or an entity within the same person as the issuer or non-corporate entity) separately identify (if known) such holder and the issuer of the voting securities (an acquisition of non-corporate interests from a holder other than the unincorporated entity or an entity within the unincorporated entity should be reported in the same manner). Acquiring persons involved in tender offers should describe the terms of the offer.

Item 3(b)

Furnish copies of all documents that constitute the agreement(s) among the acquiring person(s) and the person(s) whose voting securities, non-corporate interests or assets are to be acquired. Also furnish Agreements Not to Compete. Documents that constitute the agreement(s) (e.g., a Letter of Intent, Merger Agreement, Purchase and Sale Agreement) must be executed, while Agreements Not to Compete may be provided in draft form if that is the most recent version. If parties are filing on an executed Letter of Intent, they may also submit a draft of the definitive agreement. Note that transactions subject to §801.30 and bankruptcies under 11 USC §363 do not require an executed agreement or letter of intent. (For paper copy submissions, do not attach these documents to the Form).

ITEM 4

Item 4(a)

Provide the names of all entities, including the UPE, within the person filing notification that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission and provide the Central Index Key (CIK) number for each entity.

For Items 4(b) through 4(d), furnish one copy of each of the indicated documents.

Item 4(b)

Provide the most recent annual reports and/or annual audit reports

of the person filing notification and of each unconsolidated United States entity included within such person. Natural persons need only provide annual reports and/or annual audit reports for the highest level entity(s) they control. Alternatively, the person filing notification may incorporate a document by reference to an internet address directly linking to the document (see §803.2(e)(2)).

> **NOTE:** In response to Item 4(b), the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in §803.2(e).

If the annual report and/or annual audit report does not show sales or assets sufficient to meet the size of person test, and the size of person test is relevant given the size of the transaction, the filing person must stipulate in Item 4(b) that it meets the test.

Item 4(c)

Provide all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

> **NOTE:** If the person filing notification withholds or redacts any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and §803.3(d).

Item 4(d)

For each category below, indicate (if not contained in the document itself) the date of preparation, and the name of the company or organization that prepared each such document.

Item 4(d)(i): Provide all offering memoranda (or documents that served that function) that reference the acquired entity(s) or assets. Documents responsive to this item are limited to those produced up to two years before the date of filing.

Item 4(d)(ii): Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors if they were prepared for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and that also reference the acquired entity(s) or assets. Documents responsive to this item are limited to those produced up to two years before the date of filing.

Item 4(d)(iii): Provide all studies, surveys, analyses and reports evaluating or analyzing synergies and/or efficiencies if they were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided in response to this item.

Persons filing notification may provide an optional index of documents called for by Item 4.

ITEMS 5 through 7

For Items 5 through 7, the acquired person should limit its response in the case of an acquisition of assets, to the assets to be acquired, in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) being acquired and all entities controlled by such unincorporated entity(s), and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. A person filing as both acquiring and acquired may be required to provide a separate response to these items in each capacity so that it can properly limit its response as an acquired person. (See §§ 803.2(b) and (c)).

> **NOTE:** See "References" listed in the General Instructions to the Form.

ITEM 5

This item requests information by NAICS code regarding non-manufacturing and manufacturing dollar revenues. All persons must submit data on non-manufacturing revenues at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), data must be submitted at the 10-digit product code level (NAICS-based codes). Where certain published NAICS industry codes contain only 5 digits, the filing person should add a zero (0) after the fifth (5th) digit.

Nondepository credit intermediation (NAICS Industry Group Code 5222); securities, commodity contracts, and other financial investments (NAICS Subsector 523); funds, trusts, and other financial vehicles (NAICS Subsector 525); real estate (NAICS Subsector 531); lessors of nonfinancial intangible assets, except copyright works (NAICS Subsector 533); and management of companies and enterprises (NAICS Subsector 551) should identify or explain the revenues reported (e.g. dollar sales receipts).

Persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time the Form is prepared. If no revenues are reported, check the "None" box and provide a brief explanation.

Item 5(a)

Provide 6-digit NAICS industry data concerning the aggregate operations of the person filing notification for the most recent year in NAICS Sectors other than 31-33 (non-manufacturing industries) in which the person engaged and 10-digit NAICS product code data for each product code within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged, including revenues for each product manufactured outside the U.S. but sold in or into the U.S. Sales made directly into the U.S. should be reported in a manufacturing code. Sales made into the U.S. through a wholesale or retail operation within the same person should be reported in both manufacturing (transfer price) and wholesale or retail (sales price) codes. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry codes and 10-digit NAICS product codes may be provided if a statement describing the method of estimation is furnished.

Item 5(b)

Supply the following information only if the acquisition is the formation of a joint venture corporation or unincorporated entity (see

§§801.40 and 801.50). If the acquisition is not a formation, check the "Not Applicable" box.

Item 5(b)(i)

List the contributions that each person forming the joint venture corporation or unincorporated entity has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(b)(ii)

Describe fully the consideration which each person forming the joint venture corporation or unincorporated entity will receive in exchange for its contribution(s).

Item 5(b)(iii)

Describe generally the business in which the joint venture corporation or unincorporated entity will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(b)(iv)

Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing, also specify each 10-digit NAICS product code in which it will derive dollar revenues.

ITEM 6

This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired. Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "document attachment" furnished with this Form if the information so referenced is a complete response and is up-to-date and accurate. Indicate for each item the specific page(s) of the document that are responsive to that item.

Item 6(a)

List the name and city and state/country of any U.S. entities and any foreign entities that have sales into the U.S. included within the person filing notification. Entities with total assets of less than $10 million may be omitted. In responding to Item 6(a), it is permissible for a filing person to report all entities within it.

Item 6(b)

For the acquired entity(s) and for the acquiring entity(s) and its UPE or, in the case of natural persons, the top-level corporate or non-corporate entity(s) within that UPE, list the name and headquarters mailing address of each other person that holds (See §801.1(c)) five percent or more of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person.

For limited partnerships, only the general partner(s), regardless of percentage held, should be listed.

Item 6(c)

Item 6(c)(i)

If the person filing notification holds five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an unincorporated entity, the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year. The acquired entity should limit its response, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquiring person. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the filing person, should be listed. Holdings of issuers or unincorporated entities with total assets of less than $10 million, may be omitted. In responding to Item 6(c)(i), it is permissible for a filing person to list all entities in which it has a reportable minority interest.

Item 6(c)(ii)

(Acquiring person only) For each associate (see §801.1(d)(2)) of the person filing notification holding five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year, list, based on the knowledge or belief of the acquiring person, the top level associate, the issuer or unincorporated entity and percentage held. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. Holdings of entities with total assets of less than $10 million may be omitted. In responding to Item 6(c)(ii), it is permissible for the acquiring person to list all entities in which its associate(s) has a reportable minority interest.

ITEM 7

If, to the knowledge or belief of the person filing notification, the acquiring person filing notification, or any associate (see §801.1(d)(2)) of the acquiring person, derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition also derived dollar revenues in the most recent year, or in which a joint venture corporation or unincorporated entity will derive dollar revenues (note that if the acquired entity is a joint venture the only overlaps will be between the assets to be held by the joint venture and any assets of the acquiring person not contributed to the joint venture), then for each such 6-digit NAICS industry code:

Item 7(a)

Supply the 6-digit NAICS industry code and description for the industry.

Item 7(b)

Item 7(b)(i)

List the name of each person that is a party to the acquisition that also derived dollar revenues in the 6-digit industry and, if different, the name of the entity(s) that actually derived those revenues.

Item 7(b)(ii)

(Acquiring person only) List the name of each top level associate of the acquiring person that also derived dollar revenues in the 6-digit industry and, if different, the name of the entity(s) that actually derived those revenues.

Item 7(c)

Item 7(c)(i)

For each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a) above, list the states or, if desired, portions thereof in which, to the knowledge or belief of the person filing notification, the products in that 6-digit NAICS industry code produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold.

Item 7(c)(ii)

For each 6-digit NAICS industry code within NAICS Sectors or Subsectors 11 (agriculture, forestry, fishing and hunting); 21 (mining); 22 (utilities); 23 (construction); 48-49 (transportation and warehousing); 511(publishing industries); 515 (broadcasting); 517 (telecommunications); and 71 (arts, entertainment and recreation) listed in item 7(a) above, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

Item 7(c)(iii)

For each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a) above, list the states or, if desired, portions thereof in which the customers of the person filing notification are located.

Item 7(c)(iv)

For each 6-digit NAICS industry code within NAICS Sectors or Subsectors Nonmetallic Mineral Mining and Quarrying (2123); Concrete (32732); Concrete products (32733); Industrial gases (32512); 44-45 (retail trade), except 442 (furniture and home furnishings stores), and 443 (electronics and appliance stores); 512 (motion picture and sound recording industries); 521 (monetary authorities- central bank); 522 (credit intermediation and related activities); 532 (rental and leasing services); 62 (health care and social assistance); 72 (accommodations and food services), except 7212 (recreational vehicle parks and recreational camps), and 7213 (rooming and boarding houses); 811 (repair and maintenance), except 8114 (Personal and Household Goods Repair and Maintenance); and 812 (personal and laundry services) listed in Item 7(a) above, provide the address, **arranged by state, county and city or town,** of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

Item 7(c)(v)

For each 6-digit NAICS industry code within NAICS Subsectors 442 (furniture and home furnishings stores), 443 (electronics and appliance stores); 516 (internet publishing & broadcasting); 518 (internet service providers); 519 (other information services); 523 (securities, commodity contracts and other financial investments and related activities); 525 (funds, trusts and other financial vehicles); 53 (real estate and rental and leasing); 54 (professional, scientific and technical services); 55 (management of companies and enterprises); 56 (administrative and support and waste management and remediation services); 61 (educational services); 813 (religious, grantmaking, civic, professional, and similar organizations); and NAICS Industry Group 5242 (insurance agencies and brokerages, and other insurance related activities); 7212 (recreational vehicle parks and recreational camps), 7213 (rooming and boarding houses) and 8114 (personal and household goods repair and maintenance) listed in Item 7(a) above, list the states or, if desired, portions thereof in which establishments were located from which the person filing notification derived revenues in the most recent year.

Item 7(c)(vi)

For each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

NOTE: Except in the case of those NAICS major industries in the Sectors and Subsectors mentioned in Item 7(c)(iv) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

Item 7(d)

(Acquiring person only) Use the geographic markets listed in Items 7(c)(i) through 7(c)(vi) to respond to this item, providing the information for associates of the acquiring person. List separately responses for each associate of the acquiring person and, if different, the entity(s) that actually derived the revenues.

ITEM 8

(Acquiring person only). Determine each 6-digit NAICS industry code listed in Item 7(a) above, in which the acquiring person derived dollar revenues of $1 million or more in the most recent year and in which either the acquired entity derived revenues of $1 million or more in the recent year (or in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive revenues of $1 million or more), or, in the case of acquired assets, to which revenues of $1 million or more were attributable in the most recent year. For each such 6-digit NAICS industry code, list all acquisitions made by the person filing notification in the five years prior to the date of filing of entities deriving dollar revenues in that 6-digit NAICS industry code. List only acquisitions of 50 percent or more of the voting securities of an issuer or 50 percent or more of non-corporate interests of an unincorporated entity that had annual net sales or total assets greater than $10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

For each such acquisition, supply:

(a) the name of the entity from which the voting securities, non-corporate interests or assets were acquired;

(b) the headquarters address of that entity prior to the acquisition;

(c) whether voting securities, non-corporate interests or assets were acquired;

(d) the consummation date of the acquisition; and

(e) the 6-digit (NAICS code) industries by (number and description) identified above in which the acquired entity derived dollar revenues.

CERTIFICATION- (See §803.6)

The language found in 28 U.S.C. §1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the certification.

Privacy Act Statement–Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $16,000 per day. We also may be unable to process the Form unless you provide all of the requested information.

16 C.F.R. Part 803 – Appendix

NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

☐☐☐☐☐☐☐☐ TRANSACTION NUMBER ASSIGNED

FEE INFORMATION *(For Payer Only)*

AMOUNT PAID $ _____

In cases where your filing fee would be higher if based on acquisition price or where the acquisition price is undetermined to the extent that it may straddle a filing fee threshold, attach an explanation of how you determined the appropriate fee.

Attachment Number _____

TAXPAYER IDENTIFICATION NUMBER _____
OR SOCIAL SECURITY NUMBER FOR NATURAL PERSONS

NAME OF PAYER *(if different from PERSON FILING)* _____

WIRE TRANSFER ☐ or CERTIFIED CHECK / MONEY ORDER ATTACHED ☐

WIRE TRANSFER CONFIRMATION NO. _____

FROM (NAME OF INSTITUTION) _____

IS THIS A CORRECTIVE FILING? ☐ YES ☐ NO | CASH TENDER OFFER? ☐ YES ☐ NO | BANKRUPTCY? ☐ YES ☐ NO

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? ☐ YES ☐ NO
(Grants of early termination are published in the Federal Register and on the FTC web site, www.ftc.gov)

(voluntary) IS THIS ACQUISITION SUBJECT TO NON-US FILING REQUIREMENTS? ☐ YES ☐ NO
IF YES, list jurisdictions:

ITEM 1

1(a) PERSON FILING

NAME
HEADQUARTERS ADDRESS
ADDRESS LINE 2
CITY, STATE, COUNTRY
ZIP CODE
WEB SITE

1(b) PERSON FILING NOTIFICATION IS ☐ an acquiring person ☐ an acquired person ☐ both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE THE PERSON FILING NOTIFICATION
☐ Corporation ☐ Unincorporated Entity ☐ Natural Person ☐ Other *(Specify)*: _____

1(d) DATA FURNISHED BY
☐ calendar year ☐ fiscal year *(specify period)*: _____ (month/year) to _____ (month/year)

1(e) PUT AN "X" IN THE APPROPRIATE BOX BELOW AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION, IF DIFFERENT THAN THE ULTIMATE PARENT ENTITY

☐ Not Applicable | ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4. | ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authonzed by it to file pursuant to § 803.2(a)

NAME
ADDRESS
CITY, STATE, COUNTRY
ZIP CODE

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS, VOTING SECURITIES OR NON-CORPORATE INTERESTS ARE BEING ACQUIRED, IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

NAME
ADDRESS
CITY, STATE, COUNTRY
ZIP CODE

☐ Not Applicable

PERCENT OF VOTING SECURITIES OR NON-CORPORATE INTERESTS THAT THE UPE HOLDS DIRECTLY OR INDIRECTLY IN THE ACQUIRING OR ACQUIRED ENTITY IDENTIFIED IN ITEM 1(f) %

1(g) IDENTIFICATION OF PERSONS TO CONTACT REGARDING THIS REPORT

CONTACT PERSON 1		CONTACT PERSON 2	
FIRM NAME		FIRM NAME	
BUSINESS ADDRESS		BUSINESS ADDRESS	
CITY, STATE, COUNTRY		CITY, STATE, COUNTRY	
ZIP CODE		ZIP CODE	
TELEPHONE NUMBER		TELEPHONE NUMBER	
FAX NUMBER		FAX NUMBER	
E-MAIL ADDRESS		E-MAIL ADDRESS	

1(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS (See § 803.20(b)(2)(iii))

NAME
FIRM NAME
BUSINESS ADDRESS
CITY, STATE, COUNTRY
ZIP CODE
TELEPHONE NUMBER
FAX NUMBER
E-MAIL ADDRESS

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS	LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

2(b) THIS ACQUISITION IS *(put an "X" in all the boxes that apply)*

- ☐ an acquisition of assets
- ☐ a merger (see § 801.2)
- ☐ an acquisition subject to § 801.2(e)
- ☐ a formation of a joint venture or other corporation or unincorporated entity (see § 801.40 or § 801.50)
- ☐ an acquisition subject to § 801.30 (*specify type*)
- ☐ a consolidation (see § 801.2)
- ☐ an acquisition of voting securities
- ☐ a secondary acquisition
- ☐ an acquisition subject to § 801.31
- ☐ an acquisition of non-corporate interests
- ☐ other (*specify*) _____

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED
(acquiring person only in an acquisition of voting securities)

☐ $50 million (as adjusted) ☐ $100 million (as adjusted) ☐ $500 million (as adjusted) ☐ 25% (see Instructions) (as adjusted) ☐ 50% ☐ N/A

2(d)(i) VALUE OF VOTING SECURITIES ALREADY HELD ($MM)	(v) VALUE OF NON-CORPORATE INTERESTS ALREADY HELD ($MM)	
$	$	
(ii) PERCENTAGE OF VOTING SECURITIES ALREADY HELD	(vi) PERCENTAGE OF NON-CORPORATE INTERESTS ALREADY HELD	
%	%	
(iii) TOTAL VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION ($MM)	(vii) TOTAL VALUE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION ($MM)	(ix) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION ($MM)
$	$	$
(iv) TOTAL PERCENTAGE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION	(viii) TOTAL PERCENTAGE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION	(x) AGGREGATE TOTAL VALUE ($MM)
%	%	$

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

ACQUIRING UPE(S)	ACQUIRED UPE(S)
ACQUIRING ENTITY(S)	ACQUIRED ENTITY(S)

TRANSACTION DESCRIPTION

3(b) SUBMIT A COPY OF THE MOST RECENT VERSION OF THE CONTRACT OR AGREEMENT *(or letter of intent to merge or acquire)*

(DO NOT ATTACH THE DOCUMENT TO THIS PAGE) ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT _____

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 4

PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 *(See Item by Item instructions)*. THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

4(a) ENTITIES WITHIN THE PERSON FILING NOTIFICATION THAT FILE ANNUAL REPORTS WITH THE SECURITIES AND EXCHANGE COMMISSION	CENTRAL INDEX KEY NUMBER

4(b) ANNUAL REPORTS AND ANNUAL AUDIT REPORTS	ATTACHMENT OR REFERENCE NUMBER

4(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS	ATTACHMENT OR REFERENCE NUMBER

4(d) ADDITIONAL DOCUMENTS	ATTACHMENT OR REFERENCE NUMBER

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5

5(a) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY CODE AND BY MANUFACTURED PRODUCT CODE

6-DIGIT INDUSTRY CODE AND/OR 10-DIGIT PRODUCT CODE	DESCRIPTION	YEAR _____ TOTAL DOLLAR REVENUES ($MM)

NONE ☐ *(PROVIDE EXPLANATION)*

NAME OF PERSON FILING NOTIFICATION	DATE

5(b) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY	☐ Not Applicable

5(b)(i) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY HAS AGREED TO MAKE

5(b)(ii) DESCRIPTION OF CONSIDERATION THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL RECEIVE

5(b)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL ENGAGE

5(b)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 10-DIGIT PRODUCT CODE (manufactured)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) HOLDERS OF PERSON FILING NOTIFICATION

6(c)(i) HOLDINGS OF PERSON FILING NOTIFICATION

6(c)(ii) HOLDINGS OF ASSOCIATES *(ACQUIRING PERSON ONLY)*

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 7

OVERLAP DOLLAR REVENUES

7(a) 6-DIGIT NAICS INDUSTRY CODE AND DESCRIPTION

7(b)(i) LIST THE NAME OF EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

7(b)(ii) LIST THE NAME OF EACH ASSOCIATE OF THE ACQUIRING PERSON THAT ALSO DERIVED DOLLAR REVENUES (*ACQUIRING PERSON ONLY*)

7(c) GEOGRAPHIC MARKET INFORMATION FOR EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

7(d) GEOGRAPHIC MARKET INFORMATION FOR ASSOCIATES OF THE ACQUIRING PERSON (*ACQUIRING PERSON ONLY*)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 8

PRIOR ACQUISITIONS *(ACQUIRING PERSON ONLY)*

CERTIFICATION

This **NOTIFICATION AND REPORT FORM,** together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)	TITLE
SIGNATURE	DATE

Subscribed and sworn to before me at the

City of _____, State of _____ [SEAL]

this _____ day of _____, the year _____

Signature _____

My Commission expires _____

16 C.F.R. Part 803 – Appendix NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS	Approved by OMB 3084-0005 Expires xx/xx/20xx

Attach the Affidavit required by § 803.5 to the Form.

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $16,000 for each day during which such person is in violation of 15 U.S.C. §18a.

Pursuant to the Hart-Scott-Rodino Act, information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 37 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office, H-303, Federal Trade Commission, Washington, DC 20580
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

Under the **Paperwork Reduction Act**, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears above.

Privacy Act Statement--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $16,000 per day. We also may be unable to process the Form unless you provide all of the requested information.

This page may be omitted when submitting the Form.

By direction of the Commission.

Donald S. Clark
Secretary

[FR Doc. 2010–23079 Filed 9–16–10; 8:45 am]
BILLING CODE 6750–01–C

Federal Register

Friday,
September 17, 2010

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 606

Federal-State Unemployment Compensation Program; Funding Goals for Interest-Free Advances; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 606

RIN 1205–AB53

Federal-State Unemployment Compensation Program; Funding Goals for Interest-Free Advances

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the United States Department of Labor (Department) issues this final rule to implement Federal requirements conditioning a State's receipt of interest-free advances from the Federal Government for the payment of unemployment compensation (UC) upon the State meeting "funding goals, established under regulations issued by the Secretary of Labor." This final rule requires that States meet a solvency criterion in one of the 5 calendar years preceding the year in which advances are taken; and to meet two tax effort criteria for each calendar year after the solvency criterion is met up to the year in which an advance is taken.

DATES: *Effective date:* This final rule is effective October 18, 2010.

FOR FURTHER INFORMATION CONTACT: Ron Wilus, Chief, Division of Fiscal and Actuarial Services, Office of Unemployment Insurance, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; telephone (202) 693–3029 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The preamble to this final rule is organized as follows:

I. Background

UC generally is funded by employer contributions (taxes) paid to a State. The State, in accordance with section 303(a)(4) of the Social Security Act (SSA) (42 U.S.C. 503(a)(4)) and section 3304(a)(3) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(3)), deposits these contributions immediately upon receipt into its account in the Unemployment Trust Fund (UTF) maintained by the U.S. Treasury. Section 1202 of the SSA (42 U.S.C. 1322) permits a State to obtain from the Federal Government repayable advances to this account to pay UC when the State account reaches a zero balance. These advances are interest-bearing, except for certain short-term advances, which are called cash flow loans. Under section 1202(b)(2) of the SSA (42 U.S.C. 1322(b)(2)), these short-term advances are interest-free if:

(1) The advances made during a calendar year are repaid in full before the close of September 30 of the same calendar year;

(2) No additional advance is made during the same calendar year and after September 30; and,

(3) The State meets funding goals relating to its account in the UTF, established under regulations issued by the Secretary of Labor (Secretary).

The Balanced Budget Act of 1997 (Pub. L. 105–33, section 5404) added the third requirement, that is, that the State meet funding goals established under regulations by the Secretary. This statutory requirement is implemented in this final rule.

State UC programs, created in the 1930s, were intended to be self-financing social insurance programs that levied payroll taxes on covered employers and paid benefits to eligible unemployed workers. A primary goal of the program was to act as an automatic stabilizer for the economy, by automatically injecting needed income support during recessionary periods and delaying tax increases. This is accomplished by building trust fund reserves during expansionary periods and using the reserves as a cushion to finance benefit payments during recessions. However, to acquire and maintain levels of reserves that would guarantee all legitimate claims are paid can be prohibitively costly. In the case of the UC program, employers largely pay the taxes (employees may also pay in three States) and paying more in taxes means employers experience increased costs. As a result, employers may have less money available to grow their businesses and add jobs to the economy. Therefore, to satisfy financing needs and fulfill the primary goal of stabilizing the economy in recessions, the UC program is designed to build and maintain State UC reserves at a level that will ensure funds are available to pay benefits during average recessions while not building reserves so high as to impede economic growth. *Report of the Committee on Economic Security: Hearings on S. 1130 Before the Senate Committee on Finance,* 74th Cong., 1st Sess. (1935).

States have wide latitude in determining how to provide for increases in UC benefits. Generally, there are three methods of doing this: (1) Forward funding, whereby the State builds up its fund balance in anticipation of increased outlays; (2) pay-as-you-go financing, whereby taxes are raised as needed to cover benefits; and (3) deficit financing where a State uses alternative funds to pay UC. Most States use a combination of these methods.

This final rule encourages States to improve their level of forward funding. Forward funding as a method of financing UC began deteriorating in the early 1990s. A steady decline in UC tax rates since then resulted in a measurable deterioration in the level of State UTF account balances. Following a mild recession in 2001, nine States depleted their UC reserves and were forced to take advances to pay UC. At the end of 2007, following more than 6 years of economic expansion, State UTF account balances, on average, stood at approximately 5 months of average recessionary benefits, a historically low level for that period in a cycle.

Forward funding of State UC programs is desirable because taking large advances can result in undesirable State actions. Such actions might include lowering benefits, increasing taxes, or a combination of both, at a time when neither employers nor UC beneficiaries are best able to cope with the consequences. Obtaining advances can also create difficult political decisions for a State. For example, if the advance results in interest coming due, a State must finance the interest payment from a source other than the regular UC tax. Therefore, maintaining solvent State UTF accounts is in the best interest of all involved. This rulemaking will encourage each State to maintain solvent UTF accounts by conditioning interest-free advances upon the State having met funding goals established under section 1202(b)(2)(C) of the SSA.

II. General Discussion of the Rulemaking

On June 25, 2009, the Department published a notice of proposed rulemaking (NPRM, at 74 FR 30402, Jun. 25, 2009) proposing, consistent with the statutory direction to the Department, regulations establishing "funding goals * * * relating to the accounts of the States in the [UTF]," that States must meet as a condition of an interest-free advance. The Department explained in the NPRM that the purpose of the

funding goals requirement added by the Balanced Budget Act of 1997 was to provide an incentive for States to build and maintain sufficient reserves in their UTF accounts by restricting an existing Federal subsidy, in the form of an interest-free advance, to only those States that meet a forward funding solvency goal. The NPRM also explained that by restricting the subsidy, Congress hoped to encourage States to build cash reserves in order to adequately prepare for economic downturns. To meet the statutory requirement and its purpose of encouraging States to maintain sufficient balances in their UTF accounts to cover UC benefits in the event of a recession, the NPRM outlined three possible solvency approaches. All three approaches encouraged maintenance of adequate reserves.

The approach selected in the NPRM had two prongs. The first prong required a State to meet a measure of UTF account adequacy, recommended by the Advisory Council on Unemployment Compensation (Advisory Council) (created by the Emergency Unemployment Compensation Act of 1991), in at least one of the 5 calendar years before the calendar year in which the advance was obtained. This prong assured that the State had made sufficient efforts to obtain solvency before the need for the advance. The second prong required that the State meet two tax effort criteria for each year after the solvency criterion is met up to the year in which the advance was obtained. This prong assured that the State made reasonable efforts through its taxing authority to maintain solvency, even though, despite these efforts, the State needed an advance to pay benefits. In short, a State must achieve fund solvency and have maintained its tax efforts, which satisfies the statutory direction to the Department to establish funding goals for a State's UTF account as a condition of receiving the benefit of an interest-free advance. While not a mandate on the States, these funding goals, consistent with Congressional intent, encourage the States to build and maintain adequate solvency levels during economic expansions, and maintain tax effort, before obtaining an interest-free advance.

The NPRM proposed amending 20 CFR part 606. More specifically, the Department proposed amending § 606.32 by re-designating existing paragraph (b) as paragraph (b)(1) and adding new paragraphs (b)(2) through (b)(5) to establish the funding goals required by the SSA. Paragraph (b)(2)(i) set forth the first prong of the requirement, that the State, as of December 31 of any of the 5 calendar years preceding the calendar year in which the advance was taken, had an average high cost multiple (AHCM) of at least 1.0. Paragraph (b)(2)(ii) set forth the second prong, requiring the State to maintain tax effort with respect to the years between the last year the State had an AHCM of at least 1.0 and the year in which the advance was taken. Paragraph (b)(3) explained the calculation of the AHCM, based, in part, upon the calculation of the average high cost rate, as provided by paragraph (b)(4).

For any year, the AHCM consists of two ratios:

(1) The "reserve ratio" — The balance in a State's UTF account on December 31 divided by total wages paid to UC-covered employees during the 12 months ending on December 31; and,

(2) The "average high cost rate (AHCR)" —The average of the three highest values of: Benefits paid during a calendar year divided by total wages paid to UC-covered employees during the same calendar year over whichever period is longer, either the most recent 20 years or the period covering the most recent three recessions.

The AHCM is computed by dividing the reserve ratio by the AHCR. The resulting AHCM represents the number of years a State could pay UC benefits at a rate equal to the AHCR, without collecting any additional UC taxes.

Paragraph (b)(5) set forth the details of the maintenance of tax effort requirement: A State has maintained tax effort if, for every year between the last calendar year in which it attained an AHCM of 1.0 and the calendar year in which it obtained the advance, the State's unemployment tax rate as defined in § 606.3 for each of the specified years was at least:

1. Eighty percent of the prior year's rate; and,

2. Seventy-five percent of the average benefit-cost ratio over the preceding 5 calendar years, where the benefit-cost ratio for a year is defined as the amount of benefits and interest paid in the year divided by the total covered wages paid in the year.

The first criterion assures that the State maintained its tax effort by not allowing employer contributions, that is, tax revenue, to decline unduly. The second criterion assures that the State maintained its tax efforts by keeping employer contributions at a reasonable proportion of UC paid, which assures that the State's tax structure is sufficiently functional to generate adequate revenue to cover a reasonable percentage of the 5-year average costs. Thus, the two criteria together assure that the State meets the maintenance of tax effort goal by both maintaining revenue and assuring that that revenue is reasonably adequate to finance benefits.

In the NPRM, the Department also proposed amending the definition of benefit-cost ratio in § 606.3. Previously, this definition applied only for purposes of the cap on tax credit reductions under section 3302(f) of the FUTA (26 U.S.C. 3302(f)). The Department proposed deleting the reference to the cap, thereby making the definition applicable to the funding goals as well. The Department similarly proposed amending the definition of "State 5-year average benefit-cost ratio" at § 606.21(d), so that it also applies to the funding goals as well as the cap. Determining whether a State has met the maintenance of tax effort criteria involves the application of both definitions.

Finally, in the NPRM, the Department also solicited comments on its proposal to apply the funding goals 2 years after publication of the final rule to allow States time to adjust their financing systems. NPRM, at 74 FR 30406, Jun. 25, 2009; *See also http://www.regulations.gov/search/Regs/home.html#docketDetail?R=ETA-2009-0002*, Docket ID: ETA–2009–0002 (analysis of simulations applying solvency approaches discussed in NPRM).

Overview of the Comments Received on the NPRM

The Department received eleven unique comments in response to the NPRM: all but one were from State UC agencies.

The issue most frequently raised in the comments concerned the Department's proposal to apply the funding goals 2 years from publication of the final rule. Most commenters urged the Department to delay applicability due to the recession. In response to these comments, the Department has decided to delay and phase-in the funding goals requirement.

Several commenters also addressed the details of the solvency and maintenance of tax effort criteria. Some commenters offered modest support of the Department's proposed rulemaking objective. In addition, some commenters sought additional stakeholder collaboration before a final approach was determined. A few commenters suggested that the Department avoid "penalizing" States that have demonstrated reasonable efforts to obtain solvency. One commenter challenged the Department's authority to promulgate funding goals regulations. Some commenters requested that the

Department make available waivers from the funding goals requirement.

The Department read and carefully considered all of the comments in the process of developing this final rule. The substantive issues raised by the comments that are germane to the rule are responded to below. Other than the changes related to the phase-in of the funding goals, the Department makes no substantive change from what it proposed in the NPRM.

Timing of Rule Applicability

The most significant change to the rulemaking relates to the Department's intention to make the funding goals effective two years after publication of the final rule. In general, commenters argued that since the United States has experienced an economic downturn of historic proportion, now is not the time to require States to build and maintain sufficient reserves in their UTF accounts. Some of these commenters noted that the proposed 2-year timeframe for applicability was not sufficient for the States that have gone into debt due to the current recession. As one commenter stated, "[t]he majority of [S]tates are dealing with record high benefit levels and immediate or near-future insolvency * * *. Implementing this new requirement will seriously hamper [their recovery] process." Another commenter contended that the solvency goal "is not reasonably attainable to a large number of [S]tates that currently have negative balances in their funds."

Several commenters requested that the Department delay implementation of the funding goals requirements, with one commenter suggesting that the new funding goal requirements be delayed indefinitely in light of the length and severity of the current recession. One commenter suggested a delay of 5 years after the end of the current recession in the rule implementation, while another commenter suggested the funding goals should be implemented in 2017. Commenters also noted that section 2004 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) waived all interest on advances during the period February 17, 2009, through December 31, 2010, and provided that no interest accrues on any advance during this period. They argued that this Act recognizes the need for a delay in the timing of the funding goal requirement. One commenter urged an extension of the existing waiver of interest on UTF account advances until 2011. Commenters also recommended that the solvency criterion, in particular, be phase-in over a period of time.

The Department has carefully considered these comments and recognizes that the current recessionary environment has greatly stressed States' ability to meet their UC funding obligations. While the Recovery Act's interest provisions will help the States, the Department also recognizes that States needing access to interest-free advances after this statutory provision expires may not meet the measure of UTF account adequacy established by this rulemaking within the proposed 2-year timeframe. Therefore, the Department has decided to delay and phase-in implementation of the funding goals requirement.

The Department has decided to delay application of the funding goals requirement until 2014, and to phase-in the solvency criterion thereafter. No funding goals requirement for an interest-free advance will apply through calendar year 2013. Starting in 2014, the maintenance of tax effort criteria will apply, as will a solvency criterion of 0.50 AHCM. The AHCM requirement will then increase by one-tenth each year until it reaches the 1.00 requirement in 2019. (As explained below, the NPRM proposed an AHCM of 1.0, but the final rule adopts an AHCM of 1.00. The distinction is relevant for rounding.)

In response to these comments, the Department chose to begin phasing in the funding goals requirement in 2014. Commencing application of the funding goals requirement in 2014 will give States more than a year of additional time to prepare for the requirement beyond what they would have under the 2-year application timeframe proposed in the NPRM. The Department decided to delay the application of the funding goals requirement in recognition that there will be a continued period when States will attempt to recover from a recession in the midst of unusually high unemployment. The Department's approach provides States additional time to repay advances and to build sufficient reserves to meet the requirement for an interest-free advance.

Phasing in the solvency requirement will also make this goal reasonably attainable, thus addressing one commenter's concern. Although the Department remains committed to the eventual application of the 1.00 AHCM solvency criterion, it recognizes that the effects of the current recession remain and so it will allow access to interest-free advances in 2014 to States with an AHCM of only 0.50 in at least one of the preceding 5 years. By then, the economy should be well into an expansionary period. Phasing in the AHCM also will provide States more severely impacted by the recession additional time to repay advances and build sufficient reserves to meet the requirement for an interest-free advance. Further, by increasing the solvency criterion by 0.10 a year, the Department intends to continue to provide the benefit of interest-free advances to those States that are actively pursuing forward funding their UTF accounts but which cannot yet attain an AHCM of 1.00. By 2019, the lingering effects of the current recession will have abated sufficiently to make it reasonable for the Department to apply the full solvency criterion.

While the Department's decision to delay implementation of the funding goals requirement provides States time to restore their finances, it also should encourage States to be more aware of the need to build cash reserves in order to adequately prepare for future economic downturns. Financing UC by the use of forward funding is a basic UC program goal. Forward funding allows a State to avoid the need to obtain advances as well the need to increase taxes or cut benefits when the economy is weak. Notably, several commenters supported the concept of a funding goal that builds UTF account solvency and tax effort maintenance goals into the UC system, with the caveat that sufficient time be provided for States to implement the proposed goals after the end of this current recession.

While the UTF account solvency measure will be phased-in over a 5-year period, the maintenance of tax effort goal begins in 2014. As the Department explained in the NPRM, it is important to maintain an adequate UTF account balance over the length of a business cycle rather than at just one point in time, in order to reduce the need for States to obtain advances. If the maintenance of tax effort criteria were not included, a State might reduce taxes too sharply during a period of economic expansion, which would likely leave the State to rely on advances from the Federal government during a recessionary period.

As States move away from a pay-as-you-go funding goal approach and toward forward funding their UC programs, the Department encourages States not to freeze, restrict eligibility, or precipitously lower UC benefits. These actions would reduce the UC program's economic stabilization effect during recessionary periods and clearly would have a negative impact on the ability of unemployed workers to support themselves and their families.

Many commenters acknowledged the need to maintain and restore solvency in their accounts to adequately prepare for the next economic downturn; to

avoid the negative consequences of obtaining advances; and to restore the UC program to its forward funding nature. The funding goals requirement will help satisfy the legislative goal (as described in House Report No. 105–149, June 24, 1997, on the original House bill) to "encourage States to maintain sufficient unemployment trust fund balances to cover the needs of unemployed workers in the event of a recession."

In reviewing these comments, the Department realized that denoting a solvency goal that is rounded to the nearest tenth (0.1) does not reflect the established procedures for rounding the Department has adhered to when measuring the AHCM to assess trust fund adequacy. The Department has historically adhered to an established policy that carries out final calculations for the AHCM to the nearest hundredth (0.01) as demonstrated in the simulation analysis discussed in the NPRM and included in the rulemaking docket. This policy and changes made to the definitions in § 606.3 to reflect the Department's rounding procedures are explained in detail below. Accordingly, in this final rule and as appropriate in this preamble and as explained more fully below, references to the AHCM will be expressed in hundredths to reflect the Department's established rounding procedures. In addition, the Department modified § 606.32(b) to reflect the delay and phase-in of the funding goals requirement. The Department added a sentence to what is now the permanent funding goals requirement at paragraph (b)(2), stating that the paragraph is effective January 1, 2019. The Department also added a new paragraph (b)(3) to address the phase-in of the funding goals requirement. Paragraph (b)(3) states what AHCM will be required for each calendar year between 2014 and 2018. Paragraph (b)(3)(i) provides the phase-in of the solvency criterion. Paragraph (b)(3)(ii) covers the tax maintenance criteria, which become effective in 2014. The historical simulation analysis cited in the NPRM is still applicable for estimating the impact of the funding goals once the program is fully implemented. The phase-in of the solvency criterion does not change that analysis.

Solvency and Maintenance of Tax Effort Criteria

The Department received several comments about the solvency and tax maintenance criteria.

Some commenters addressed the proposed solvency criterion of a 1.0 AHCM; a few commenters suggested that this level was too high. One commenter suggested that, "as a practical matter, the requirement would foreclose the possibility of cash flow loans for many, if not all, of the largest [S]tates." This commenter further contended that a 1.0 AHCM is a "luxury" that many States will not be able to afford given the "virtually unlimited demands" facing State governments. Another commenter argued that a 1.0 AHCM would result in unnecessarily high reserves; maintaining that much money in the UTF account would be bad for local economies by diverting funds from those economies into a Federal account where the money is "not needed and not used, for decades."

The Advisory Council recommended using a 1.0 AHCM as a measure of solvency in its report to Congress in 1996. The Advisory Council's recommendation was made to encourage States to avoid obtaining large advances and incurring the risk of having to reduce benefits and raise taxes during the early years of a recovery. The Department conducted simulations to determine the effects of applying the funding goals on a State's eligibility for an interest-free advance. The simulations were discussed in the NPRM. The analysis revealed that a 1.00 AHCM (using the Department's established rounding procedures) as a measure of trust fund adequacy best satisfied the legislative goal of encouraging States to maintain adequate reserves to pay benefits during recessionary time while being a realistic and obtainable measure for States.

In the analysis discussed in the NPRM (NPRM, at 74 FR 30406, Jun. 25, 2009), the Department created a set of annual State data from 1967 through 2007, and then examined borrowing over the period 1972 through 2007. (*http://www.regulations.gov/search/Regs/home.html#docketDetail?R=ETA-2009-0002*, Docket ID: ETA–2009–0002). The results from the Department's simulation analysis determined that any of the three funding goal approaches proposed in the NPRM would make it more difficult for States with problematic financing systems to receive an interest-free advance. Going into a recession with an AHCM of at least 1.00 does not guarantee that a state will not need advances at some point. However, the analysis concluded that States that achieved an AHCM of 1.00 going into a moderate recession are less likely to need to obtain an advance during or after the recession than other States. For example, entering the 2001 recession, 28 States had achieved an AHCM of 1.00 and only one of those States received an advance during or after the recession. Additionally, during the recessionary periods from 1974–2001, only 14 percent of States that entered the recession with an AHCM of 1.00 received an advance during or after the recession whereas 60 percent of the States that entered those recessionary periods with an AHCM below 1.00 received an advance.

Before the current recession, nineteen States had already met the 1.00 AHCM criterion with an additional two States having AHCMs above 0.95 for which little or no action would have been necessary to meet the criterion. Some States with lower AHCMs perceive a low risk of borrowing either because they have responsive tax systems or low unemployment projections, while other States prefer keeping their UC taxes low to spur further economic growth and such States are not likely to take action to meet the solvency criterion. For the States that might take action, achieving the solvency criterion would involve varying degrees of tax changes depending on how quickly achievement of the criterion is desired. With proper adjustment to their funding mechanisms, tax increases would only be in place until appropriate UTF account balances reflecting the solvency criterion are met. Only a few States are likely to take action to achieve the solvency criterion and any action is likely to involve temporary, modest increases to a tax that is relatively low.

Therefore, the Department will implement an AHCM solvency criterion of 1.00.

Raising a related issue, one commenter suggested a "pay-as-you go" approach that would include a measure of solvency of 50 percent of a State's average high cost of benefits. Using a solvency level of 50 percent of the average high cost of benefits would be similar to using a 0.50 AHCM. However, forward funding of State benefits is needed in order for the UC program to act as a stabilizer for the economy. The funding goals requirement was enacted by Congress in the Balanced Budget Act of 1997 to encourage States to adequately forward fund their UC program and not rely on a "pay-as-you-go" system. The Department does not consider a solvency criterion of a 0.50 AHCM an adequate level of forward funding because, at this level of reserves, there is a high probability that the State will need to take advances during a recession. Historical data shows that on average 63 percent of the States that entered the last five recessions with an AHCM of 0.50 had to take advances to pay UC. However, of the States that entered those recessions

with a 1.00 AHCM, only 25 percent on average have taken advances. For these reasons, the Department will not adopt the commenter's suggestion.

The Department disagrees with the comment that it is difficult for large States to achieve the AHCM solvency goal; larger States will have the same relative degree of difficulty in meeting this goal as smaller States. Many large States do have smaller balances when considered in relation to the wages subject to UC taxes, but that is primarily due to deteriorating tax structures in those States rather than a result of the State's size. While large States should obviously have higher dollar amounts in their UTF accounts than smaller States, when viewed in relation to the wages being taxed there is no correlation between the size of a UTF account balance and the size of a State. That is, the measure of an adequate UTF balance is based on the average level of past high payouts in the State. A larger State will have paid out more benefits, but will also have collected taxes on more wages.

In a related point, a commenter suggested that rather than promulgating one solvency goal for all States, the Department should "set goals for individual [S]tates based on their existing status and showing improved solvency over a period of time." The Department declines to adopt this suggestion, for several reasons. First, both the solvency and the maintenance of tax effort goals are structured and intended to prepare States to be able to pay the expected UC outlays required by a moderate recession. The Department wants every State to achieve that level of preparedness, and so it makes sense to uniformly apply the criteria to all States. Further, the solvency criterion is defined as a rate, so its very design accounts for variances among States. This is a balanced and fair approach and means that the goal is equally reasonable for any State to achieve. Finally, there are advantages to applying a uniform goal to every State. One advantage is administrative ease, but another is transparency; the factors that enable a State to obtain an interest-free advance will be known and uniform for all States and thus a State's progress in meeting the funding goals can be easily tracked.

In the NPRM, the Department proposed December 31 as the date on which to measure a State's AHCM. One commenter recommended changing to a date after the collection of the first quarter tax revenues (May) because States have higher UTF balances at that time. However, selecting such a date would provide a false reading on the State's financial health; States generally do not sustain that balance over the course of the year. End-of-calendar-year UTF account balances are neither a seasonal high nor low. Accordingly, the Department retains December 31 as the AHCM measuring point.

In the NPRM, the Department proposed a solvency requirement based upon whether a State had an AHCM of 1.0 on December 31 of any of the 5 calendar years preceding the calendar year in which the advance was taken. The same commenter recommended using the last 7 years before the advance instead of the last 5 years for the time period used to determine achievement of the solvency criterion. The Department selected a period of 5 years because it is a reasonable balance between a lengthy period for deterioration in a State's solvency level and allowing insufficient time for the unpredictable arrival of the next recession. Specifically, choosing a period longer than 5 years would allow a prolonged period of possible tax reductions, which might keep the State above the tax maintenance effort limits but would still contribute to a slowly diminishing trust fund solvency level that is inadequate for the next recession. Choosing a period of less than 5 years means less allowance for the normal swings between unexpected benefit payment levels and revenue flows that a state may experience.

Other commenters addressed the maintenance of tax effort criteria. One commenter raised concerns about the second criterion for the maintenance of tax effort goal, which requires the average tax rate in each year after attaining the AHCM of at least 1.00 but before the year in which an advance is taken to be at least 75 percent of the average benefit-cost rate over the preceding 5 years. This commenter objected to this requirement, arguing that the methodology in the criterion is flawed because it is impossible to know in advance when benefit payments are going to spike. In other words, following a large increase in total benefits (due to an economic downturn), even if a State meets the solvency criterion, its average tax rate may still not meet the 75 percent threshold compared to the State's 5-year average benefit-cost ratio because of the increased benefit payout, or spike, during the downturn.

In fact, the Department chose a 5-year period and a 75 percent rate to provide States a generous limit to account for unexpected changes in benefit levels. Using a 5-year average for the benefit-cost ratio will mitigate any 1- or 2-year large increase, or spike, in benefits, making it much easier for the State's tax system to respond. The last several recessions lasted on average about a year, and although unemployment may continue to rise for a short time following a recession, a 5-year average of benefits is still an exceptionally low level for a State's average tax rate to meet.

The Department ran historical simulations (available at *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809ff0d2*) going back to 1967 assuming the funding goal requirements had been in effect, and found that in the vast majority of cases, the only States unable to meet the 75 percent criterion were those that had implemented large tax cuts, not those that had experienced significantly increased benefit outlays.

The same commenter also proposed amending the 80 percent and 75 percent tax rate thresholds in the maintenance of tax effort criteria so that a State would fail to achieve the criteria only if it failed to meet each requirement for 3 consecutive years rather than every year between the last year for which the solvency goal was met and the year in which a potentially interest-free advance is taken, as proposed in the NPRM. The tax maintenance criteria were included in the funding goals requirement specifically to discourage States from implementing large tax cuts after achieving an adequate level of solvency. Historically, a number of States have implemented significant tax cuts for short periods of time, for example 1 or 2 years, which have resulted in significant reductions in their trust fund solvency level. In some instances, States assigned a zero-percent tax rate to a large majority of their employers for the entire year. The 80 percent and 75 percent criteria would allow the States some latitude to reduce their tax effort, but allowing States to avoid the tax effort criteria altogether for 1 or 2 years would undermine the funding goals because of the potential loss of solvency from large, temporary tax cuts. As a result, the Department has determined that it is appropriate to apply the tax effort criteria to every year, as originally proposed.

In the NPRM, the Department described three possible approaches to funding goals. The first approach, the one selected, included the solvency criterion of a 1.0 AHCM and the two maintenance of tax effort criteria. The second possible approach eliminated the maintenance of tax effort criteria from Approach I. The third possible approach included a solvency criterion of a 1.7 reserve ratio and the two maintenance of tax effort criteria. One

commenter suggested that the Department chose the most burdensome of the possible approaches. While Approach I imposes obligations that the commenter considers burdensome, it is the best approach to funding goals. As explained in the NPRM, Approach III would have been roughly as stringent as Approach I. Simulations revealed that approximately the same number of States, though not necessarily the same States, would have qualified for an interest-free advance under Approach III during the period 1972–2007 as qualified using Approach I. The Department selected Approach I over Approach III because the AHCM is a better indicator of a State's ability to pay UC benefits in an economic downturn than the reserve ratio. The Department selected Approach I over Approach II because Approach I included incentives for States to achieve an adequately financed system via the maintenance of tax effort criteria.

Other Issues

The comments raised a variety of other issues.

One commenter suggested that the Department encourage States to amend their laws to achieve solvency in their UTF accounts by linking the FUTA tax credit employers receive to criteria designed to achieve solvency in their UTF accounts, noting that this approach would provide a strong incentive for State legislatures to enact responsible UC tax reforms. The Department cannot adopt this suggestion as it does not have the legal authority to link the FUTA tax credit to a solvency requirement for a State's account in the UTF. Section 3304(a) of the FUTA (26 U.S.C. 3304(a)) sets forth the requirements for approval of State UC laws, which are conditions for the tax credit under section 3302(a)(1) of the FUTA (26 U.S.C. 3302(a)(1)). No requirement in section 3304(a) provides a basis for conditioning employer tax credits upon a State's meeting a solvency requirement.

That being said, the Department does have the authority to condition a State's UC administrative grant upon the State meeting a solvency standard. Section 303(a)(1) of the SSA (42 U.S.C. 503(a)(1)) conditions a State's grant upon its law including provision for "[s]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due * * *." Since an insolvent UTF account could jeopardize the "full payment of unemployment compensation when due," the SSA certainly authorizes the Secretary to prescribe "methods of administration" for maintaining the solvency of that account. Nevertheless, since section 1202(b)(2)(C) of the SSA (42 U.S.C. 1322(b)(2)(C)) explicitly directs the Secretary to promulgate funding goals, that is the proper vehicle for addressing this matter. Accordingly, the Department makes no change in the final rule.

One commenter took the position that mandating solvency goals as a requirement to obtain an interest-free advance may not be an effective mechanism to promote fund solvency. This commenter contended that States that do meet the solvency criterion will not need an advance, while some States cannot even meet the basic requirements for an interest-free advance (the advance is repaid in full by September 30 and no additional advance is made after that date) and so the funding goals requirement provides no real incentive to forward fund their UTF account because those States cannot get an interest-free advance anyway.

The Department disagrees with these comments. Section 1202(b)(2)(C) of the SSA explicitly directs the Secretary to promulgate funding goals regulations as a condition for an interest-free advance, even though the commenter believes that this is not an effective mechanism for promoting solvency. The Department also disagrees with the commenter's contention that this rule will provide insufficient incentive to affect the behavior of many States. During the 2001 recession, all nine of the States that obtained advances took interest-free cash flow loans. The Department is confident that many States will continue to seek these interest-free advances and will be consequently motivated to meet the funding goal.

Also, it is not true that States that do meet the solvency criterion will not need an advance, since a severe recession occurring after a State meets this criterion may result in the State's UTF account becoming insolvent. Nevertheless, the solvency criterion will make it less likely that a State will need an advance, which, of course, is the purpose of this rule.

One commenter recommended a "waiver of the solvency goal when during a downturn or recession in which the benefits cost rates during the downturn are substantially higher than the AHCM standard." The Department interprets this comment to refer to a situation in which benefit costs in the current recession are higher than the historical benefit costs used in calculating the AHCM. The Department believes that no waiver is necessary in this situation. Under the proposed funding goals, a State that builds up a fund balance sufficient to cover a recession equal to the average of past recessions, but then experiences a worse recession and is forced to take advances, would meet the solvency criterion.

Another commenter suggested that "[S]tates that continue to be the hardest hit by recessions" should be eligible for interest-free advances. First, to the extent that this comment is related to the current recession and the 2-year implementation date proposed in the NPRM, the delay and phase-in of the rule should mitigate the commenter's concern. To the extent the commenter is considering future recessions, the funding goals requirement promulgated in this rule is intended to encourage States to prepare for economic downturns. The solvency and tax maintenance effort criteria are designed so that States that meet those criteria are adequately prepared for an average recession.

Another commenter suggested providing a waiver for States that demonstrate reasonable efforts to obtain solvency through changes in State law. As this commenter, a State, detailed its recent actions to obtain solvency, this comment may also relate to the current recession and the 2-year implementation date proposed in the NPRM. To that extent, again, the delay and phase-in of the rule should mitigate the commenter's concern. To the extent this comment relates to potential future efforts by States, such actions would be consistent with, and reflected in, the maintenance of tax effort criteria. This rule is intended to encourage States to make reasonable efforts toward solvency by forward funding their UTF accounts. The reward for doing so is access to interest-free terms for short-term advances, just as the commenter desires.

One commenter argued that the Department's proposed funding goals "go well beyond the authority" of the 'Balanced Budget Act' by prescribing "standards that were never codified in statute" and "[i]n fact, the Congress by deciding in 1997 to drop the solvency standard and timeframe expressly rejected the idea of standards or sanctions." This comment apparently refers to the fact that the original House bill (H.R. 2015, 105th Cong, section 9404 (1997)) specified a solvency standard that was dropped from the enacted law. The commenter also maintained that this rulemaking overvalues the notion of building reserves as a solvency goal. The Department disagrees with both contentions. The Balanced Budget Act of 1997 added section 1202(b)(2)(C) to

the SSA, explicitly requiring the Secretary to issue regulations governing "funding goals * * * relating to the accounts of the States in the [UTF]." Further, the SSA explicitly conditions an interest-free advance upon a State meeting these funding goals. That is exactly what this regulation does. It establishes funding goals that a State account in the UTF must meet as a condition of an interest-free advance.

The original House bill required, for an interest-free advance, that the average daily balance of a State's account "for each of 4 of the 5 calendar quarters preceding the calendar quarter in which such advances were made exceeds the funding goal of such State (as defined in subsection (d))." Subsection (d) defined "funding goal" as meaning "for any State for any calendar quarter, the average of the unemployment insurance benefits paid by such State during each of the 3 years, in the 20-year period ending with the calendar year containing such calendar quarter, during which the State paid the greatest amount of unemployment benefits." The report (H.R. Rep. No. 105–149 (1997)) accompanying the original House bill made clear that the funding goal requirement was a "provision [that] would encourage States to maintain sufficient unemployment trust fund balances to cover the needs of unemployed workers in the event of a recession." Thus, that "funding goal" was clearly a "solvency" standard which a State's account had to meet over a specified period in order for the State to qualify for an interest-free advance.

The enacted legislation deleted the specified "funding goal," but nevertheless required that a State meet "funding goals, established under regulations issued by the Secretary of Labor * * *." Accordingly, the final bill only deleted the particular "funding goal" specified in the House bill, which was a "solvency" requirement, and instead directed the Secretary of Labor to establish "funding goals," that is, a solvency requirement. There is no indication that the House/Senate conference decided that a "funding goal" in the form of a solvency requirement was inappropriate, only that it should be the Secretary, rather than Congress, that determined the "funding goals." As the House Conference Report (H.R. Rep. No. 105–217, at 950 (1997) (Conf. Rep.)) stated, "[t]he conference agreement follows the House bill, with the modification that the Secretary is to establish appropriate funding goals for States." Thus, although the original House bill would have established the funding goal, Congress ultimately decided that the Secretary should select the specific level of reserves necessary. Congress, therefore, did not turn away from a "solvency" requirement; it only turned away from selecting the particular "solvency" requirement itself, and, instead, delegated to the Secretary the determination of the solvency standard. This is precisely what the NPRM proposed.

Further, section 1202(b)(2)(C) of the SSA clearly makes the funding goal a condition of obtaining an interest free advance. The NPRM simply proposed incorporating this condition into the existing regulations setting forth the requirements for an interest-free advance. Accordingly, no change is made to the final rule.

This same commenter also argued that there was no statutory basis for a requirement that a state maintain a specified level of tax effort in order to receive an interest-free advance. The Department again disagrees. Because the maintenance of tax effort criteria are essential components of sound funding goals, the statutory basis for these criteria is the statutory direction to the Secretary to "establish[] under regulations" funding goals "relating to the accounts of the States in the [UTF]." Merely requiring a State to achieve solvency at some point in time before receiving an advance would serve no purpose if the State could thereafter "squander" that solvency by significantly reducing its tax effort. Thus, the maintenance of tax effort and solvency criteria work in tandem to encourage proper management of the State's UTF account.

In the NPRM, the Department stated that, "[t]o the extent States do react and interest-free borrowing is reduced, the policy goal of reducing the subsidy provided by interest-free advances will be achieved." 74 FR 30406, Jun. 25, 2009. One commenter argued that no such policy goal exists because Congress did not mention it in the Balanced Budget Act of 1997. Regardless of whether a reduction in the subsidy provided by interest-free advances was considered by Congress to be a policy goal, the Department is required to promulgate these funding goals regulations which encourage States to forward fund their UTF accounts. A reduction in advances is a likely consequence of improved forward funding.

One commenter argued that the maintenance of tax effort criteria are effectively at odds with the experience rating aspect of the UC system. The Department disagrees. The tax maintenance criteria do not restrict a State's ability to award reductions in tax rates based on an individual employer's experience with layoffs. The criteria place a limit on the State's overall tax rate reduction once a State has achieved an adequate trust fund balance. A State may still individually assign any distribution of rates it desires. In fact, the tax maintenance limits were made intentionally low to avoid the possibility that in any one year the movement of employers within the existing range of rates of any State's effective tax schedule would affect the level of tax effort and cause a State to fall below the limit.

A commenter also contended that, if States do not satisfy the criteria, they will be subject to sanctions without recourse. As an initial matter, the Department disagrees with characterizing the requirement that a State pay interest on an advance as a "sanction," when, in fact, paying interest is the norm. The SSA requires that interest be paid on all advances and then provides incentives for States to obtain interest-free advances, which is a significant benefit. Failure to meet the conditions under which this benefit is offered is not a sanction. Additionally, the SSA does not provide a process for a State to challenge the denial of an interest-free advance, which is why the Department did not create such a process through regulations. A State seeking recourse could challenge funding goals determinations through other legal processes.

The same commenter suggested measuring each State's solvency effort against its own history. The AHCM is calculated using State data to determine the adequacy of its UTF account. This measure takes the current balance of a State's account in the UTF and compares it to its own benefit payout history in order to derive the length of time the current account balance would last under an average recession in that State. Thus, the rule accords with the suggestion, and the Department makes no change in the final rule.

This commenter also suggested that the Department reward States that have made meaningful progress toward solvency with additional administrative grant funding. Congress thought that the way to promote solvency is to establish funding goals, as required by section 1202(b)(2)(C) of the SSA, which established the mechanism for encouraging States to achieve funding goals. Accordingly, the Department does not adopt this suggestion.

A commenter argued that placing any further conditions on obtaining interest-free advances might result in a State not qualifying for one, which would impose interest costs on the State. The commenter further argued that meeting

those costs might reduce the amount of money available for the payment of benefits. In fact, the funds in a State's trust fund account may only, with exceptions not relevant here, be used to pay for UC (section 3304(a)(4) of the FUTA; section 303(a)(5) of the SSA), and may not, therefore, be used to pay interest costs, so the payment of interest would not, at least directly, reduce funds available for the payment of benefits. Nevertheless, the Department may not decline to impose funding goals because they might result in interest costs, since section 1202(b)(2)(C) of the SSA requires that the Secretary establish them by regulation.

Some commenters sought more involvement in the development of a funding goal approach. The Department believes that it provided stakeholders ample opportunity through the rulemaking process to provide reasonable alternatives to the funding goal approach selected by the Department. These commenters did not provide an alternative solvency goal for the Department to consider; therefore, the Department will not further delay this rulemaking.

A few commenters suggested that the Department's proposed funding goals requirement failed to adequately account for or appreciate the action(s) that some States have taken to maintain solvency. To the extent that this comment relates to the effects of the current recession, the delay and phase-in of this rule should mitigate the commenters' concern. Viewed more globally, the Department agrees that the funding goals ought to take into account what actions a State has undertaken to achieve and/or maintain solvency; this rule has been designed to do exactly that. The solvency criterion indicates whether a State has put sufficient funds in its UTF account to cover expected outlays during a recession. The maintenance of tax effort criteria indicate the adequacy of a State's tax structure. As both funding goals directly reflect State action(s), the Department has determined that the rule adequately accounts for State actions aimed at improving solvency.

One commenter also took issue with the Department's assertion, which the commenter found in the supporting and related materials (available at *http://www.regulations.gov/search/Regs/home.html#docketDetail?R=ETA-2009-0002)* that States have "misuse[d]" the system. The commenter appears to be referring to the sentence in the Impact Analysis that one advantage of this rule is "stemming the possibility of misuse of the current system by taking an interest-free advance and repaying it with funds from other sources, thereby avoiding the payment of interest on the use of federal funds." The commenter argues that since this is permitted under Federal law, it is not a misuse.

Although these actions are legally permissible, the SSA requires the Secretary to establish funding goals under regulations. To the extent that a State receives advances in the January to September period and repays by the September 30 deadline with funds from a non-UC source, but fails to actually improve its solvency, the system is not functioning in accordance with the obvious intent of section 1202(b)(2)(C) of the SSA. These funding goals will, of necessity, prevent a State from using the interest-free terms of the short-term advance to avoid confronting and addressing the underlying lack of solvency in the State's UTF account. It is a benefit that this rule may deter such behavior in the future, because a State will have to have made real efforts to obtain solvency to avoid interest.

Clarifying and Technical Corrections

We made several clerical and technical corrections to the regulations. These changes are intended to add clarity and accuracy but do not change the meaning or intent of the regulation.

We made several changes to § 606.3. Since the "Calculation of AHCM" and "Calculation of the AHCR" are definitions, they were moved from § 606.32(b)(3) and (4), where they respectively appeared in the NPRM, to § 606.3. "Definitions." The words, "Calculation of" were removed from the headings of those paragraphs and acronyms for these terms spelled out.

We added a definition for the reserve ratio to § 606.3. We also modified the definition of the AHCM to explain that it is calculated by dividing this reserve ratio by the AHCR and to include rounding to the nearest multiple of 0.01. Adding a definition for the "reserve ratio" to § 606.3 and using this term to describe the calculation of the AHCM is more accurate and consistent with the preamble discussion. In the NPRM, we described the AHCM as consisting of two ratios: The "reserve ratio" divided by the "average high cost rate (AHCR)." We described the "reserve ratio" as the balance in a State's UTF account on December 31 divided by total wages paid to UC-covered employees during the 12 months ending on December 31. However in § 606.32(b)(3) of the NPRM, we defined the calculation of the AHCM as: "The State's AHCM as of December 31 of a calendar year is calculated by: (i) Dividing the balance in the State's account in the Unemployment Trust Fund as of December 31 of such year by the total paid to UC covered workers during such year; and (ii) Dividing the amount so obtained by the State's average high cost rate (AHCR) for the same year." The first ratio defined in § 606.32(b)(3)(i) was not identified as the "reserve ratio." In the NPRM, we noted that this rulemaking would "be based on established concepts and measures such as the reserve ratio and the average high cost multiple that are commonly used by DOL, State offices, and researchers to assess trust fund account adequacy." Adding a definition for the "reserve ratio" and referencing the "reserve ratio" as the first of the two ratios used to calculate the AHCM ensures that these established concepts and measures are reflected in this rulemaking. The reserve ratio is rounded to the nearest multiple of 0.01. The calculation of the AHCM remains unchanged. These revisions do not substantively change this rulemaking.

We also changed the definition for the Average High Cost Rate to ensure consistency with the preamble language that uses the term "average" instead of "mean" for the final calculation of the AHCR. In the NPRM, § 606.32(b)(4)(iii) read "calculate the mean of the three highest ratios from paragraph (b)(4)(ii) of this section and round to the nearest multiple of 0.01 percent." This has been revised in § 606.3 to read "Average the three highest calendar year benefit cost ratios for the selected time period from paragraph (b) of this section. Final calculations are rounded to the nearest multiple of 0.01 percent." The calculation of the AHCR remains unchanged. This is not a substantive change to the rulemaking.

We removed the paragraph designations in § 606.3 (Definitions) and added, in alphabetical order, definitions for Average High Cost Multiple (AHCM), Average High Cost Rate (AHCR), and "Reserve Ratio". In subparts A and C of §§ 606.3 and 606.2 through 606.22, we removed the references of § 606.3(c), (f), (j), (k), and (l) and added in their place references to § 606.3.

In the NPRM, we changed the definition of "benefit-cost ratio" by removing the phrase "for cap purposes." The existing part 606 regulations, in addition to setting forth the conditions for interest-free advances, implement Federal provisions governing the "capping" of the reduction in the credits against the Federal unemployment tax where a State does not timely repay an advance. Eliminating this phrase makes clear that the definition applies to the funding goals provisions of part 606, in addition to the "cap purposes" of part 606. The benefit-cost ratio is also

rounded to the nearest multiple of 0.01 percent when calculated for funding goal purposes; however, for cap purposes, final calculations are rounded to the nearest multiple of 0.1 percent as required by FUTA section 3302(f)(5)(E).

In the NPRM, we used the following heading for § 606.21(d), "State five-year benefit-cost ratio." In keeping with conventions governing Government printing, the heading now reads, "State 5-year average benefit-cost ratio." Similarly, we changed the reference within that section from "five preceding calendar years" to "5 preceding calendar years." We also added two hyphens to the section, each between "benefit" and "cost."

We made several technical changes to § 606.32. We moved the heading "Cash flow loans" from paragraph (b)(1)(i) to paragraph (b), and added the heading, "Availability of interest-free advances" to paragraph (b)(1). We moved to paragraph (b)(1) the first word and last phrase of the sentence that appeared in the NPRM in paragraph (b)(1)(i) so that paragraph (b)(1) now reads, "[a]dvances are deemed cash flow loans and shall be free of interest provided that:". For clarity, paragraphs (b)(1)(i)–(iii) have become explicit conditions a State must meet to avoid interest on the cash flow loan; the language for those paragraphs is drawn from what appeared in the NPRM as the first half of the sentence in paragraph (b)(1)(i), paragraphs (b)(1)(i)(A) and (B), and paragraph (b)(1)(ii).

We added the word "requirement" to paragraph (b)(2) of § 606.32, after the words, "funding goals," for clarity. In paragraph (b)(2)(i), we moved the words, "[t]he State" from the middle to the beginning of the sentence for clarity and to be consistent with paragraph (b)(2)(ii). Also in paragraph (b)(2)(i), we added the word, "consecutive" between the "5" and "years," again for clarity. In paragraph (b)(2)(ii), after the sentence begins with, "[t]he State maintained tax effort," we deleted the phrase, "with respect to the years between the last year the State had an AHCM of 1.00 and the year in which the advance or advances are made," because repeated information in the "maintenance of tax effort" paragraph (now paragraph (b)(4)).

We added the word, "criteria" after "[m]aintenance of tax effort" in the heading of what used to be paragraph (b)(5) but is now paragraph (b)(4). Also in paragraph (b)(4), we rephrased the opening sentence for clarity and accuracy. Most notably, we removed the word "not" which had appeared between "is" and "at least." The preamble to the NPRM correctly described the maintenance of tax effort criteria but the word "not" was inadvertently used in the NPRM regulatory text. Also, in the NPRM, we mistakenly included the word "any" between the words, "for" and "year;" that is corrected to now read, "for every year," which is consistent with how the preamble to the NPRM described the maintenance of tax effort criteria.

Due to these changes, we have renumbered and re-lettered the affected paragraphs of the rule. We also adjusted references to all relocated provisions throughout this rule.

Rounding Procedures

As we noted earlier in this preamble, we have changed the way we denote the AHCM to reflect the actual level of precision used to examine the proposed solvency goal in the NPRM. The simulation analysis, included in the NPRM and the rulemaking docket, assessed the solvency goal using an AHCM that was computed to the nearest hundredth (0.01). The simulation analysis, which examined the three possible solvency approaches outlined in the NPRM, used a set of annual State data from 1967 through 2007, and then examined borrowing over the period 1972 through 2007. The AHCM data used to determine eligibility for an interest-free advance in this analysis was calculated to the nearest hundredth (0.01).

In addition, quarterly financial reports on State-reported unemployment insurance data, which have been published by the Department on its Web site for more than a decade, reported a State's AHCM to the nearest multiple of 0.01. These quarterly reports can be found at *http://www.ows.doleta.gov/unemploy/content/data.asp*.

The AHCM as a measure of solvency was recommended by the Advisory Council. The Advisory Council recommended that States accumulate reserves sufficient to pay at least one year of benefits. This level of reserves was commonly described in the Advisory Council's 1996 report as an AHCM of 1.0. However, this description did not represent the level of precision the Advisory Council used to analyze the AHCM. The Advisory Council based its recommendation on a review of historical data that calculated the AHCM to the nearest hundredth (0.01). The Advisory Council used data provided by the Department to substantiate its AHCM recommendation and showed State AHCM data calculated to the nearest hundredth (0.01) in supporting tables in its 1996 report to Congress. Thus, an AHCM calculated to the nearest hundredth (0.01) also reflects a level of precision used by the Advisory Council to arrive at its recommendation that a State accumulate reserves sufficient to pay at least one year of benefits.

In addition, a majority of States that use an AHCM to assess trust fund solvency calculate the AHCM to the nearest hundredth (0.01).

An AHCM calculated to the nearest hundredth (0.01) reflects the long-standing and established procedure used by the Department to assess trust fund solvency. We calculate the AHCM to the nearest hundredth (0.01) because this level of precision more accurately measures a State's trust fund solvency than using an AHCM calculated to the nearest tenth (0.1).

Based upon a further review of data over a 40-year period, the Department determined that the use of a 1.00 AHCM, rather than a 1.0 AHCM, would have adversely affected only three States. Therefore, in § 606.3, we are revising the definition of the AHCM to include rounding it to the nearest multiple of 0.01.

The reserve ratio is rounded to the nearest multiple of 0.01 percent to conform to the rounding procedure for the AHCM. Also, the practice among a majority of States is to round the reserve ratio to the nearest multiple of 0.01.

The benefit-cost ratio is also rounded to the nearest multiple of 0.01 percent when calculated for funding goal purposes to conform to the procedures for rounding the AHCM and the reserve ratio; however, for cap purposes, final calculations are rounded to the nearest multiple of 0.1 percent as required by section 3302(f)(5)(E) of the FUTA.

III. Administrative Information

Executive Order 12866: Regulatory Planning and Review

This final rule is not an economically significant rule. Under Executive Order 12866, a rule is economically significant if it materially alters the budgetary impact of entitlements, grants, user fees, or loan programs; has an annual effect on the economy of $100 million or more; or adversely affects the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. This final rule is not economically significant under the Executive Order because it will not have an economic impact of $100 million or more on the State agencies or the economy as explained above. However, the final rule is a significant regulatory action under Executive Order 12866 at section 3(f) because it raises novel legal or policy issues arising out of legal

mandates, the President's priorities, or the principles set forth in the Executive Order. This final rule updates existing regulations in accordance with Congressional mandates. Therefore, the Department has submitted this final rule to the Office of Management and Budget (OMB) for review.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The Department has determined that this rule does not contain new information collection requiring it to submit a paperwork package to OMB. Data to be used is covered by the following OMB approvals: OMB No. 1220–0012 for the Quarterly Census of Employment and Wages report and OMB No. 1205–0456 for the ETA–2112 report containing State account balances in the UTF and benefits paid data.

Executive Order 13132: Federalism

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

The Department received 11 unique comments during the public comment period for the NPRM. All but one of these comments were made by States. The Department's implementation of a phased-in approach for the AHCM levels is in response to feedback received from the States' through the NPRM. In addition, the Advisory Council's recommendation of using a 1.0 AHCM as a measure of solvency was developed through consultation with the States.

Moreover, the rule does not have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the Executive Order. Any action taken by a State as a result of the rule would be at its own discretion as the rule imposes no requirements.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995. Under the Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any single year. The Department has determined this final rule does not include any Federal mandate that may result in increased expenditure by State, local, and Tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

One commenter argued that this rule constitutes an unfunded Federal mandate. However, this rule is not a Federal mandate because States are not required to comply; this rule provides an incentive (in the form of access to interest-free advances) to achieve the funding goals requirement. The effect of this rulemaking is to encourage, but not require, States to build and maintain adequate balances in their UTF accounts.

Accordingly, it is unnecessary for the Department to prepare a budgetary impact statement. Further, as noted above, the impact is positive for State UTF accounts.

Plain Language

The Department drafted this rule in plain language.

Effect on Family Life

The Department certifies that this final rule has been assessed according to section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), for its effect on family well-being. This provision protects the stability of family life, including marital relationships, financial status of families, and parental rights by encouraging the States to maintain adequate funding of their UTF accounts. It will not adversely affect the well-being of the nation's families. Therefore, the Department certifies that this final rule does not adversely impact family well-being.

Regulatory Flexibility Act/SBREFA

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification according to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required where the rule "will not * * * have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(5). This final rule would directly impact States. The definition of small entity does not include States. Therefore, no RFA analysis is required.

In addition, this final rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The Department provides the following analysis to support this certification.

This final rule encourages States to build and maintain adequate balances in their UC accounts but does not require that they do so. Before the current recession, nineteen States had already met the 1.00 AHCM criterion with an additional two States having AHCMs above 0.95 for which little or no action would have been necessary to meet the criterion. Some States with lower AHCMs perceive a low risk of borrowing either because they have responsive tax systems or low unemployment projections, while other States prefer keeping their UC taxes low to spur further economic growth and such States are not likely to take action to meet the solvency criterion. For the States that might take action, achieving the solvency criterion would involve varying degrees of tax changes depending on how quickly achievement of the criterion is desired. With proper adjustment to their funding mechanisms, tax increases would only be in place until appropriate UTF account balances reflecting the solvency criterion are met. Only a few States are

likely to take action to achieve the solvency criterion and any action is likely to involve temporary, modest increases to a tax that is relatively low. Under any of the alternatives, only a few States would take action which would translate to a minimal impact on all entities given the impact estimates and size of the UC tax. Although we cannot quantify the magnitude of any possible tax increases that might result from this final rule, we are confident that States would be unwilling to adopt tax increases of a size which would even approach $100 million in the aggregate as a condition for receiving interest-free advances. Therefore, the Department certifies that this final rule will not have a significant impact on a substantial number of small entities and, as a result, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 606

Employment and Training Administration, Labor, Unemployment compensation.

■ For the reasons stated in the preamble, the Department amends 20 CFR part 606 as set forth below:

PART 606—TAX CREDITS UNDER THE FEDERAL UNEMPLOYMENT TAX ACT; ADVANCES UNDER TITLE XII OF THE SOCIAL SECURITY ACT

■ 1. The authority citation for 20 CFR part 606 is revised to read as follows:

Authority: 42 U.S.C. 1102; 42 U.S.C. 1322(b)(2)(C); 26 U.S.C. 7805(a); Secretary's Order No. 3–2007, April 3, 2007 (72 FR 15907).

■ 2. Amend § 606.3 as follows:
■ a. Remove the paragraph designations and arrange definitions in alphabetical order;
■ b. Add in alphabetical order definitions for "Average High Cost Multiple (AHCM)", "Average High Cost Rate (AHCR)", and "Reserve Ratio";
■ c. Revise the introductory text and paragraph (2) and add a new paragraph (3) in the definition for "Benefit-cost ratio";
■ d. Amend paragraph (2) in the definition of "Benefit-cost ratio" by removing the reference "§ 606.3(l)" and adding in its place, the reference "§ 606.3"; and
■ e. Amend the definition of "Unemployment tax rate" by removing the reference "§ 606.3(l)" and adding in its place, the reference "§ 606.3".

The revisions and additions read as follows:

§ 606.3 Definitions.

* * * * *

Average High Cost Multiple (AHCM) for a State as of December 31 of a calendar year is calculated by dividing the State's reserve ratio, as defined in § 606.3, by the State's average high cost rate (AHCR), as defined in § 606.3, for the same year. Final calculations are rounded to the nearest multiple of 0.01.

Average High Cost Rate (AHCR) for a State is calculated as follows:

(1) Determine the time period over which calculations are to be made by selecting the longer of:

(i) The 20-calendar year period that ends with the year for which the AHCR calculation is made; or

(ii) The number of years beginning with the calendar year in which the first of the last three completed national recessions began, as determined by the National Bureau of Economic Research, and ending with the calendar year for which the AHCR is being calculated.

(2) For each calendar year during the selected time period, calculate the benefit-cost ratio, as defined in § 606.3; and

(3) Average the three highest calendar year benefit cost ratios for the selected time period from paragraph (2) of this definition. Final calculations are rounded to the nearest multiple of 0.01 percent.

* * * * *

Benefit-cost ratio for a calendar year is the percentage obtained by dividing—

(1) * * *

(2) The total wages (as defined in § 606.3) with respect to such calendar year.

(3) For cap purposes, if any percentage determined by this computation for a calendar year is not a multiple of 0.1 percent, such percentage shall be reduced to the nearest multiple of 0.1 percent. For funding goal purposes, if any percentage determined by this computation for a calendar year is not a multiple of 0.01 percent, such percentage is rounded to the nearest multiple of 0.01 percent.

* * * * *

Reserve Ratio is calculated by dividing the balance in the State's account in the unemployment trust fund (UTF) as of December 31 of such year by the total wages paid workers covered by the unemployment compensation (UC) program during the 12 months ending on December 31 of such year. Final calculations are rounded to the nearest multiple of 0.01 percent.

* * * * *

§ 606.20 [Amended]

■ 3. In § 606.20, amend paragraph (a)(3) by removing the reference "§ 606.3(c)" and adding in its place, the reference "§ 606.3" and by removing the reference § 606.3(j)" and adding in its place, the reference "§ 606.3".

■ 4. In § 606.21, amend paragraph (c) by removing the reference "606.3(j)" and adding in its place, the reference "§ 606.3" and amend paragraph (d) by revising the first sentence to read as follows:

§ 606.21 Criteria for cap.

* * * * *

(d) *State five-year average benefit-cost ratio.* The average benefit-cost ratio for the 5 preceding calendar years is the percentage determined by dividing the sum of the benefit-cost ratios for the 5 years by five. * * *

§ 606.22 [Amended]

■ 5. In § 606.22, amend paragraph (b)(4) by removing the reference "§ 606.3(f)" and adding in its place, the reference "§ 606.3"; and amend paragraphs (c)(1) and (c)(3) by removing the reference "§ 606.3(k)" and adding in its place, the reference "§ 606.3"; and by amending paragraphs (c)(2) and (d)(3) by removing the reference "§ 606.3(l)" and adding in its place, the reference "§ 606.3"

■ 6. Section 606.32 is amended by revising paragraph (b) to read as follows:

§ 606.32 Types of advances subject to interest.

* * * * *

(b) *Cash flow loans.* (1) *Availability of interest-free advances.* Advances are deemed cash flow loans and shall be free of interest provided that:

(i) The advances are repaid in full prior to October 1 of the calendar year in which the advances are made;

(ii) The State does not receive an additional advance after September 30 of the same calendar year in which the advance is made. If the State receives an additional advance after September 30 of the same calendar year in which earlier advances were made, interest on the fully repaid earlier advance(s) is due and payable not later than the day following the date of the first such additional advance. The administrator of the State agency must notify the Secretary of Labor no later than September 10 of the same calendar year of those loans deemed to be cash flow loans and not subject to interest. This notification must include the date and amount of each loan made beginning January 01 through September 30 of the same calendar year, and a copy of documentation sent to the Secretary of the Treasury requesting loan repayment transfer(s) from the State's account in the UTF to the Federal unemployment account in the UTF; and

(iii) The State has met the funding goals described in paragraph (b)(2) or (b)(3) of this section.

(2) *Funding goals.* This paragraph (b)(2) is applicable to all States as of January 1, 2019. A State has met the funding goals requirement if:

(i) The State, as of December 31 of any of the 5 consecutive calendar years preceding the calendar year in which such advances are made, had an AHCM of at least 1.00, as determined under § 606.3; and

(ii) The State maintained tax effort as determined under paragraph (b)(4) of this section.

(3) *Phasing in funding goals.* This paragraph (b)(3) applies for calendar years 2014 through 2018. A State has met the funding goals requirement if it has satisfied the solvency criterion in paragraph (i), and the maintenance of tax effort criteria in paragraph (ii), of this § 606.32(b)(3).

(i) A State has met the solvency criterion if:

(A) For calendar year 2014, as of December 31 of any of the 5 consecutively preceding calendar years, the State had an AHCM of at least 0.50, as determined under § 606.3;

(B) For calendar year 2015, as of December 31 of any of the 5 consecutively preceding calendar years, the State had an AHCM of at least 0.60, as determined under § 606.3;

(C) For calendar year 2016, as of December 31 of any of the 5 consecutively preceding calendar years, the State had an AHCM of at least 0.70, as determined under § 606.3;

(D) For calendar year 2017, as of December 31 of any of the 5 consecutively preceding calendar years, the State had an AHCM of at least 0.80, as determined under § 606.3;

(E) For calendar year 2018, as of December 31 of any of the 5 consecutively preceding calendar years, the State had an AHCM of at least 0.90, as determined under § 606.3;

(ii) A State has met the maintenance of tax effort criteria if it maintained tax effort as determined under paragraph (b)(4) of this section.

(4) *Maintenance of tax effort criteria.* A State has maintained tax effort if, for every year between the last calendar year in which it met the solvency criterion in paragraph (b)(2)(i) or (b)(3)(i) of this section and the calendar year in which an interest-free advance is taken, the State's unemployment tax rate as defined in § 606.3 for the calendar year is at least—

(i) 80 percent of the prior year's unemployment tax rate; and

(ii) 75 percent of the State 5-year average benefit-cost ratio, as determined under § 606.21(d).

Signed at Washington, DC, this 8th day of September, 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
Star-Spangled Banner Commemorative Coin Act (Aug. 16, 2010; 124 Stat. 2490)

H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the "John C. Godbold Federal Building". (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the "President Ronald W. Reagan Post Office Building". (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the "Paula Hawkins Post Office Building". (Aug. 16, 2010; 124 Stat. 2496)

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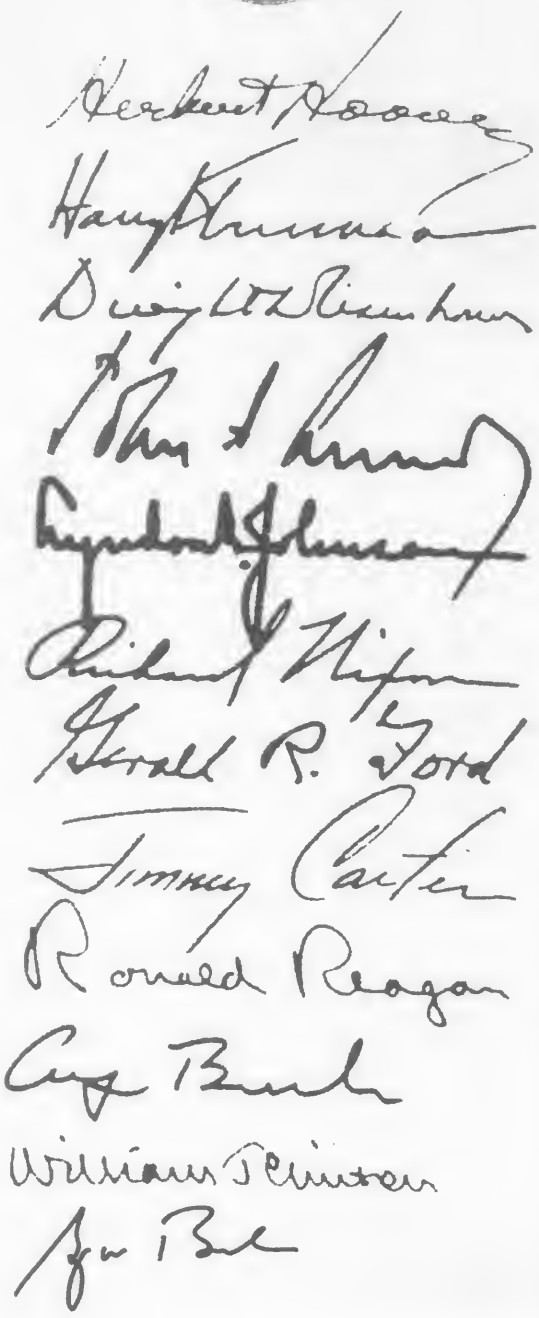

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