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Rules and Regulations

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 106

[Notice 2009–30]

Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees

AGENCY: Federal Election Commission.

ACTION: Interim final rule.

SUMMARY: The United States District Court for the District of Columbia ordered that the Federal Election Commission's ("Commission") rules regarding funds received in response to solicitations and the allocation of certain expenses by separate segregated funds and nonconnected committees are vacated. The Commission is inserting a note to these regulations that reflects the court's decision. The Commission will engage in a separate notice of rulemaking to remove these rules from the Code of Federal Regulations. Further information is provided in the supplementary information that follows.

DATES: The interim final rule is effective on December 29, 2009. Comments must be received on or before January 28, 2010.

ADDRESSES: All comments must be in writing, must be addressed to Mr. Robert M. Knop, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to *ifrnote@fec.gov*. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post all comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On September 18, 2009, the United States Court of Appeals for the DC Circuit ("DC Circuit Court") ruled that 11 CFR 100.57, 106.6(c), and 106.6(f) violated the First Amendment of the United States Constitution. *See EMILY's List* v. *FEC*, 581 F.3d 1 (DC Cir. 2009). The court also ruled that 11 CFR 100.57 and 106.6(f), as well as one provision of 106.6(c), exceeded the Commission's authority under the Federal Election Campaign Act ("Act"). *See id.* At the direction of the DC Circuit Court, the United States District Court for the District of Columbia ordered that these rules are vacated. *See Final Order, EMILY's List* v. *FEC*, No. 05–0049 (D.DC Nov. 30, 2009). The Commission is now inserting a note to 11 CFR 100.57, 106.6(c), and 106.6(f) that reflects this court order.

The Commission will issue a separate notice of rulemaking document to implement the court's order vacating 11 CFR 100.57, 106.6(c), and 106.6(f) from the regulations pursuant to the *EMILY's List* decision. The Commission is first inserting a note to give the public immediate guidance that these provisions were vacated by court order while the Commission completes the rulemaking process of implementing the *EMILY's List* decision.

Administrative Procedure Act

The Commission is issuing this rule as an interim final rule. This interim final rule will take effect immediately upon publication in the Federal Register. The public nonetheless may comment on this interim final rule and the Commission may address any comments received in a later rulemaking document.

The Administrative Procedure Act ("APA") requires an agency promulgating regulations to publish a notice of a proposed rulemaking in the **Federal Register**. 5 U.S.C. 553(b). The notice and comment requirement does not apply, however, "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The notice and comment requirement in this case is unnecessary because the Commission action is merely to insert language reciting the fact that the DC District Court has ordered that the aforementioned regulations are vacated. The result of the court's order is that neither public notice nor a comment period is likely to benefit the Commission in this rulemaking. This interim final rule is merely an informational amendment indicating that a court has issued an order concerning these rules.

Moreover, the notice and comment period may be contrary to the public interest. The Commission notes that the 2010 elections for Federal office are scheduled to begin as early as February 2010, when some States begin holding their primary elections. The State of Illinois, for example, will hold its 2010 primary election on February 2, 2010. *See http://www.elections.il.gov/Votinginformation/2010GPGE.aspx*. It is urgent, therefore, to give immediate notice to the public that these rules have been vacated by court order. The additional delay that would be incurred by providing notice and an opportunity to comment could be contrary to the public interest.

For the same reasons, this interim final rule is not subject to the APA's thirty day delayed effective date requirement under the "good cause" exemption to the delayed effective date requirement. 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because this interim final rule is exempt from the notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 and 604 (Regulatory Flexibility Act). *See* 5 U.S.C. 601(2) and 604(a).

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 106

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Commission is amending Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

■ 2. Section 100.57 is amended by adding a note to read as follows:

§ 100.57 Funds received in response to solicitations.

* * * * *

Note to § 100.57: On November 30, 2009, the United States District Court for the District of Columbia ordered that § 100.57 is vacated. *See Final Order, EMILY's List* v. *FEC,* No. 05–0049 (D.D.C. Nov. 30, 2009).

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 3. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

■ 4. Section 106.6 is amended by adding a note to read as follows:

§ 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

* * * * *

Note to 11 CFR 106.6: On November 30, 2009, the United States District Court for the District of Columbia ordered that paragraphs (c) and (f) of § 106.6 are vacated. *See Final Order, EMILY's List* v. *FEC,* No. 05–0049 (D.D.C. Nov. 30, 2009).

Dated: December 21, 2009.

On behalf of the Commission,

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–30767 Filed 12–28–09; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC–2009–0019]

RIN 1557–AD29

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1380]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AD54

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket ID OTS–2009–0022]

RIN 1550–AC37

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, the FDIC, and the OTS (collectively, the "agencies") are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define "small bank" or "small savings association" and "intermediate small bank" or "intermediate small savings association." As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Gregory Nagel or Brian Borkowicz, National Bank Examiners, Compliance Policy Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Rebecca Lassman, Supervisory Consumer Financial Services Analyst, (202) 452–3946; or Brent Lattin, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Janet R. Gordon, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898–3850; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Stephanie M. Caputo, Senior Compliance Program Analyst, Compliance and Consumer Protection, (202) 906–6549; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small institutions by reference to asset-size criteria expressed in dollar amounts, and they further require the agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

The threshold for small banks and small savings associations was revised most recently effective January 1, 2009 (73 FR 78153 (Dec. 22, 2008)). The CRA regulations, as revised on December 22, 2008, provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.109 billion are "small banks" or "small savings associations." Small banks and small savings associations with assets of at least $277 million as of December 31 of both of the prior two calendar years and less than $1.109 billion as of December 31 of either of the prior two calendar years are "intermediate small banks" or "intermediate small savings associations." 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), 563e.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2009, the CPIW decreased by 0.98 percent. As a result, the agencies are revising 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) to make this annual adjustment. Beginning January 1, 2010, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.098 billion are "small banks" or "small savings associations." Small banks or small savings associations with assets of at least $274 million as of December 31 of both of the prior two calendar years and less than $1.098 billion as of December 31 of either of the prior two calendar years are "intermediate small banks" or "intermediate small savings associations." The agencies also publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/*.

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the CRA regulations that the agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). Sections 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) are amended by adjusting the asset-size thresholds as provided for in §§ 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

Accordingly, since the agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria, the agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2010. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate asset-size thresholds will be adjusted as of December 31 based on twelve-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR part 1320), the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Executive Order 12866

The OCC and OTS have each determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the agencies have determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

Executive Order 13132

The OCC and OTS have each determined that its portion of this joint final rule does not have any Federalism implications as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

■ For the reasons discussed in the joint preamble, 12 CFR part 25 is amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

■ 2. Revise § 25.12(u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.098 billion. Intermediate small bank means a small bank with assets of at least $274 million as of December 31 of both of the prior two calendar years and less than $1.098 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Reserve System

12 CFR Chapter II

■ For the reasons set forth in the joint preamble, the Board of Governors of the

Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. Revise § 228.12(u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.098 billion. Intermediate small bank means a small bank with assets of at least $274 million as of December 31 of both of the prior two calendar years and less than $1.098 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 2. Revise § 345.12(u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.098 billion. Intermediate small bank means a small bank with assets of at least $274 million as of December 31 of both of the prior two calendar years and less than $1.098 billion as of December 31 of either of the prior two calendar years.

* * * * *

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

■ For the reasons discussed in the joint preamble, 12 CFR part 563e is amended as follows:

PART 563e—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. Revise § 563e.12(u)(1) to read as follows:

§ 563e.12 Definitions.

* * * * *

(u) *Small savings association*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.098 billion. *Intermediate small savings association* means a small savings association with assets of at least $274 million as of December 31 of both of the prior two calendar years and less than $1.098 billion as of December 31 of either of the prior two calendar years.

* * * * *

Dated: December 14, 2009.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority,

Dated: December 16, 2009.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 17th day of December 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: December 10, 2009.

By the Office of Thrift Supervision,

John E. Bowman,

Acting Director.

[FR Doc. E9–30646 Filed 12–28–09; 8:45 am]

BILLING CODES 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[OTS No. 2009–0023]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate technical and conforming amendments.

DATES: *Effective Date:* December 29, 2009.

FOR FURTHER INFORMATION CONTACT: Sandra E. Evans, Legal Information Assistant (Regulations), (202) 906–6086, or Marvin Shaw, Senior Attorney, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate technical and conforming amendments to Part 502—*Assessments and Fees.* The final rule makes two changes to part 502. First, the final rule revises section 502.26(a)(1) with respect to the base assessment amount for a savings and loan holding company (SHLC). Specifically, the final rule increases the base assessment amount from $3,000 to $3,500. The increase reflects the change in the Thrift Bulletin TB 48–27 that provides for an adjustment for inflation that is permissible under part 502. Second, the final rule revises section 502.29 with respect to the condition component for a SLHC. Specifically, the final rule replaces the term "unsatisfactory" with the phrase "a composite rating of 4 or 5." The new phrase reflects a change in an agency guidance titled *Savings and Loan Holding Company Rating System* issued in the **Federal Register.**[1]

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.[2] OTS believes that these procedures are unnecessary and contrary to public interest because the rule merely makes

[1] 72 FR 72442, December 20, 2007.

[2] 5 U.S.C. 553.

a technical change to an existing provision.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.[3] This section does not apply because this final rule imposes no additional requirements and makes only technical changes to existing regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[4] the OTS Director certifies that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995

List of Subjects in 12 CFR Part 502

Assessments, Reporting and recordkeeping requirements, Savings associations.

■ Accordingly, the Office of Thrift Supervision amends title 12, chapter V of the Code of Federal Regulations, as set forth below.

PART 502—ASSESSMENTS AND FEES

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1467, 1467a.

■ 2. Revise § 502.26(a)(1) as follows:

§ 502.26 How does OTS calculate the semi-annual assessment for savings and loan holding companies?

(a) * * *

(1) OTS will assess a base assessment amount of $3,500 on responsible savings and loan holding companies. The base assessment amount reflects OTS's estimate of the base costs of conducting on- and off-site supervision of a noncomplex, low risk savings and loan holding company structure. OTS will periodically revise this amount to reflect changes in inflation based on a readily available index. OTS will establish the revised amount of the base assessment in a Thrift Bulletin.

* * * * *

■ 3. Revise § 502.29(a) as follows:

§ 502.29 How does OTS determine the condition component for a savings and loan holding company?

(a) If the most recent examination rating assigned to the responsible savings and loan holding company (or most recent examination rating assigned to any savings and loan holding company in the holding company structure) is a composite rating of 4 or 5, OTS will assess a charge under the condition component. The amount of the condition component is equal to 100 percent of the sum of the base assessment amount, the risk/complexity component, and any organizational form component.

* * * * *

Dated: December 18, 2009.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. E9–30846 Filed 12–28–09; 8:45 am]

BILLING CODE 6720–01–P

[3] Pub. L. No. 103–325, 12 U.S.C. 4802.

[4] Pub. L. No. 96–354, 5 U.S.C. 601.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0859; Airspace Docket No. 09–ASW–23]

Amendment of Class E Airspace; Burnet, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Burnet, TX, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Burnet Municipal Airport—Kate Craddock Field, and updates the geographic coordinates of the Burnet Non-directional Radio Beacon (NDB). The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, April 8, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On October 14, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Burnet, TX, reconfiguring controlled airspace at Burnet Municipal Airport–Kate Craddock Field, Burnet, TX (74 FR 52703) Docket No. FAA–2009–0859. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Burnet, TX area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Burnet Municipal Airport—Kate Craddock Field, Burnet, TX. This action also updates the geographic coordinates of the Burnet NDB to coincide with the FAA's National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Burnet Municipal Airport—Kate Craddock Field, Burnet, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009:

* * * * *

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

* * * * *

ASW TX E5 Burnet, TX [Amended]

Burnet Municipal Airport—Kate Craddock Field, TX
(Lat. 30°44′20″ N., long. 98°14′19″ W.)
Burnet NDB
(Lat. 30°44′25″ N., long. 98°14′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Burnet Municipal Airport—Kate Craddock Field and within 2 miles each side of the 016° bearing from the airport extending from the 6.7-mile radius to 10.2 miles north of the airport, and within 2 miles each side of the 196° bearing from the airport extending from the 6.7-mile radius to 10.3 miles south of the airport, and within 2.5 miles each side of the 202° bearing from the Burnet NDB extending from the 6.7-mile radius to 7.4 miles southwest of the airport.

* * * * *

Issued in Fort Worth, Texas, on December 15, 2009.

Richard Farrell,

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

[FR Doc. E9–30272 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0540; Airspace Docket No. 09–ASW–17]

Amendment of Class E Airspace; Altus, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for the Altus, OK area. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Altus/Quartz Mountain Regional Airport, Altus, OK. This action also updates the geographic coordinates of the Altus AFB Rwy 17 ILS Localizer. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, April 8, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On September 10, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for the Altus, OK area, reconfiguring controlled airspace at Altus/Quartz Mountain Regional Airport, Altus, OK. (74 FR 46513, Docket No. FAA–2009–0540). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the National Aeronautical Charting Office notified the FAA that the geographic coordinates of the Altus AFB Rwy 17 ILS Localizer had changed. With the exception of the changes described above, this rule is the same as that proposed in the NPRM. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Altus, OK area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Altus/Quartz Mountain Regional Airport, Altus, OK. This action also updates the geographic coordinates of the Altus AFB Rwy 17 ILS Localizer to coincide with the National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the

FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Altus/Quartz Mountain Regional Airport, Altus, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009:

* * * * *

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

* * * * *

ASW OK E5 Altus, OK [Amended]

Altus AFB, OK
(Lat. 34°39′59″ N., long. 99°16′05″ W.)
Altus VORTAC
(Lat. 34°39′46″ N., long. 99°16′16″ W.)
Altus/Quartz Mountain Regional Airport, OK
(Lat. 34°41′56″ N., long. 99°20′19″ W.)
Tipton Municipal Airport, OK
(Lat. 34°27′31″ N., long. 99°10′17″ W.)
Frederick Municipal Airport, OK
(Lat. 34°21′08″ N., long. 98°59′02″ W.)
Altus AFB ILS Runway 17R Localizer
(Lat. 34°41′15″ N., long. 99°16′26″ W.)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Altus AFB and within 1.6 miles each side of the 185° radial of the Altus VORTAC extending from the 9.1-mile radius to 11.9 miles south of Altus AFB and within 3 miles west and 2 miles east of the Altus AFB ILS Runway 17R Localizer north course extending from the 9.1-mile radius to 15 miles north of Altus AFB; and within a 6.5-mile radius of Altus/Quartz Mountain Regional Airport; and within 2 miles each side of the 000° bearing from Altus/Quartz Mountain Regional Airport extending from the 6.5-mile radius to 11.4 miles north of Altus/Quartz Mountain Regional Airport; and within a 5.4-mile radius of Tipton Municipal Airport; and within a 7.2-mile radius of Frederick Municipal Airport; and within 2.5 miles each side of the 180° bearing from the Frederick Municipal Airport extending from the 7.2-mile radius to 7.7 miles south of Frederick Municipal Airport; and within a 12-mile radius of Altus AFB beginning at a point 3 miles west of the Altus VORTAC 019° radial, thence clockwise along the 12-mile radius of Altus AFB, ending at a point 3 miles west of the Altus VORTAC 185° radial.

* * * * *

Issued in Fort Worth, Texas, on December 4, 2009.

Roger M. Trevino,

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

[FR Doc. E9–30283 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0955; Airspace Docket No. 09–ASO–28]

Amendment of Class E Airspace; Gadsden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies Class E airspace at Gadsden, AL, to accommodate the new Standard Instrument Approach Procedures (SIAPs) developed for Northeast Alabama Regional, Gadsden, AL. Additional controlled airspace is necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also changes the airport name to Northeast Alabama Regional.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before February 12, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0955; Airspace Docket No. 09–ASO–28, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610, Fax 404–305–5572.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. The direct final rule is used in this case to facilitate the timing of the charting schedule and enhance the operation at the airport, while still allowing and requesting

public comment on this rulemaking action. An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the website. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2009–0955; Airspace Docket No. 09–ASO–28." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E Airspace at Gadsden, AL, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Northeast Alabama Regional Airport, Gadsden, AL. This action also denotes the renaming of the airport from Gadsden Municipal Airport to Northeast Alabama Regional. The FAA is taking this action to enhance the safety and management of (IFR) operations at the airport.

Designations for Class E airspace areas extending upward from 700 feet above the surface of the Earth are published in FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Gadsden, AL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Gadsden, AL [Revised]

Northeast Alabama Regional, AL
(Lat. 33°58′21″ N., long 86°05′21″ W.)

That airspace extending upward from 700 feet above the surface within a 13.2-mile radius of Northeast Alabama Regional.

* * * * *

Issued in College Park, Georgia, on December 9, 2009.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–30285 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1130

Requirements for Consumer Registration of Durable Infant or Toddler Products; Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission ("Commission") is issuing a final rule under section 104(d) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). In accordance with that section, the final rule requires each manufacturer of a durable infant or toddler product to: provide a postage-paid consumer registration form with each product; keep records of consumers who register their products with the manufacturer; and permanently place the manufacturer's name and contact information, model name and

number, and the date of manufacture on each such product. The final rule specifies the text and format for the registration form and establishes requirements for registration through the internet.

DATES: *Effective Date:* The rule will become effective on June 28, 2010.

Compliance Dates: The compliance date will be June 28, 2010 for the following products: full-size cribs and nonfull-size cribs; toddler beds; high chairs, booster chairs, and hook-on chairs; bath seats; gates and other enclosures for confining a child; play yards; stationary activity centers; infant carriers; strollers; walkers; swings; and bassinets and cradles. The compliance date will be December 29, 2010 for the following products: children's folding chairs, changing tables, infant bouncers, infant bath tubs, bed rails and infant slings.

FOR FURTHER INFORMATION CONTACT: Marc Schoem, Deputy Director, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7520; *mschoem@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 ("CPSIA", Pub. L. 110–314) was enacted on August 14, 2008. Section 104(d) of the CPSIA requires the U.S. Consumer Product Safety Commission ("Commission") to promulgate a final consumer product safety rule that requires manufacturers of durable infant or toddler products to: (1) Provide with each product a postage-paid consumer registration form; (2) keep records of consumers who register such products with the manufacturer; and (3) permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each such product. The Commission is now issuing such a final rule.[1]

Section 104(d) of the CPSIA specifies many of the requirements for the registration rule. It establishes certain requirements for the registration forms and specifies recordkeeping and notification requirements. The statute permits the Commission to prescribe the exact text and format for the registration forms, and the final rule does so.

The CPSIA also requires the Commission to assess consumer registration requirements in the future. Within four years of enactment of the CPSIA, the Commission must conduct a study on the effectiveness of the consumer registration forms and whether to expand registration to other children's products. The Commission also must regularly review recall notification technology and assess the effectiveness of such technology. The Commission must inform Congress of these assessments.

On June 29, 2009, the Commission issued a notice of proposed rulemaking ("NPR") proposing consumer registration requirements under section 104(d) of the CPSIA. 74 FR 30903. The Commission received 19 comments on the NPR raising a variety of issues discussed in section B of this preamble.

The NPR discussed the Commission's previous activities regarding product registration cards. This experience and activities considering how to improve recall effectiveness have informed the development of this rule. The Commission has also taken into consideration the car seat registration program administered by the National Highway Traffic Safety Administration ("NHTSA"). 49 CFR 571.213S5.8.

B. Response to Comments on the NPR

Comments that the Commission received on the NPR and the Commission's responses to them are discussed in this section of the preamble.

1. Definition of "Durable Infant or Toddler Products"

Comments

The Commission received 11 comments pertaining to the products that should be covered under the registration provision in section 104 of the CPSIA. Most of the comments requested the Commission to identify with specificity exactly which products will be covered by the rule. Commenters indicated that the open-ended nature of the proposed regulation leaves room for possible application to products that were never intended to be covered and they could be subject to the possibility of severe civil penalties for not including a registration card with a product that CPSC considers to be covered.

Several commenters stated that Congress intended the product registration cards to apply to a narrow subset of juvenile products and that the Commission should limit registration to the specified 12 product categories listed in section 104(f)(2).

On the other hand, a few commenters stated that the CPSC should not limit the rule to just the 12 product categories specified in the statute, but needs to leave room for new products coming into the market that may meet the definition of a "durable infant or toddler product."

Others suggested ways to provide guidance on products that would be considered "durable infant or toddler products" such as using the Juvenile Products Manufacturers Association (JPMA) certification program and based on that program adding children's folding chairs, changing tables, infant bouncers and bed rails to the statutory list of products.

Commenters requested that footwear, mattresses, sports equipment, playground equipment, toys and textile items, including clothing, blankets and bedding, not be considered durable infant or toddler products for the purpose of this rule.

Another commenter expressed agreement with the NPR that infant slings, changing tables, bouncers, children's folding chairs, infant bath tubs, and bed rails are products that warrant registration. The commenter also suggested that crib mattresses, toy chests, backpack carriers, doorway jumpers, and bike seats/trailers could warrant inclusion in the registration card program.

Another commenter requested that the CPSC clarify that the exclusion for car seat products that already carry the NHTSA registration card includes travel systems that have infant carriers sold with stroller bases. This commenter also urged the Commission to clarify that replacement parts, spare parts, or service parts for durable infant and toddler products are not independently subject to the registration card and product identification requirements of section 104.

Response

The Commission agrees that the rule needs to identify the items covered with specificity in order for manufacturers to know whether the registration requirements apply to their particular product. Because the statute has a broad definition of a durable infant or toddler product but also includes 12 specific product categories, additional items can and should be included in the definition, but should also be specifically listed in the rule. As noted in the NPR, in addition to the 12 product categories mentioned in section 104(f)(2)(A) through (L), children's folding chairs, changing tables, bouncers, infant bath tubs, bed rails, and infant slings should also be included in the rule. The Commission believes these additional six items meet

[1] Commissioner Thomas H. Moore issued a statement, a copy of which is available from the Commission's Office of the Secretary or from the Commission's Web site, *http://www.cpsc.gov.*

the definition of a durable infant or toddler product. In addition, currently they are covered under, or are in the process of being covered under, a voluntary standard. The Commission could add other products in the future through notice and comment rulemaking.

Based on the definition of durable infant or toddler products and the original 12 product categories identified in the CPSIA, the Commission does not believe that some other types of products, such as footwear, mattresses, sports equipment, playground equipment, or toys, should be included in the final rule. The Commission agrees that registration is required for finished products only, not for replacement parts.

2. Definition of "Durability"

Comments

Six comments were received regarding the definition of "durability." The comments were similar to those discussed above, indicating concern that the program will be interpreted and applied in an inconsistent manner unless the Commission provides a precise scope of the "durability" requirement. One commenter indicated that relying on the NPR preamble's discussion would result in unnecessary confusion about products meant to be used by children under one year of age, which may be used for only twelve months after purchase, and whether they would be considered to have an "average life" of three years or more.

Another commenter suggested that registration requirements should be applicable to a specific subset of children's products based on "durability" and that the Commission should limit the interpretation of durable infant or toddler products to those durable goods that are composed primarily, if not nearly entirely, of rigid components (*e.g.*, a molded plastic base, frame, or supporting mechanism) and should not include products composed exclusively or nearly exclusively of textiles, such as infant slings.

One commenter suggested that the price paid by the consumer should be considered when determining what is a durable nursery product. Others objected that 3 years was too short a period and that using the average product life as an indicator of durable goods was not sufficiently objective.

Response

The Commission believes that these comments illustrate some of the problems that may be encountered with an open-ended definition of durable infant or toddler product rather than a specific list.

3. Responsible Party for Registration Cards and Database

Comments

Most of the nine comments received regarding the responsible party for the registration cards and databases agree that domestic manufacturers should be responsible for their products. In the case of a foreign manufacturer, most commenters stated it should be the importer of record who is responsible. Commenters stated that the rule should also permit an importer to put its name and contact information on the registration cards rather than the name of the manufacturer, and to put its name on the product rather than the name of the foreign manufacturer. This process would avoid consumer confusion and prevent the potential disclosure of confidential business information. Commenters recommended that in the case of private label items, the private labeler or sole retailer should be able to make a contractual agreement with the manufacturer to assume responsibility.

One commenter suggested that the final rule should allow for retailers to be given the option to accept product registration cards, that retailers should be able to at least try to help consumers complete the product registration cards, and that large retail outlets may want to establish retail kiosks where consumers could electronically submit their information directly to the manufacturer to register their durable infant or toddler product.

Response

The Commission agrees that the domestic manufacturer and the importer of foreign manufactured products should be responsible for the registration cards and for maintaining the registration database. In the case of foreign manufactured products, the Commission agrees that the importer should be allowed to put its name and United States contact information on the card and product. The Commission has written the final rule to reflect this change.

Through contractual agreement with the manufacturer, a private labeler or retailer may take responsibility for the registration cards and database. However, ultimately, the manufacturer is responsible for registration. Similarly, nothing prevents retailers from accepting the registration cards and otherwise encouraging registration; however, under the statute, the manufacturer ultimately bears responsibility for registration and is the party the Commission will proceed against should it pursue any enforcement action.

4. Request To Exempt Businesses That Demonstrate They Already Collect Contact Information

Comments

The Commission received three comments requesting that companies that can demonstrate that they already collect and maintain contact information should not have to include registration cards with each product. Commenters opined that this would avoid redundant information and fulfill the intent of the law. One commenter suggested that registration via Web sites is more effective since card data becomes outdated very quickly and a web-based solution allows updating of addresses over time.

Response

Section 104(d)(1)(A) of the CPSIA states that each manufacturer of a durable infant or toddler product must provide consumers with a postage-paid consumer registration form with each such product. In addition, the statute requires that the form be attached to the product so that, as a practical matter, the consumer notices and handles it. CPSIA, 104(d)(2)(c). No exemptions were listed. Therefore, while consumers have the option of using electronic registration, it is not a substitute for the product registration card being included with the durable infant or toddler product.

5. Allow Flexibility for Product Identification

Comments

Three comments requested flexibility for product identification. One commenter stated that the form should be changed to say "Product Identification Number" (PIN) instead of "Model Number" because PIN would allow tracking of specific products to the retailer, or consider asking model number and PIN. Another commenter requested flexibility where companies use unique product numbers to identify their products rather than a "model name and number." The commenter also requested that a company be able to provide cards that allow consumers to insert the model information. Another commenter stated that NHTSA's registration rule requires either the model name or model number but not both. The commenter recommended allowing the manufacturer to preprint the model name or the model number, but not require both.

Response

The Commission recognizes that some manufacturers may not use a model name and model number. The final rule clarifies that if a manufacturer uses only one or the other, the manufacturer does not have to provide both on the product or registration form. Manufacturers do not have to create something they do not currently have. If they use both, then both should be provided. The Commission also believes that manufacturers who use unique product numbers, product descriptions, or other customarily used identifiers, such as a Product Identification Number (PIN) instead of a model number, should be allowed to provide those identifiers in place of the model number. The intent of the law is to make it easier for consumers to register their products and, therefore, manufacturers shall include on the registration card the manufacturer's name, model name and number, and date of manufacture, so consumers do not have to fill it in on the card themselves.

6. Coding Date of Manufacture

Comments

Two commenters requested that the rule allow the date of manufacture to be expressed in code. Both commenters pointed out that many manufacturers currently use date codes and they are considered acceptable under the ASTM International (ASTM) standards that apply to the infant and toddler products which are part of the Juvenile Products Manufacturers Association (JPMA) certification program. They also indicated that by allowing the use of a date code, or the month and year of manufacture, the CPSC would be consistent with its guidance on date coding for section 102 Conformity Certificates and section 103 Tracking Labels.

Response

The Commission agrees and has revised the final rule accordingly. These are recognized standard operating practices of manufacturers.

7. Section 103 Tracking Label Redundancy

Comments

Eight comments were received regarding the overlapping information required for labels in sections 103 and 104. Five of the eight commenters urged the Commission to allow manufacturers to combine the labeling information required for section 103 and section 104 into one label. One commenter stated that a durable infant and toddler product manufacturer must include both sets of identifying tracking information from section 103 and section 104. On the other hand, two commenters stated that they felt the tracking label required in section 103 should satisfy the labeling requirements of section 104 and products do not need to have both labels. Another commenter requested the CPSC to clarify that CPSIA section 104(f) is not intended to require that manufacturers attach to their products additional or duplicative labels if existing labels required by CSPC product safety standards or other laws contain the same information. One commenter urged the Commission to clarify in the final rule that labels are permitted as the "permanent marking" as long as they meet appropriate standards for permanence of attachment.

Response

The Commission agrees that it should not be necessary to have two marks with redundant information on a product. The final rule clarifies that manufacturers/importers may combine information required by section 103 with the section 104 registration information into one marking so long as all the information required by both sections is included. The final rule also clarifies the meaning of "permanent." The preamble indicates that labels are permitted as the "permanent marking" as long as they can reasonably be expected to remain on the product during the useful life of the product.

8. Harmonize With NHTSA's Car Seat Registration Form

Comment

The Commission received two comments requesting that section 104 be harmonized with the NHTSA registration format. The commenters specifically identified the online registration page and uniform message and formatting as areas where harmonization is needed and requested the CPSC conform the minimum height requirements of the registration card to the NHTSA rule. The commenters also indicated that NHTSA's rule does not require small, pen-top blocks but, rather, allows the consumer to enter his/her name/address in free style which most manufacturers prefer.

Response

The Commission recognizes that manufacturers who already provide the NHTSA car seat registration card have a system in place and that allowing more similarity to the NHTSA registration cards will streamline their process for implementing the section 104 registration cards. The final rule provides more flexibility for the design of the registration card. The specifics are discussed below in section 10, *Format Flexibility of Registration Card.*

9. Format Flexibility of Registration Card

Comment

Twelve comments were received regarding the format and placement of the registration card. The majority of the commenters requested more flexibility, with some asking that the Commission consider making the form and format for the registration cards "recommended" or "safe harbor," so that minor and possibly inadvertent variations in the type size, card size or font style of the registration cards, or of the labels added to the cards, would not result in a potential regulatory violation.

One commenter requested that fewer boxes be required per line to allow for printing variations. One commenter supported CPSC prescribing the text of the registration form to ensure that foreign manufacturers don't have any problems with translation issues. One commenter suggested adding "Required by Law" to the purpose statement on the card.

Response

The Commission agrees that more flexibility can be incorporated into the design, format, and placement of the registration card. The final rule includes the following changes:

1. *Size of form:* The form shall be two standard post cards connected with perforation for later separation. As defined by the United States Postal Service, the cards shall be at a minimum: 3½ inches high by 5 inches long by 0.007 inch thick.

2. *Font size and typeface:* All the information on the card shall be printed in bold typeface, capital and lower cases, and no less than 10-point with one exception being the purpose statement. The title of the purpose statement shall be all capitals, bold, and at a minimum 12-point typeface. The purpose statement shall be at a minimum 12-point, bold typeface with capital and lower case type.

3. *Purpose Statement:* Manufacturers that do not have a Web site must provide an e-mail address and state at the end of the purpose statement: "To register your product, please complete and mail this card or email your contact information, the model name and number, and date of manufacture of the product as provided on this card to: *name@firmname.com*".

4. *Consumer Information:* The bottom front portion of the form shall have

blocks for the consumer to provide his/her name, mailing address, telephone number, and email address. The blocks shall be 5 mm wide and 7 mm high. Manufacturers should use as many blocks as possible to fill the width of the card, allowing for normal printing practices. Staff believes the use of blocks encourages consumers to print their information in a more legible format than free-style writing.

10. Effective Date for Final Rule

Comments

Three comments were received regarding the time for implementation. All three indicated that one year is needed to reasonably implement section 104 requirements. The commenters stated that with the increase in manufacturing overseas their companies needed more time to determine a method for collecting the registration card information and creating a database to store the information, as well as to identify how the registration cards will be inserted into the packaging for the covered products. They also expressed the need to coordinate the registration information with websites and internet access especially for companies that do not have a pre-existing infrastructure for consumer registration.

Response

The Commission believes that six months from publication of the final rule is reasonable and adequate for implementation of the rule for the original 12 product categories listed in the NPR. The CPSIA was enacted more than 15 months ago and manufacturers have been on notice of the requirement for registration for these twelve items since enactment. Moreover, the Commission must provide a report to Congress on the effectiveness of the program not later than four years after the date of enactment. Manufacturers who produce the additional six items specified in the proposed final rule should have one year from publication of the final rule to implement the registration cards and database. It is possible that manufacturers who produce one or more of the original 12 product categories and one or more of the additional six items would be able to implement the process sooner than one year for the additional six items.

11. Retaining Registration Card Information

Comments

The Commission received three comments regarding the retention of registration card information. The first commenter requested the CPSC clarify that the registration cards themselves do not have to be retained for six years, but rather the information on the card must be retained. The second comment suggested that consumer information for high quality cribs should be retained for no less than 10 years. The third commenter suggested that the CPSC should have the authority to require manufacturers to keep the information longer than six years if they have reason to believe a recall may be pending because of numerous consumer complaints about the product.

Response

Section 104(d)(3) of the CPSIA states that each manufacturer of a durable infant or toddler product shall maintain a record of registrants for each product manufactured that includes all of the information provided by each consumer registered. Thus, the information, but not necessarily the registration form itself, must be retained. The same section states that each manufacturer shall maintain such a record for a period of not less than six years after the date of manufacture of the product. The Commission believes six years of data retention is adequate. This is the same record retention period as NHTSA has in its child restraint registration rule. If manufacturers want to keep the data for a longer period they have that option, but the Commission does not believe it is necessary to specify a longer time for certain products.

12. Electronic/E-Mail Registration

Comment

Ten comments were received regarding electronic/email registration. All comments favored allowing manufacturers to set up a registration page on their website for consumers to use instead of the registration card. Comments also favored allowing firms that do not have a website to provide for consumers to register through email. Some commenters suggested that for email registrations, clear and conspicuous instructions must be provided for the consumer to know what should be provided in the email to register and that an automatic reply should be sent to the consumer to confirm that the information was received.

A number of the commenters requested flexibility in how they set up the page and requested that the CPSC not restrict navigation to other pages on the website. Several requested that an email address be required if a consumer registers on-line. One commenter suggested that registration pages be clearly separated from any product marketing sections of a company's Web site.

A commenter stated that the CPSC should not insist that each product come with a postage paid consumer registration form if both the retail outlet and the consumer will accept an alternative, non-intrusive and protected, method of electronic, web based registration instead.

One commenter supported allowing consumers to change or update their information on the internet. However, another commenter expressed concern that permitting an on-line "change of address" option for consumers could lead to the unintended deletion of properly registered consumers from the database.

Response

The Commission agrees that allowing consumers to register their product via a company Web site or by providing an e-mail for the consumer to send the required registration information may facilitate a larger response from consumers than just using the registration cards. The Commission believes that manufacturers should have flexibility in setting up their Web page but should clearly separate the registration page from any advertisement. By preventing additional information or advertising from appearing on the registration page, the benefits of a standardized registration form are maintained, helping to improve the rate of registration. Companies that do not have a Web site must provide an e-mail address to allow consumers to e-mail their registration information. These companies must set up an automatic reply so consumers can confirm that their registration information was received. Electronic/e-mail registration does not replace the mandatory requirement stated in section 104(d)(1)(A) of the CPSIA that each manufacturer of a durable infant or toddler product must provide consumers with a postage-paid consumer registration form with each such product.

13. Other Issues

Comment

One commenter suggested that the CPSC should consider carefully the penalties for violation of using the consumer information collected with the registration cards for some purpose other than the safety alert or recall.

Response

The final rule includes a requirement that manufacturers not use the consumer registration information for

any purpose other than notifying the consumer in the event of a recall or safety alert. Thus, if a manufacturer actually misuses the information, they would be violating a consumer product safety rule which is a prohibited act under section 19 of the CPSA and would subject the manufacturer to penalties under section 20 of the CPSA. Other federal and state laws governing consumer privacy may also be implicated by the inappropriate use of the information collected with the registration form which should also serve as a deterrent to such inappropriate use.

C. Description of the Final Rule

The final rule is substantially the same as what the Commission proposed in June. The Commission has made some changes, mostly in response to comments on the proposed rule.

1. Scope and Definitions—§§ 1130.1 & 1130.2

The purpose section in 1130.1(a) remains the same as the proposal. In the scope section 1130.1(b), the NPR stated that child restraint systems covered by NHTSA registration program would not be subject to the Commission's registration rule. The final rule clarifies that the consumer product registration requirements would not apply to products that are part of a travel system which is covered by NHTSA's registration requirements for child restraint systems. Thus, for example, a stroller base that is sold with an infant carrier that is covered by NHTSA's registration program would not need a separate Commission registration form.

As discussed in section B of this preamble, the Commission is maintaining the 180-day effective date it had proposed, but is establishing a compliance date of 180 days for the 12 product categories listed in the CPSIA and a compliance date of one year for the additional six products enumerated in the final rule. Although the Commission received three comments requesting a longer effective date, the Commission believes that 180 days from publication of the final rule should be adequate for these 12 product categories. The Commission also notes that the final rule provides more flexibility in the formatting of the registration forms and is more consistent with the NHTSA registration requirements. One of the comments requesting a longer effective date was submitted by a group of manufacturers who make child restraint systems for automobiles. These changes to the final rule should ease implementation. As discussed later in this preamble, the scope of the final rule will cover eighteen product categories specifically identified in the rule rather than all products that could fit within the narrative definition of "durable infant or toddler product."

The Commission is revising two definitions in section 1130.2. As mentioned, the final rule provides a list of the durable infant or toddler products covered by the rule. The CPSIA defines the term "durable infant or toddler product" with a broad narrative definition—"a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years"—and then lists twelve specific examples. The proposal would have required registration for all durable infant or toddler products that fell within the narrative part of the statutory definition as well as the specific products listed. The preamble to the proposal attempted to give some guidance on what the Commission believed would fit within the narrative part of the definition. Numerous comments on the NPR observed that, even with this preamble discussion, it remained unclear what products would be covered by the registration requirement. After considering the comments, the Commission agrees that without a specific list of products it could be difficult for manufacturers to determine if their products are subject to registration.

The final rule defines "durable infant or toddler product" as the twelve specific product categories listed in the CPSIA definition and the six additional products that the NPR preamble specifically noted would be considered by the Commission staff to be durable infant or toddler products: children's folding chairs, changing tables, infant bouncers, infant bath tubs, bed rails and infant slings. Four of these products (children's folding chairs, changing tables, infant bouncers, and bed rails) are part of the Juvenile Products Manufacturers Association ("JPMA's") certification program, which certifies products to the applicable ASTM standards, as are the products specifically listed in the statutory definition. As noted in the NPR preamble, the Commission staff believes that these products are similar to other products specifically listed in the statutory definition. A changing table is similar to other nursery products, such as cribs and cradles, which are listed, and it is under the same ASTM subcommittee (F15.18) as cribs, toddler beds, play yards, bassinets and cradles. Bed rails are similar to "gates and other enclosures for confining a child," an enumerated category. Infant bath tubs are similar to bath seats, and some were at one time covered by the same ASTM standard as bath seats. Infant slings are similar to infant or child carriers which are explicitly covered. A voluntary standard for slings is currently under development. The Commission may add other products to the list in the future through notice and comment rulemaking.

As to definitions of each listed product, if there is a relevant mandatory Commission standard for the product, the definition in the Commission standard would govern. If there is no mandatory standard for the product, manufacturers should refer to the definition of the product in the appropriate voluntary standard.

The definition of "manufacturer" in the final rule differs from that in the proposal. The preamble to the NPR discussed that section 104(d) applies to "manufacturers" of durable infant or toddler products and that the definition of "manufacturer" in the Consumer Product Safety Act includes an importer. 15 U.S.C. 2052(a)(11). The NPR preamble requested comments concerning which party, the importer or a manufacturer should have the primary responsibility for the registration obligations mandated by section 104 of the CPSIA. As discussed further in section B of this preamble, the Commission received several comments concerning this issue. The Commission has decided to clarify in the definition of "manufacturer" that, for purposes of this rule, for a product produced within the United States, the "manufacturer" (and the party that is responsible for product registration) is the domestic manufacturer of the product. For a foreign-made product, for purposes of this rule, the "manufacturer" is the importer of the product.

As the preamble to the NPR discussed, the statutory provision does not require the retailer of a durable infant or toddler product to establish or maintain a registration program. The NPR preamble discussed the possibility of allowing other parties—such as retailers, distributors or private labelers—to establish and maintain a registration program or allowing a manufacturer and importer to arrange among themselves who would run the registration program. The Commission requested comments on this issue. One comment suggested allowing parties other than the manufacturer to contract with the manufacturer agreeing to undertake the responsibility for registration. The commenter suggested that the Commission could then release the manufacturer from liability, similar to the provision of guaranties that is

permitted under the Flammable Fabric Act ("FFA"). The Commission has considered this suggestion. However, while the FFA explicitly provides for guaranties, no such statutory permission is given for such an arrangement under the CPSIA with regard to registration cards. Thus, the Commission believes that it must remain the obligation of the manufacturer of a durable infant or toddler product to ensure that the product complies with the registration requirements. While nothing prohibits a manufacturer from arranging for another party to undertake the registration program, the Commission will look to the manufacturer as the party that is ultimately responsible for compliance with the registration requirements under section 104 of the CPSIA and the requirements of this part.

The other definitions in this section remain the same as proposed.

2. General Requirements—§ 1130.3

The general requirements in section 1130.3 are primarily a restatement of the statutory requirements in section 104(d)(1) and (3) of the CPSIA and remain unchanged from the proposal. The section requires each manufacturer of a durable infant or toddler product to provide consumers with a postage-paid consumer registration form with each product; maintain a record of the contact information of consumers who register their products with the manufacturer; and permanently place the manufacturer's name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product. This section also prohibits the manufacturer from using or disseminating the consumer information collected under these requirements to any other party for any purpose other than notification of the consumer in the event of a product recall or safety alert.

3. Manufacturer and Product Identification on the Product—§ 1130.4

Section 104(d)(1)(C) of the CPSIA requires the manufacturer to permanently place the manufacturer's name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product. As in the proposal, section 1130.4 repeats this statutory requirement and specifies that the required information must be in English, legible, and in a location on the product that is conspicuous to the consumer. In response to comments, the final rule adds several clarifications to this section. If a manufacturer regularly uses only a model name or only a model number, it is not necessary to create a model name or number solely in order to comply with the registration requirement. Similarly, if a manufacturer uses a product identification number ("PIN") or other identification number rather than a model number, he/she may use that number to identify the product on the registration card. This section of the final rule makes these clarifications. This section further clarifies that the date to be marked on the product shall include the month and year of manufacture, and that it is permissible to state the date in code.

Some comments asked about the requirement that the marking be permanent. To clarify this requirement, the Commission is adding a provision explaining that a permanent mark is one that can reasonably be expected to remain on the product during the useful life of the product. Thus, an adhesive label could be used, so long as it meets this requirement.

The NPR preamble discussed that section 103 of the CPSIA requires that all children's products must have permanently marked on the product certain identifying information (the manufacturer or private labeler, location and date of production and cohort information), sometimes called tracking labels. The marking requirements in section 104 and in section 103 are similar, but not identical. The NPR preamble asked for comments on the interplay between these two marking provisions.

Although some commenters requested that one marking suffice for the other, the Commission believes that the statute requires that manufacturers of durable infant or toddler products comply with the marking requirements of both section 103 and section 104. Manufacturers may choose whether to place the necessary identifying information in one location or not, so long as all of the required information is provided on the product. Such a marking would need: The name of the manufacturer, contact information, location and date of manufacture, model name and number, and batch or run number (or other identifying characteristic). A new subsection (c) in section 1130.4 explains that the product identification required under this section may be combined with other information on the product.

4. Requirements for Registration Forms—§ 1130.5

Section 1130.5 remains unchanged from the proposal. With the exception of requiring compliance with particular text and format specifications and requiring that information be in English, the requirements for registration forms stated in this section are explicitly directed by section 104(d)(2) of the CPSIA. This section requires registration forms to:

- Comply with specified text and format requirements;
- State all information in English;
- Be attached to the surface of each durable infant or toddler product so that the consumer must notice and handle the form after purchasing the product;
- Include the manufacturer's name, model name and number for the product and the date of manufacture;
- Include an option to register using the internet; and
- Include a statement that information the consumer provides will only be used to facilitate a recall or safety alert.

5. Format Requirements—§ 1130.6

Section 1130.6 prescribes the registration form's size and layout. It is substantially the same as proposed. The changes reflect some clarifications and also some greater flexibility. Section 1130.6(a) establishes the size of the form. This section of the final rule now sets a minimum size for the registration forms rather than requiring that they must be a specified size. The form must be at least the size of two standard post cards connected together with a perforated line so that the portions can be separated. Each of the two portions must be at least 3½ inches high by 5 inches wide by 0.007 inches thick. This is the measurement the Postal Service specifies for a standard post card. It is also the same measurement that NHTSA's child restraint registration requirements establish as a minimum for its registration forms. The proposal did not specify a thickness for the forms. However, since both the Postal Service and the NHTSA child restraint registration requirements specify the thickness of a standard post card, the final rule clarifies this and specifies a thickness. The Commission believes that requiring a minimum size will allow some flexibility and allow for minimal variations in production but will still provide for uniformity.

Requirements for the layout of the top of the form, which provides the purpose statement and the manufacturer's contact information, remain unchanged from the proposal.

Section 1130.6(b)(3) prescribes the format for the bottom of the form. This section now explicitly states that the registration form must be postage paid. This is a requirement stated in the CPSIA and also stated elsewhere in the rule. For the sake of clarity, that requirement is also stated in this section

(it was not stated in this section in the NPR).

Proposed section 1130.6(c) required that the registration form use Arial Black typeface. In order to allow more flexibility, the final rule does not specify a particular typeface. It does, however, require that the type be in bold, black type. The type size requirement remains unchanged from the proposal (at least 12-point for the purpose statement and no less than 10-point for all other information on the form). The final rule also specifies that the title of the purpose statement must be in all capitals, and the other information must be in capital and lower case type. This is a clarification because the illustration of the registration form in both the proposed and final rule shows capital and lower case letters in this way.

6. Text Requirements—§ 1130.7

The final rule makes a few changes to the text requirements in the proposal, primarily to provide more flexibility. As in the proposal, the final rule requires a purpose statement explaining the purpose of the registration form. The final rule adds a a sentence to the purpose statement for manufacturers to use if they do not have a website and instead provide an email address.

Requirements for the manufacturer and product information remain unchanged from the proposal. As for the consumer information, the proposed rule specified a certain number of blocks on the form for consumers to supply their contact information. Some comments requested that the form not require any blocks. The Commission believes that providing blocks for consumers to write their contact information will likely make the information more legible. Section 104(d)(2)(B) of the CPSIA requires that the form permit easy, legible recording. Therefore, the final rule continues to require blocks, but does not require any particular number of blocks. As in the proposal, the final rule requires that blocks for consumer information be 5 mm wide and 7 mm high. However, rather than requiring a particular number of blocks, the final rule requires only that the forms have as many blocks as possible to fill the width of the card while allowing for normal printing practices.

Requirements for the product information portion of the registration form remain unchanged.

7. Requirements for Internet Registration or Alternative E-Mail Registration—§ 1130.8

Section 104(d)(2)(F) of the CPSIA requires that the registration form include the option of registering the product through the internet. Section 1130.8 of the final rule prescribes requirements for website registration: requiring a link to the registration page, a purpose statement, and certain requirements for the content of the registration page.

The final rule, like the proposal, restricts the website's registration page to only requesting the consumer's name, address, telephone number, email address, product name and number and the date of manufacture. The Commission specifically asked for comments on whether there is a need to restrict navigation to other pages or Web sites.

The final rule requires a few additional restrictions for Web sites than the proposal. The final rule prohibits on the electronic registration form any other information than identification of the manufacturer or a link to the manufacturer's home page, a field to confirm submission of the registration form, and a prompt to indicate any incomplete or invalid fields before the form is submitted. The final rule also states that accessing the registration form shall not cause additional screens or electronic banners to appear.

The Commission believes that these are minimal restrictions necessary to separate product registration from any other purposes of the website. These restrictions are very similar to those that NHSTSA states in its registration rule for child restraint systems.

As discussed in the NPR preamble, the Commission recognizes that some companies may not have a Web site, and such companies could allow customers to register their product by e-mail. The final rule adds a subsection (d) to section 1130.8 to clearly state that providing registration through e-mail is an alternative for manufacturers who do not have a Web site. The subsection also requires that the e-mail address be set up so that the consumer will receive an automatic reply confirming receipt of the registration information. This should decrease the possibility of a consumer entering the same registration multiple times if he/she is uncertain whether the information was received.

8. Recordkeeping and Notification—§ 1130.9

This section of the final rule remains unchanged from the proposal. In accordance with the CPSIA, section 1130.9 requires that each manufacturer of a durable infant or toddler product maintain a record of registrants for each product manufactured that includes all of the information provided by the consumer. The rule requires the manufacturer to use the information the consumer provides to notify the registrant if the product is the subject of a recall or safety alert. As the statute mandates, and as proposed, the final rule requires that the manufacturer maintain a record of the registration information for no less than 6 years after the date of manufacture of the product. Both the statue and the rule require that the information be maintained, but neither requires the manufacturer to retain the actual registration card itself.

D. Effective Date

The Commission proposed that the rule would become effective 180 days after publication of the final rule in the **Federal Register**. As discussed in the previous sections of the preamble, the Commission received three comments expressing concern that this 6-month period would be too short and requesting one year instead. The final rule retains the 180-day compliance date and sets a 180-day compliance date for the product categories specifically listed by example in the statutory definition of durable infant or toddler product: full-size cribs and nonfull-size cribs; toddler beds; high chairs, booster chairs, and hook-on chairs; bath seats; gates and other enclosures for confining a child; play yards; stationary activity centers; infant carriers; strollers; walkers; swings; and bassinets and cradles. The Commission is providing a one-year compliance date for the six products the final rule adds to the listed products: children's folding chairs, changing tables, infant bouncers, infant bath tubs, bed rails and infant slings. These six products were previously identified in the NPR preamble, but were not specifically listed in the text of the NPR. Therefore, the Commission is providing additional time for these products to comply with the registration requirements.

The rule will apply to products manufactured on or after the applicable compliance date.

E. Regulatory Flexibility Analysis or Certification

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. However, section 104(d)(1) of the CPSIA removes this requirement for promulgating the

rule implementing the CPSIA's consumer registration provision. Consequently, no regulatory flexibility analysis or certification is necessary.

F. Paperwork Reduction Act

Section 104(d)(1) of the CPSIA also excludes this rulemaking from requirements of the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520. Consequently, no Paperwork Reduction Act analysis is necessary.

G. Environmental Considerations

The Commission's regulations provide a categorical exemption for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement as they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This final rule falls within the categorical exemption.

List of Subjects in 16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

■ Therefore, the Commission amends Title 16 of the Code of Federal Regulations by adding part 1130 to read as follows:

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

Authority: 15 U.S.C. 2056a, 2065(b).

§ 1130.1 Purpose, scope, and effective date.

(a) *Purpose.* This part prescribes a consumer product safety rule establishing requirements for consumer registration of durable infant or toddler products. These requirements are intended to improve the effectiveness of recalls of, and safety alerts regarding, such products.

(b) *Scope.* Part 1130 applies to manufacturers, including importers, of durable infant or toddler products, as defined in § 1130.2(a). It does not apply to infant or child restraint systems intended for use in automobiles that are covered by the registration program of the National Highway Traffic and Safety Administration (NHTSA) at 49 CFR 571.213, or to products that comprise a travel system, and are sold with a child restraint system that is covered by the NHTSA registration program at 49 CFR 571.213.

(c) *Compliance Date.* Compliance with this part 1130 shall be required on June 28, 2010 for the following products: full-size cribs and nonfull-size cribs; toddler beds; high chairs, booster chairs, and hook-on chairs; bath seats; gates and other enclosures for confining a child; play yards; stationary activity centers; infant carriers; strollers; walkers; swings; and bassinets and cradles. Compliance with this part 1130 shall be required on December 29, 2010 for the following products: Children's folding chairs, changing tables, infant bouncers, infant bath tubs, bed rails and infant slings. The rule shall apply to durable infant or toddler products, as defined in § 1130.2(a), that are manufactured on or after those dates.

§ 1130.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply:

(a) *Durable infant or toddler product* means the following products, including combinations thereof:

(1) Full-size cribs and non-full-size cribs;
(2) Toddler beds;
(3) High chairs, booster seats, and hook-on chairs;
(4) Bath seats;
(5) Gates and other enclosures for confining a child;
(6) Play yards;
(7) Stationary activity centers;
(8) Infant carriers;
(9) Strollers;
(10) Walkers;
(11) Swings; and
(12) Bassinets and cradles;
(13) Children's folding chairs;
(14) Changing tables;
(15) Infant bouncers;
(16) Infant bathtubs;
(17) Bed rails;
(18) Infant slings.

(b) *Manufacturer,* for purposes of this part, in the case of a product produced within the United States, means the domestic manufacturer of the product, and in the case of an imported product, means the importer of the product.

(c) *Product recall* means action taken pursuant to sections 12, 15(c) or 15(d) of the CPSA (15 U.S.C. 2061, 2054(c), or 2064(d)), and action taken pursuant to a corrective action plan implemented by a company in cooperation with the Commission, where the firm is conducting one or more of the following: repair of the product; replacement of the product; or refund of the purchase price of the product.

(d) *Safety alert* means notice or warning of a potential problem with an individual product or class of products so that consumers and other users of the affected products respond accordingly to reduce or eliminate the potential for injury.

§ 1130.3 General requirements.

(a) Each manufacturer of a durable infant or toddler product shall:

(1) Provide consumers with a postage-paid consumer registration form that meets the requirements of this part 1130 with each such product;

(2) Maintain a record in accordance with the requirements set forth in § 1130.9 of the contact information (names, addresses, e-mail addresses, and telephone numbers) of consumers who register their products with the manufacturer under this part 1130;

(3) Permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product in accordance with the requirements set forth in § 1130.4.

(b) Consumer information collected by a manufacturer pursuant to the requirements of this part 1130 shall not be used by the manufacturer, nor disseminated by the manufacturer to any other party, for any purpose other than notification to such consumer in the event of a product recall or safety alert.

§ 1130.4 Identification on the product.

(a) Each durable infant or toddler product shall be permanently marked with the manufacturer name, and contact information (U.S. address and telephone number, toll free if available) model name and number, and date of manufacture.

(1) If the manufacturer regularly uses only a model name or a model number, but not both, to identify the product, he/she may provide only the model name or number rather than creating a model name or number for the sole purpose of this part 1130.

(2) If the manufacturer regularly identifies the product by a product

identification number ("PIN") or other similar identifying number rather than a model number, he/she may provide that identifying number instead of a model number.

(3) The date referred to in paragraph (a) of this section shall include the month and year of manufacture and can be stated in code.

(4) A permanent mark is one that can reasonably be expected to remain on the product during the useful life of the product.

(b) The information required by this section shall be in English, legible, and in a location that is conspicuous to the consumer.

(c) The information required by this section may be combined with other information marked on the product.

§ 1130.5 Requirements for registration forms.

The registration form required under § 1130.3(a)(1) shall:

(a) Comply with the format and text requirements set forth in §§ 1130.6 and 1130.7 as shown in figures 1 and 2 of this part;

(b) State all information required by this part 1130 in the English language;

(c) Be attached to the surface of each durable infant or toddler product so that, as a practical matter, the consumer must notice and handle the form after purchasing the product;

(d) Include the manufacturer's name, model name and number for the product, and the date of manufacture;

(e) Include an option for consumers to register through the Internet;

(f) Include the statement required in § 1130.7(a) that information provided by the consumer shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

§ 1130.6 Requirements for format of registration forms.

(a) *Size of form.* The form shall be at least the size of two standard post cards connected with perforation for later separation, so that each of the two portions is at least 3½ inches high by 5 inches wide by 0.007 inches thick.

(b) *Layout of form.* (1) General. The form shall consist of four parts: Top and bottom, divided by perforations for easy separation, and front and back.

(2) *Top of form.* The top portion of the form is to be retained by the consumer. The front top portion shall provide the purpose statement set forth in § 1130.7(a). The back of the top portion shall provide the manufacturer's contact information as required in § 1130.7(b).

(3) *Bottom of form.* The bottom portion of the form is to be returned to the manufacturer. The bottom front panel shall have blocks for the consumer to provide his/her contact information as required in § 1130.7(c). Below the consumer contact information shall be product information as required in § 1130.7(d) which may be printed on the form or provided on a pre-printed label placed on the form by the manufacturer. The back of the bottom portion of the form shall be pre-addressed and postage-paid with the manufacturer's name and mailing address where registration information is to be collected.

(c) *Font size and typeface.* The registration form shall use bold black typeface. The size of the type shall be at least 12-point for the purpose statement required in § 1130.7(a) and no less than 10-point for the other information in the registration form. The title of the purpose statement shall be in all capitals. All other information shall be in capital and lower case type.

§ 1130.7 Requirements for text of registration form.

(a) *Purpose statement.* The front top portion of each form shall state: "PRODUCT REGISTRATION FOR SAFETY ALERT OR RECALL. We will use the information provided on this card to contact you only if there is a safety alert or recall for this product. We will not sell, rent, or share your personal information. To register your product, please complete and mail this card or visit our online registration at *http://www.websitename.com*." Manufacturers that do not have a Web site may provide an email address and state at the end of the purpose statement: "To register your product, please complete and mail this card or email your contact information, the model name and number and date of manufacture of the product as provided on this card to: *name@firmname.com*".

(b) *Manufacturer and product information.* The back of the top portion of the form shall state the manufacturer's name and contact information (a U.S. mailing address, a telephone number, toll free if available), Web site address, product model name and number (or other identifier as described in § 1130.4(a)(1) and (2)), and manufacture date of the product.

(c) *Consumer information.* The bottom front portion of the form shall have blocks for the consumer to provide his/her name, address, telephone number, and email address. These blocks shall be 5 mm wide and 7 mm high, with as many blocks as possible to fill the width of the card allowing for normal printing practices.

(d) *Product information.* The following product information shall be provided on the back of the bottom portion of the form below the blocks for customer information printed directly on the form or on a pre-printed label that is applied to the form: The manufacturer's name, the model name and number (or other identifier as described in § 1130.4(a)(1) and (2)), and the date of manufacture of the product. A rectangular box shall be placed around the model name, model number and manufacture date.

§ 1130.8 Requirements for Web site registration or alternative e-mail registration.

(a) *Link to registration page.* The manufacturer's Web site, or other Web site established for the purpose of registration under this part 1130, shall be designed with a link clearly identified on the main web page that goes directly to "Product Registration."

(b) *Purpose statement.* The registration page shall have the following statement at the top of the page: "PRODUCT REGISTRATION FOR SAFETY ALERT OR RECALL ONLY. We will use the information provided on this page only to contact you if there is a safety alert or recall for this product. We will not sell, rent, or share your personal information. If you register on this Web site you do not need to fill out the card that came with your product."

(c) *Content of registration page.* The Web site registration page shall request only the consumer's name, address, telephone number, e-mail address, product model name and number, and the date of manufacture. The consumer's telephone number and e-mail address shall not be required for the consumer to submit the registration form. No other information shall appear on the electronic registration form, except for identification of the manufacturer or a link to the manufacturer's home page, a field to confirm submission, and a prompt to indicate any incomplete or invalid fields before submission. Accessing the electronic registration form shall not cause additional screens or electronic banners to appear.

(d) *Alternative for manufacturers without a Web site.* A manufacturer that lacks a Web site shall provide for consumers to register their product through e-mail. Such e-mail addresses shall be set up to provide an automatic reply to confirm receipt of the consumer's registration information.

§ 1130.9 Recordkeeping and notification requirements.

(a) Each manufacturer of a durable infant or toddler product shall maintain a record of registrants for each product

manufactured that includes all of the information provided by each consumer registered.

(b) Each manufacturer of a durable infant or toddler product shall use the information provided by the registrant to notify the registrant in the event of a voluntary or involuntary recall of, or safety alert regarding, such product.

(c) Each manufacturer of a durable infant or toddler product shall maintain a record of the information provided by the registrant for a period of not less than 6 years after the date of manufacture of the product.

BILLING CODE 6355–01–P

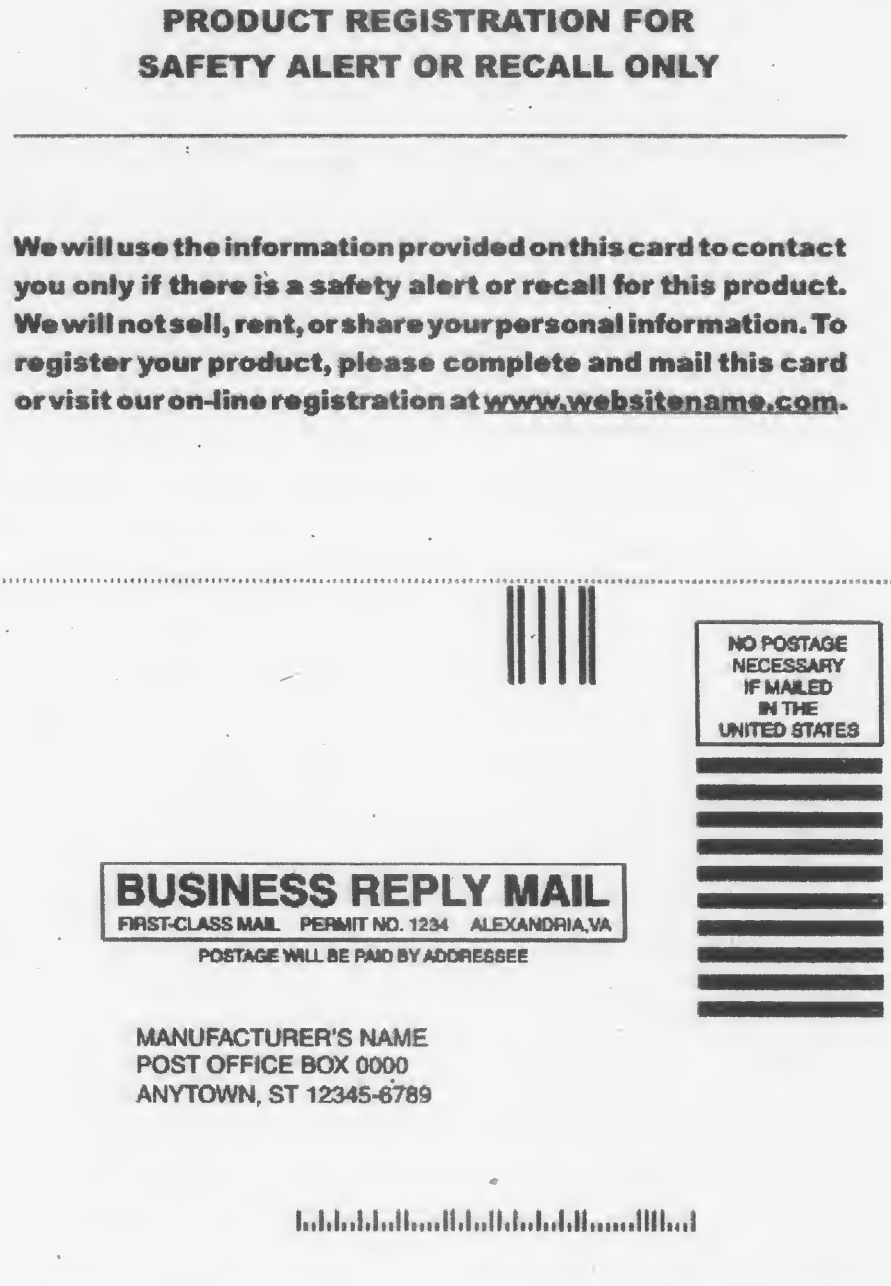

FIGURE 1 TO PART 1130 - FRONT OF REGISTRATION FORM

Model Name :

Model Number :

Manufacture Date :

Manufacturer's Name

www.websitename.com

Phone Number - Toll Free (if available) :

.....

Tear off and mail this part.
Please print clearly in the spaces below.

Name

Mailing address

City **State** **Zip Code**

Telephone number

E-mail address

Model Name :

Model Number :

Manufacture Date :

FIGURE 2 TO PART 1130 - BACK OF REGISTRATION FORM

Dated: December 17, 2009.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–30485 Filed 12–28–09; 8:45 am]

BILLING CODE 6355–01–C

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[Docket No. USCBP–2009–0015; CBP Dec. 09–46]

RIN 1505–AC13

"Imported Directly" Requirement Under the United States—Bahrain Free Trade Agreement

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, interim amendments to the U.S. Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (19 CFR) which were published in the **Federal Register** on May 22, 2009, as CBP Dec. 09–17 to change certain provisions relating to the requirement under the United States-Bahrain Free Trade Agreement (BFTA) that a good must be "imported directly" from one BFTA Party to the other Party to qualify for preferential tariff treatment. The change involved removing the condition that a good passing through the territory of an intermediate country while en route from a Party to the other Party must remain under the control of the customs authority of the intermediate country. This change more closely conformed these regulatory provisions to the BFTA and the BFTA implementing statute.

DATES: This final rule is effective January 28, 2010.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Regulations and Rulings, Office of International Trade, (202) 325–0041.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2004, the United States and the Kingdom of Bahrain (the Parties) signed the U.S.-Bahrain Free Trade Agreement (BFTA). The provisions of the BFTA were adopted by the United States with the enactment on January 11, 2006, of the United States-Bahrain Free Trade Area Implementation Act (the Act), Public Law 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note).

On October 16, 2007, CBP published CBP Dec. 07–81 in the **Federal Register** (72 FR 58511), setting forth interim amendments to implement the preferential tariff treatment and customs-related provisions of the BFTA. The majority of the BFTA implementing regulations were included within new subpart N in part 10 of the CBP regulations (19 CFR subpart N, part 10). In CBP Dec. 08–28, published in the **Federal Register** on July 23, 2008 (73 FR 42679), CBP adopted the interim regulations set forth in CBP Dec. 07–81 as a final rule with two technical corrections.

Section 10.817(a) of the CBP regulations implementing the BFTA sets forth the basic requirement, found in Article 4.1 of the BFTA, that a good must be "imported directly" from the territory of a Party into the territory of the other Party to qualify as an originating good under the BFTA. In circumstances in which a shipment passes through the territory of a non-Party, § 10.817(a)(2) provided (prior to the publication of the interim amendments set forth in CBP Dec. 09–17 on May 22, 2009) that a good will be considered to be "imported directly" only if the good: (i) Remained under the control of the customs authority of the non-Party; and (ii) did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than certain specified minor operations. Nearly identical language to that found in § 10.817(a) appeared in § 10.822(a), relating to the application of the "imported directly" requirement to certain non-originating textile and apparel goods that qualify for preferential tariff treatment under an applicable tariff preference level (TPL).

Article 4.9 of the BFTA provides that a good shall not be considered to be "imported directly" from the territory of the other Party if the good undergoes subsequent production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party. Section 202(g) of the Act mirrors the language in Article 4.9 of the Agreement. Neither the BFTA nor the Act includes a requirement that a good must remain under the control of the customs authority of a non-Party to qualify as having met the "imported directly" requirement when the good passes through the territory of a non-Party.

To more closely conform paragraph (a)(2) of §§ 10.817 and 10.822, CBP regulations, to the Agreement and the Act, CBP amended these regulatory provisions on an interim basis in CBP Dec. 09–17, published in the **Federal Register** on May 22, 2009 (74 FR 23950), by removing the "customs control" requirement. Specifically, CBP Dec. 09–17 removed paragraph (a)(2)(i) of §§ 10.817 and 10.822 and incorporated the text of paragraph (a)(2)(ii) of §§ 10.817 and 10.822 into the paragraph (a)(2) introductory text of those sections.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on May 22, 2009, CBP Dec. 09–17 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed public comment period closed on July 21, 2009. No comments were received.

Conclusion

Accordingly, CBP has decided to adopt the interim rule published on May 22, 2009, without change.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 09–17 was published as an interim rule rather than as a notice of proposed rulemaking because, as noted above, the interim amendments involved a foreign affairs function of the United States. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Exports, Imports, Preference programs, Trade agreements.

Amendments to the CBP Regulations

■ Accordingly, the interim rule amending part 10 of the CBP regulations

(19 CFR part 10), which was published at 74 FR 23950 on May 22, 2009, is adopted as a final rule without change.

Approved: December 22, 2009.

Jayson P. Ahern,

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

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E9–30737 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 19 and 144

[Docket No. USCBP–2007–0080; CBP Dec. 09–48]

RIN 1505–AB85

Class 9 Bonded Warehouse Procedures

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with modifications set forth in this document, amendments proposed to title 19 of the Code of Federal Regulations with respect to the requirements applicable to the operation of Class 9 bonded warehouses, which are also known as "duty-free sales enterprises" or "duty-free stores." The amendments in this document will extend the blanket withdrawal procedure for duty-free merchandise under certain circumstances and expand and create a uniform time period for Class 9 proprietors to file an entry, provide written confirmation of certain shortages, overages, and damages, and to pay duties, taxes, and interest on overages and shortages. The amendments in this document will also permit Class 9 warehouses to utilize existing technological systems more effectively. In addition, this document sets forth technical amendments to the applicable regulations to extend the time period for which merchandise may remain in a bonded warehouse under certain circumstances. The amendments will facilitate the efficient operation of Class 9 warehouses and also ensure adequate records are maintained for U.S. Customs and Border Protection ("CBP") trade enforcement purposes.

DATES: *Effective Date:* The final rule is effective on January 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gary Rosenthal, Office of Field Operations, (202) 344–2673, or Gary Schreffler, Office of Field Operations, (202) 344–1535.

SUPPLEMENTARY INFORMATION:

Background

Section 1555 of title 19 of the United States Code (19 U.S.C. 1555) sets forth provisions governing the establishment and operation of customs bonded warehouses. Section 1555(b) provides for a type of bonded warehouse, Class 9, also called a "duty-free sales enterprise" or "duty-free store." As defined in § 1555(b)(8)(D), duty-free sales enterprise means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory of the United States. The regulations implementing § 1555(b), and which govern the operation of duty-free stores, are found within parts 19 and 144 of title 19 of the Code of Federal Regulations (19 CFR parts 19 and 144).

Notice of Proposed Rulemaking

On January 16, 2008, a notice of proposed rulemaking was published in the **Federal Register** (73 FR 2843; the "NPRM") by U.S. Customs and Border Protection ("CBP") that proposed to amend certain regulations governing the operation of duty-free stores in order to align the regulations with actual business practices and the use of modern technologies. The amendments were proposed in order to facilitate the operation of duty-free stores in a technological environment by streamlining outdated processes and requirements while ensuring adequate records are maintained for audit purposes.

In the NPRM, CBP specifically proposed amendments to §§ 19.6, 19.12, 19.36, and 144.37 of title 19 of the CFR (19 CFR 19.6, 19.12, 19.36, and 144.37). Section 19.6 describes the requirements for depositing merchandise into or withdrawing merchandise from a warehouse, including the requirements pertaining to blanket permits to withdraw. The proposed amendments to § 19.6(d)(1)(ii) would allow the appropriate Director, Field Operations, to extend the blanket withdrawal procedure in situations where the Class 9 warehouse and destination port are located within that Director's authority.

Section 19.12 provides for inventory control and recordkeeping systems. The NPRM proposed to modify § 19.12(d)(3), which sets forth the requirements for the accounting of merchandise in bonded warehouses and for the reporting of inventory theft, shortages, overages, and damages. In order to provide adequate time to comply with reporting and filing requirements, the NPRM proposed to modify § 19.12(d)(3) in order to afford Class 9 proprietors with 20 calendar days to provide written confirmation of any reported shortages, overages, or damages, and to require that an entry for warehouse be filed for all overages by the person with the right to make entry within 20 calendar days of the date of discovery.

In addition, the NPRM proposed to modify § 19.12(h)(2), which lists the information required for the annual reconciliation report, in order to set forth special reporting rules for Class 9 warehouses. In this regard, under the proposal, § 19.12(h)(2)(ii) would allow for a reduced reporting requirement for Class 9 warehouse proprietors in cases where the proprietor successfully demonstrates, by application to the appropriate CBP port director, that shortages would be reported within 20 days of discovery. If the application were approved by the port director, the Class 9 warehouse proprietor would be permitted to submit a report that that sets forth the company name; address of the warehouse; class of warehouse; dates when physical inventories and cycle counts occur; dates when resulting shortages and overages are reported to CBP; and a listing of all entries open at the beginning of the year, added during the year, and closed during the year.

Section 19.36 sets forth the requirements for duty-free store operations, including guidance on the type of merchandise permitted in the sales or crib area of a Class 9 warehouse. The NPRM proposed to amend § 19.36(e) in order to provide an alternative to marking merchandise for Class 9 warehouse proprietors who maintain an electronic system capable of immediately identifying "DUTY-PAID" or "U.S.-ORIGIN" merchandise. In addition, the NPRM proposed changes that would ease the current requirement that conditionally duty-free merchandise either be physically separated from other merchandise, or that the other merchandise be identified or marked as "DUTY–PAID" or "U.S. ORIGIN," for those Class 9 warehouse proprietors who can immediately identify the duty status of goods through the use of an electronic system.

Section 144.37 sets forth the procedures for withdrawing

merchandise from a warehouse for exportation. Under § 144.37(h)(2), a sales ticket, in triplicate, must be made out in the name of the purchaser with at least one copy to be retained by the Class 9 warehouse proprietor. The NPRM proposed to amend § 144.37(h)(2) in order to remove the "in triplicate" requirement and to allow the Class 9 warehouse proprietor's copy to be maintained electronically, provided the port director is satisfied that the proprietor has the technological capability to immediately print the sales ticket upon the request of a CBP officer.

Comments were solicited in the NPRM of January 16, 2008. The comment period closed on March 17, 2008.

Discussion of Comments

One commenter, a trade association representing airport duty-free stores, responded to the solicitation of comments in the NPRM. A description of the comments contained in the submission and CBP's analysis is set forth below.

Comment: The commenter generally supports the streamlined reporting requirements for the annual reconciliation report for Class 9 warehouse proprietors set forth in proposed § 19.12(h)(2)(ii). However, the commenter notes that proposed § 19.12(h)(2)(ii) would still require the report to include a description of merchandise for each entry or unique identifier. The commenter states that this creates a great burden for Class 9 warehouse proprietors and requires a voluminous compilation of data. For example, the commenter states that there are literally hundreds or thousands of unique items in an entry, making it impossible to include them all in the annual reconciliation report in an automated way. In consideration of these concerns, the commenter requests that CBP delete the requirement in § 19.12(h)(2)(ii) that the annual reconciliation report include a description of merchandise for each entry or unique identifier.

CBP's Response: In order to facilitate trade and eliminate outdated or unnecessary requirements in the regulations, CBP continually monitors its requirements and thoroughly considers suggestions such as that set forth by the commenter. In analyzing the commenter's recommendation, CBP field personnel have been consulted and it has been determined that the requirement that the annual reconciliation report include a description of merchandise for each entry or unique identifier remains essential for CBP audit purposes. In this regard, the information aids CBP auditors in the targeting and sample selection process undertaken during a warehouse review and specifically enhances CBP's efforts in ensuring duty-free merchandise is accounted for and exported in accordance with law. With respect to the commenter's statement that there may be hundreds or thousands of unique items in an entry making it a burden to compile the annual reconciliation report, CBP notes that there are instances where certain types of merchandise may be described in a general manner that is not overly burdensome, although this may not be acceptable for all situations. CBP recommends that duty-free store operators consult with the port director where the duty-free store is located as to whether certain merchandise can be described in a general manner. Accordingly, the requirement in § 19.12(h)(2)(ii) that the annual reconciliation report include a description of merchandise for each entry or unique identifier will not be eliminated in this final rule.

Comment: The commenter generally supports the proposal to amend § 144.37(h)(2)(vi) in order to remove the sales ticket "in triplicate" requirement and to allow the proprietor's copy to be maintained electronically. However, the commenter does not believe that Class 9 warehouse proprietors should only be able to maintain the proprietor's copy electronically if the port director is satisfied that the proprietor has the technological capability to immediately print the sales ticket upon the request of a CBP officer. The commenter states that requiring Class 9 proprietors to first obtain the permission of the port director is not necessary because most, if not all, Class 9 warehouse proprietors maintain an electronic sales ticket register capable of printing out any number of sales tickets. In addition, it is stated that this requirement is a burden because Class 9 warehouse proprietors often operate in multiple ports and would have to obtain the permission of multiple port directors under the proposal.

CBP's Response: CBP agrees with the commenter and § 144.37(h)(2)(vi), as set forth in the proposed rule, is amended in this final rule by eliminating the requirement that the Class 9 proprietor must first obtain the permission of the port director in order to maintain the proprietor's copy of the sales ticket electronically.

Comment: The commenter suggests that CBP extend the period of warehousing set forth in the regulations so that merchandise can remain in a Class 9 warehouse for more than five years and not be destroyed. The commenter notes that there are situations when a Class 9 warehouse proprietor purchases an inventory of products that have a long shelf life, such as liquor, and that after the current five-year period ends these products have to be destroyed which is both expensive and wasteful. In order to remedy this issue, the commenter encourages CBP to update its regulations pursuant to the technical amendment of 19 U.S.C. 1557(a)(1) in § 1635 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, which provided CBP with the authority to permit products to remain in a bonded warehouse if a proper request is filed with the port director and good cause shown.

CBP Response: CBP agrees with the proposal to permit products to remain in a bonded warehouse if certain conditions are met, but notes that the current regulations (§ 144.5) do not necessarily require destruction, but only removal after 5 years. Accordingly, pursuant to the authority granted by the technical amendment of 19 U.S.C. 1557(a)(1) in § 1635 of the Pension Protection Act of 2006, Public Law 109–280, CBP is making a conforming amendment in this final rule to § 19.6(b)(2), pertaining to the retention of merchandise (other than perishable articles and explosive substances other than firecrackers) in warehouse after withdrawal. In this regard, the last sentence of § 19.6(b)(2) will be amended by removing the reference to the 5-year warehouse entry bond period. In addition, a conforming amendment will be made in this final rule to § 144.5, pertaining to the period of warehousing. In this respect, amended § 144.5 will clarify that the total period of time for which merchandise may remain in a bonded warehouse must not exceed five years from the date of importation or such longer period of time as the port director may at his discretion permit upon proper request being filed and good cause shown.

Comment: The commenter notes that § 144.32 currently requires that each withdrawal from a warehouse must include a detailed summary statement indicating the quantity of merchandise in the warehouse before withdrawal, the quantity being withdrawn, and the quantity remaining in the warehouse after withdrawal. The commenter suggests that CBP craft an exception to this requirement in the applicable regulation for Class 9 warehouses.

CBP Response: Section 144.32 was not addressed in the NPRM set forth in 73 FR 2843 and CBP is not inclined to accept the commenter's suggestion

because the requirement is essential for CBP post-audit purposes.

Comment: The commenter suggests that CBP make changes in its Automated Commercial System (ACS) to facilitate the paperless release of "Type 21" (Warehouse) and "Type 22" (Re-Warehouse) entries.

CBP Response: This issue is also outside the scope of this rulemaking. However, as CBP is continually exploring options to facilitate the entry process, the commenter's suggestion is appreciated.

Conclusion

After analysis of the comments and further review of the matter, CBP has decided to adopt as final, with the changes discussed above in the comment discussion as well as below, the NPRM published in the **Federal Register** (73 FR 2843) on January 16, 2008.

In addition to the changes discussed above, this document also amends § 19.6(d)(1)(ii), which describes the requirements for depositing merchandise into or withdrawing merchandise from a warehouse, including the requirements pertaining to blanket permits to withdraw. In the NPRM, CBP proposed to amend § 19.6(d)(1)(ii) in order to permit the appropriate Director, Field Operations, to extend the blanket withdrawal procedure to cover a withdrawal from a Class 9 warehouse for transportation in bond to another port for "vessel supplies" in situations where a Class 9 warehouse and destination port are within that Director's authority. The language in § 19.12 has also been modified to clarify the reference to the annual reconciliation reports.

It is noted that the term "vessel supplies" is a term of art and refers to merchandise that is used as supplies (including equipment) upon, or in the maintenance or repair of, certain vessels (*see* 19 U.S.C. 1309 and 1317). Upon further consideration of the language employed, CBP believes that the use of the term "vessel supplies" in § 19.6(d)(1)(ii) causes confusion and does not accurately describe the duty-free merchandise that is withdrawn from a Class 9 warehouse for transportation in bond to another port for sale to passengers departing the United States on a cruise ship. Since vessel supplies are not duty-free merchandise, this document removes the reference to "vessel supplies" in proposed § 19.6(d)(1)(ii) and clarifies that in new § 19.6(d)(1)(iii) the blanket withdrawal procedure may be used for a withdrawal from a Class 9 warehouse, for transportation in bond to another port, of duty-free merchandise intended for "passengers' on-board purchases" on board the vessel.

In addition, it is noted that duty-free merchandise withdrawn from a Class 9 warehouse must be sold to individuals for exportation from the United States. Accordingly, this final rule further amends § 19.6(d)(1)(ii) in order to clarify that a blanket permit for withdrawal may be used for a withdrawal from a Class 9 warehouse for the passenger vessel purchases referenced above only if the vessel to which the merchandise is transferred is destined for a foreign destination. Finally, other editorial changes have been made to § 19.6(d)(1).

Executive Order 12866

This rule is not considered to be a "significant regulatory action" under Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993). Accordingly, a regulatory assessment is not required.

Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the rule on small entities as required by the Regulatory Flexibility Act ("RFA", *See* 5 U.S.C. 601–612). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

According to the International Association of Airport Duty Free Stores ("IAADFS"), there are approximately 25 companies with duty-free operations in the United States and approximately 15 of them would be considered small businesses. As described above, this final rule is expected to result in enhanced efficiency and should lead to uniform operations at customs bonded warehouses.

Thus, while the number of small entities affected would be considered substantial, the economic impacts, while important and beneficial, would not rise to the level of a "significant economic impact." CBP thus certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information in this document are contained in §§ 19.6, 19.12, 19.36, and 144.37. This information is required and will be used by CBP to ensure that merchandise that was intended for exportation from duty-free stores was accounted for and was exported in accordance with law. This final rule is intended to facilitate the operation of duty-free stores in a technological environment by streamlining outdated paper accounting processes and requirements with electronic equivalents while ensuring that adequate records are maintained for audit purposes. The likely respondents are Class 9 warehouse proprietors.

This final rule is intended to facilitate the efficient operation of Class 9 warehouses and the resulting paperwork implications are expected to be minor. As the burden hours associated with the collections of information contained in this final rule are not substantively changed, the Office of Management and Budget (OMB) has already approved the collections of information in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1651–0003 for bonded warehouse proprietor's submissions and 1651–0041 concerning the establishment of bonded warehouses and other bonded warehouse regulations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 19

Bonds, Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

19 CFR Part 144

Bonds, Customs duties and inspection, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Amendments to the CBP Regulations

■ For the reasons set forth in the preamble, parts 19 and 144 of the CBP regulations (19 CFR parts 19 and 144) are amended as follows:

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

■ 1. The general authority citation for part 19 and specific authority citation

for §§ 19.35–19.39 continue to read, and a new specific authority citation for § 19.6 is added to read, as follows:

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

* * * * *

Section 19.6 also issued under 19 U.S.C. 1555, 1557;

* * * * *

Sections 19.35–19.39 also issued under 19 U.S.C. 1555;

* * * * *

■ 2. In § 19.6:

■ a. In paragraph (a)(1), the first sentence is amended by removing the word "Customs" and, in its place, adding the term "CBP"; the second and last sentences are amended by removing the word "shall" each place it appears and adding the word "will" in its place; and the fourth sentence is amended by removing the word "shall" and, in its place, adding the word "must".

■ b. Paragraphs (b)(1), (d)(4), and (d)(5) are amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP"; and by removing the word "shall" each place it appears and, in its place, adding the word "must".

■ c. Paragraph (b)(2) is amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP".

■ d. Paragraph (c) is amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP"; and by removing the word "shall" and, in its place, adding the word "will".

■ e. Paragraph (d)(1)(i)(A) is amended by removing the term "Customs territory" and, in its place, adding the term "customs territory".

■ f. In paragraph (d)(2), the first and second sentences are amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP" and by removing the word "shall" each place it appears and, in its place, adding the term "must"; the third, fourth, fifth, sixth, and seventh sentences are amended by removing the word "shall" each place it appears and, in its place, adding the term "must"; and the last sentence of the paragraph is amended by removing the word "shall" and, in its place, adding the word "will" and by removing the phrase "without Customs permit" and, in its place, adding the phrase "without a CBP permit".

■ g. Paragraph (d)(3) is amended by removing the word "shall" each place it appears and, in its place, adding the word "must".

■ h. In paragraph (e), the first sentence is amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP"; the second sentence is amended by removing the word "shall" and, in its place, adding the term "will" and by removing the word "Customs" and, in its place, adding the term "CBP"; and the last sentence of the paragraph is amended by removing the word "shall" and, in its place, adding the word "must".

■ i. The last sentence of paragraph (b)(2) and paragraph (d)(1)(ii) are revised and a new paragraph (d)(1)(iii) is added, to read as follows:

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

* * * * *

(b) * * *

(2) * * * All other goods which have been withdrawn, but not removed, remain in CBP custody until the end of the warehouse entry bond period (see § 144.5 of this chapter).

* * * * *

(d) * * *

(1) * * *

(ii) Except as provided in paragraph (d)(1)(iii) of this section, blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of § 18.24 of this chapter. A withdrawer who desires a blanket permit must state on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that "Some or all of the merchandise will be withdrawn under blanket permit per § 19.6(d), CBP Regulations." CBP's acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the port director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation CBP is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144, of this chapter.

(iii) Blanket permits to withdraw may be used for a withdrawal for transportation to another port by a duty-free sales enterprise which meets the requirements for exemption as stated in § 144.34(c) of this chapter. In addition, blanket permits to withdraw may be used for a withdrawal from a Class 9 warehouse for transportation in bond to another port of duty-free merchandise intended for passengers' on-board purchases when expressly authorized in writing by the appropriate Director, Field Operations, provided that both the Class 9 warehouse and port of destination are under that Director's authority and the vessel is destined for a foreign destination.

* * * * *

■ 3. In § 19.12:

■ a. Paragraph (a)(1) is amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP"; and the word "shall" is removed and the word "must" is added in its place.

■ b. Paragraphs (a)(3), (d)(2)(ii), (d)(4)(iii), (f)(2), (h)(1), and (h)(3) are amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP".

■ c. Paragraphs (b)(1) and (b)(2) are amended by removing the word "shall" each place it appears and, in its place, adding the word "must".

■ d. Paragraphs (c)(1), (c)(3), (d)(1), (d)(2), and (e) are amended by removing the term "Customs entry" each place it appears and, in its place, adding the term "customs entry".

■ e. Paragraphs (f)(5), (f)(6), (f)(7), (f)(8), (f)(9), and (i) are amended by removing the word "shall" each place it appears and, in its place, adding the word "must".

■ f. Paragraphs (d)(4)(i), (d)(4)(ii), (d)(5), and (f)(1) are amended by removing the word "shall" each place it appears and, in its place, adding the word "must"; and by removing the word "Customs" each place it appears and, in its place, adding the term "CBP".

■ g. In paragraph (g), the word "Customs" is removed each place it appears and, in its place, the term "CBP" is added; in the first sentence, "(CF)" is removed; the term "CF 300" is removed each place it appears and, in its place, the term "CBP Form 300" is added; and the word "shall" is removed and, in its place, the word "must" is added.

■ h. In paragraph (j), the term "(CF 300)" is removed and, in its place, the term "(CBP Form 300)" is added.

■ i. Paragraphs (d)(3) and (h)(2) are revised to read as follows:

§ 19.12 Inventory control and recordkeeping system.

* * * * *

(d) * * *

(3) *Theft, shortage, overage or damage.*

(i) *General.* Except as otherwise provided in paragraph (d)(3)(ii) of this section, any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the value of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of $100) must be immediately brought to the attention of the port director, and confirmed in writing within five business days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within five business days of the date of discovery. The responsible party must pay the applicable duties, taxes and interest on thefts and shortages reported to CBP within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and must specify the applicable duty, tax and interest. These same requirements apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed $100. Upon identification, the proprietor must record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the CBP Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of CBP Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section.

(ii) *Class 9 warehouses.* With respect to Class 9 warehouses, any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of $100) must be immediately brought to the attention of the port director, and confirmed in writing within 20 calendar days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within 20 calendar days of the date of discovery. The responsible party must pay the applicable duties, taxes and interest on thefts and shortages reported to CBP within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and must specify the applicable duty, tax and interest. These same requirements apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed $100. Upon identification, the proprietor must record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the CBP Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of CBP Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section. Discrepancies found in a Class 9 warehouse with integrated locations as set forth in § 19.35(c) will be the net discrepancies for a unique identifier (see § 19.4(b)(8)(ii) of this part) such that overages within one sales location will be offset against shortages in another location that is within the integrated location. A Class 9 proprietor who transfers merchandise between facilities in different ports without being required to file a rewarehouse entry in accordance with § 144.34 of this chapter may offset overages and shortages within the same unique identifier for merchandise located in stores in different ports (see § 19.4(b)(8)(ii) of this part).

* * * * *

(h) * * *

* * * * *

(2) *Information required*—(i) *General.* Except as otherwise provided in paragraph (h)(2)(ii) of this section, the report must contain the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; a description of merchandise for each entry or unique identifier, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(ii) *Class 9 warehouses.* If the proprietor of a Class 9 warehouse successfully demonstrates, by application to the appropriate port director, that shortages will be reported within 20 calendar days of discovery, the port director may approve the submission of a report that contains the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; date when resulting shortages and overages are reported to CBP; a description of merchandise for each entry or unique identifier; and a listing of all entries open at the beginning of the year, added during the year, and closed during the year.

(iii) *Multiple facilities.* If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the annual reconciliation report must cover all locations and warehouses of the proprietor at the same port. If the annual reconciliation report includes entries for which merchandise was transferred to a warehouse without filing a rewarehouse entry, as allowed under § 144.34, the annual reconciliation report must contain sufficient detail to show all required information by location where the merchandise is stored. For example, if merchandise covered by a single entry is stored in warehouses located in 3 different ports, the annual reconciliation report should specify individually the beginning and ending inventory balances, cumulative receipts, transfers, and positive and negative adjustments for each location.

* * * * *

■ 4. In § 19.36:

■ a. Paragraphs (a) and (f) are amended by removing the term "Customs territory" each place it appears and, in its place, adding the term "customs territory".

■ b. In paragraph (b), the first sentence is amended by removing the word "shall" and, in its place, adding the word "must" and by removing the term "Customs territory" and, in its place, adding the term "customs territory"; the third sentence is amended by removing the term "shall" and, in its place, adding the term "will" and by removing the two references to "Customs" and, in its place, adding the term "CBP"; and the fourth sentence is amended by removing the reference to "Customs" and, in its place, adding the term "CBP".

■ c. In paragraph (c), the first and fourth sentences are amended by removing the term "shall" each place it appears and adding the term "must" in its place; and the fifth sentence is amended by removing the term "shall" and, in its place, adding the term "will" and by removing the two references to "Customs" and, in its place, adding the term "CBP".

■ d. Paragraph (g) is amended by removing the term "shall" each place it appears and, in its place, adding the term "must"; and by removing the term "Customs" and, in its place, adding the term "CBP".

■ e. Paragraph (e) is revised to read as follows:

§ 19.36 Requirements for duty-free store operations.

* * * * *

(e) *Merchandise eligible for warehousing in duty-free stores (Class 9 Warehouses)*—(1) *In General.* Conditionally duty-free merchandise and other merchandise (domestic merchandise and merchandise which was previously entered or withdrawn for consumption and brought into a duty-free store (Class 9 warehouse) for display and sale or for delivery to purchasers can be warehoused in a duty-free store (Class 9 warehouse), but the conditionally duty-free merchandise and other merchandise must be physically segregated from one another, unless one of the following exceptions apply.

(2) *Marking exception to physical segregation.* Merchandise may be identified or marked "DUTY-PAID" or "U.S.-ORIGIN", or similar markings, as applicable, to enable CBP officers to easily distinguish conditionally duty-free merchandise from other merchandise in the sales or crib area.

(3) *Electronic inventory exception to physical segregation.* If the proprietor has an electronic inventory system capable of immediately identifying conditionally duty-free merchandise from other merchandise, the proprietor need not physically separate conditionally duty-free merchandise from other merchandise or mark the merchandise.

* * * * *

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

■ 5. The general authority citation for part 144 and specific authority citation for § 144.37 continue to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

■ 6. Section 144.5 is revised to read as follows:

§ 144.5 Period of warehousing.

Merchandise must not remain in a bonded warehouse beyond 5 years from the date of importation or such longer period of time as the port director may at his discretion permit upon proper request being filed and good cause shown.

■ 7. In § 144.37:

■ a. Paragraph (a) is amended by removing the word "shall" each place it appears and, in its place, adding the word "must"; and by removing the word "Customs" each place it appears and, in its place, adding the term "CBP".

■ b. Paragraphs (b)(1), (f), and (h)(3) are amended by removing the word "shall" each place it appears and, in its place, adding the word "must".

■ c. In paragraph (b)(2), the first sentence is amended by removing the word "shall" and, in its place, adding the word "must" and by removing the reference to "Customs" and, in its place, adding the term "CBP"; the second and third sentences are amended by removing the word "shall" each place it appears and, in its place, adding the word "will"; and the last sentence is amended by removing the word "shall" and, in its place, adding the word "must".

■ d. Paragraph (d) is amended by removing the word "Customs" each place it appears and, in its place, adding the term "CBP"; and by removing the word "shall" each place it appears and, in its place, adding the word "must".

■ e. Paragraphs (h)(2), introductory text, and (h)(2)(vi) are revised to read as follows:

§ 144.37 Withdrawal for exportation.

* * * * *

(h) * * *

(2) *Sales ticket content and handling.* Sales ticket withdrawals must be made only under a blanket permit to withdrawal (see § 19.6(d) of this chapter) and the sales ticket will serve as the equivalent of the supplementary withdrawal. A sales ticket is an invoice of the proprietor's design which will include:

* * * * *

(vi) A statement on the original copy (purchaser's copy) to the effect that goods purchased in a duty-free store will be subject to duty and/or tax with personal exemption if returned to the United States. At the time of purchase, the original sales ticket must be made out in the name of the purchaser and given to the purchaser. One copy of the sales ticket must be retained by the proprietor. This copy may be maintained electronically. A permit file copy will be attached to the parcel containing the purchased articles unless the proprietor has established and maintained an effective method to match the parcel containing the purchased articles with the purchaser. Additional copies may be retained by the proprietor.

* * * * *

Approved: December 22, 2009.

Jayson P. Ahern,

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

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E9–30735 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1067]

RIN 1625–AA00

Safety Zone; Atlantic Intracoastal Waterway, Oak Island, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Oak Island, North Carolina. All vessels are prohibited from transiting the zone near the second crossing to Oak Island, North Carolina except as specifically authorized by the Captain of the Port or a designated representative. The safety zone is necessary to provide for the safety of mariners on navigable waters during the installation of bridge girders at the new high-level fixed highway bridge at the

second crossing to Oak Island, North Carolina.

DATES: This rule is effective December 29, 2009 through 5:30 p.m. January 11, 2010, and applicable for purposes of enforcement from 7:30 a.m. December 7, 2009 through 5:30 p.m. January 11, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–1067 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1067 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 CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone (252) 247–4525, e-mail *Stephen.W.Lyons2@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to provide for the safety of life and property on navigable waters.

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.** Delaying the effective date would be contrary to public interest because hazards associated with the girder installation, including potential falling debris and the use of heavy equipment and machinery in the waterway, could lead to severe injury, fatalities and/or destruction of public property. Therefore, immediate action is needed to ensure the public's safety from the hazards noted above.

Background and Purpose

The State of North Carolina Department of Transportation awarded a contract to Lee Construction Company of the Carolinas, Inc. of Charlotte, North Carolina, to perform bridge girder installation at the new high-level fixed highway bridge at the second crossing to Oak Island, North Carolina. The contract provides for the installation of bridge girders. The center girder installation is scheduled to begin on December 7, 2009 and will be completed by January 11, 2010. The contractor will be utilizing a deck barge with a 55' beam, a 450 ton ringer crane on a stationary barge with an 85' beam, and an assist tug to conduct the girder installation. This operation presents a potential hazard to mariners from falling debris and the use of heavy equipment and machinery. To provide for the safety of the public, the Coast Guard will temporarily restrict access to this section of the Atlantic Intracoastal Waterway during girder installation, scheduled daily from 7:30 a.m. until 11:30 a.m.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone to encompass the waters of the Atlantic Intracoastal Waterway extending 250 yards in all directions from the main construction site at the second crossing to Oak Island, North Carolina, located at Atlantic Intracoastal Waterway Mile 316.6 (33°55.63 N, 078°9.37 W, NAD 1983). All vessels are prohibited from transiting this section of the waterway while the safety zone is in effect. Entry into the zone will not be permitted except as specifically authorized by the Captain of the Port or a designated representative. To seek permission to transit the area, mariners can contact Sector North Carolina at telephone number (252) 247–4570. This zone will be enforced daily from 7:30 a.m. until 11:30 a.m. while girder installation is in progress from December 7, 2009 through January 11, 2010. Notification of the safety zone will be provided to the public via broadcast notice to mariners.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration of time, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) vessels may be granted permission to transit the area by the Captain of the Port or a designated representative.

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 tug and barge, recreational, and fishing vessels intending to transit the specified portion of the Atlantic Intracoastal Waterway from 7:30 a.m. December 7, 2009 through 5:30 p.m. January 11, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This rule will be enforced for only a limited time each day. Although the safety zone will apply to the entire width of the Atlantic Intracoastal Waterway, vessel traffic can use alternate waterways to transit safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can

better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule establishes a temporary safety zone to protect the public from bridge construction operations. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–1067 to read as follows:

§ 165.T05–1067 Safety Zone; Atlantic Intracoastal Waterway, Oak Island, NC.

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: The waters of the Atlantic Intracoastal Waterway extending 250 yards in all directions from the main construction site at the new high-level fixed highway bridge at the second crossing to Oak Island, North Carolina, located at Atlantic Intracoastal Waterway Mile 316.6 (33°55.63 N., 078°9.37 W., NAD 1983).

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request

authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (252) 247–4570 or by radio on VHF Marine Band Radio, channels 13 and 16.

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

(e) *Enforcement period.* This section will be enforced daily from 7:30 a.m. until 11:30 a.m. while girder installation is in progress throughout the effective period from 7:30 a.m. December 7, 2009 through 5:30 p.m. January 11, 2010 unless cancelled earlier by the Captain of the Port. The exact daily times will be announced in Broadcast Notice to Mariners.

Dated: December 7, 2009.

J.E. Ryan,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. E9–30718 Filed 12–28–09; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2008–0787; FRL–9096–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the State Implementation Plan (SIP) submitted by the state of Missouri. This revision applies to Missouri's rule relating to restriction of emission of visible air contaminants and removes redundant definitions, removes an outdated exemption for incinerators used to burn refuse in the outstate area, and clarifies that the test methods stated in the rule shall be used to determine the opacity of visible emissions. EPA is not taking action on the state submitted revisions relating to open burning, as these provisions revise a rule that has not been adopted into the SIP. Approval of this revision will ensure consistency between the state and the Federally approved rules.

DATES: This direct final rule will be effective March 1, 2010, without further notice, unless EPA receives adverse comment by January 28, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0787, by one of the following methods:

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

2. *E-mail: kemp.lachala@epa.gov.*

3. *Mail:* Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2008–0787. 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.

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; *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 Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp at (913) 551–7214, or by e-mail at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following questions:

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is being addressed in this document?

On September 16, 2008, EPA received a request from the Missouri Department of Natural Resources to approve revisions to the SIP amending 10 CSR 10–6.220, "Restriction of Emission of Visible Air Contaminants," sections (1) Applicability, (2) Definitions, (3) General Provisions, and (4) Test Methods.

In general, these revisions relate to provisions of the state rule incorporating various Federal rules by reference. The revisions add dates to clarify the version of the incorporated Federal rules referenced in the state rules.

Subsection (1)(H), in the applicability section, exempts from the SIP visible emissions requirements sources which are subject to the new source performance standards promulgated by EPA and incorporated by reference into the state rule. The subsection is amended to provide specific references to the Federal rule (40 CFR part 60, promulgated as of July 1, 2007).

Subsection (1)(I), in the applicability section, is not being acted on. This subsection exempts from the visible emissions requirements certain activities exempted from Missouri's open burning rule. The open burning rule, 10 CSR 10–6.045, has not been submitted by Missouri for approval into the state's implementation plan. Therefore, EPA is not taking action at this time to approve this revision in the SIP.

Subsection (1)(J), in the applicability section, is being removed from the SIP. This subsection exempted from the rule incinerators used to burn refuse in the outstate areas of Missouri. EPA has determined that elimination of this exemption strengthens the SIP.

In section 2, "Definitions," the definitions of "opacity" and "outstate area" were removed. These definitions were either no longer applicable or more clearly defined in other rules. The definition of "six-minute period," applicable to sources using continuous opacity monitoring data, was revised to specify the applicable Federal rule (40 CFR part 60, App. B) which is incorporated by reference in the state definition.

In General Provisions, (3)(F) was revised to reflect that all sources subject to the rule, including those required to have continuous opacity monitors, are subject to the testing requirements in section 5 of 10 CSR 10–6.220.

Missouri's reference to test method 203A—Visual Determination of Opacity of Emissions from Stationary Sources for Time-Averaged Regulations, was revised in (5)(A)2 to update the reference to Federal test methods. The reference to test method 203B—Visual Determination of Opacity of Emissions from Stationary Sources for Time-Exception Regulations, (5)(A)3., was revised to reference the Federal methods promulgated as of July 1, 2007.

Subsections (5)(B), "Emissions from Mobile Internal Combustion Engines," and (5)(C), "Fugitive Emissions from Material Sources, Smoke Emissions from Flares and as Required by Permit Condition," were revised to specify that Missouri is incorporating applicable EPA test methods promulgated as of July 1, 2007 (Method 22, 40 CFR part 60, App. A). EPA has determined that these rule updates do not substantively change the stringency of the SIP.

Have the requirements for approval of a SIP revision been met?

The submittal satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the state submittal has met the public notice requirements for SIP submission in accordance with 40 CFR 51.102. The revisions are not substantive changes to the existing SIP, but merely clarify existing requirements. Therefore the revisions continue to meet the substantive SIP requirements of the CAA, including section 110.

What action is EPA taking?

We are approving the request to revise the Missouri SIP (10 CSR 10–6.220) as described above. We are not acting on the revision exempting sources which are exempt from the open burning rule, as described above. This revision will ensure consistency between the state and the Federally-approved rules. We have determined that these changes will not relax the SIP or adversely impact air quality.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial, and they do not contain substantive changes. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 15, 2009.

William Rice,

Acting Regional Administrator, Region 7.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for "10–6.220" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri				
*	*	*	*	*
10–6.220	Restriction of Emission of Visible Air Contaminants	9/30/08	12/29/09 [*insert FR page number where the document begins*].	Subsection (1)(I) referring to the open burning rule, 10 CSR 10–6.045, is not SIP approved.
*	*	*	*	*

* * * * *

[FR Doc. E9–30774 Filed 12–28–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0895; FRL–9096–6]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Iowa State Implementation Plan (SIP) and Iowa Operating Permits Program submitted by the State on November 18, 2008. The purpose of these revisions is to update existing air quality rules; make corrections, clarifications and improvements; add information with regard to control of fugitive dust; clarify the opacity limit for incinerators; update Prevention of Significant Deterioration (PSD) permitting requirements; and add rules for temporary operation of small generators during periods of disaster. EPA is approving the SIP provisions pursuant to section 110 of the CAA. EPA is approving the state operating permits revisions pursuant to section 502 of the CAA and implementing regulations.

DATES: This direct final rule will be effective March 1, 2010, without further notice, unless EPA receives adverse comment by January 28, 2010. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0895, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: casburn.tracey@epa.gov.*
3. *Mail or Hand Delivery:* Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2008–0895. 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.

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, *i.e.*, 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 form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn at (913) 551–7016, or by e-mail at *casburn.tracey@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?

The State has revised Chapters 20, 21, 22, 23, 25 and 33 of the State air pollution control rules promulgated by the State's Environmental Protection Commission. EPA is approving the revisions described below for the reasons discussed in this document.

II. What Part 52 revisions is EPA approving?

A. Definition Changes

In Iowa (IA) Rule 567–20.2 and 567–33.3(1) the mailing addresses of the "American Society of Mechanical Engineers," or ASME, and the "American Society for Testing and Materials," or ASTM, are being removed. The "EPA Reference Method" definition is being revised to update the amended dates of several appendices as described under 40 CFR part 60 (Appendices A, B, C and F), 40 CFR part 61 (Appendix B), 40 CFR part 63 (Appendix A) and 40 CFR part 75 (Appendix A, B, F and K). The definition of "volatile organic compound" was updated to reflect recent Federal amendments to exclude the compound HF–7300 from the list of compounds that contribute to tropospheric ozone formation. EPA is approving these revisions as they are administrative in nature and do not alter the stringency of the SIP.

B. Construction Permit Exemption for Temporary Operation of Small Generators in Disaster Situations

The State added a new rule, IA Rule 567–21.6, to allow utilities to temporarily operate (generally for no more than 10 days) small generators for electricity generation during periods of natural and man-made disasters. The rule defines the term "disaster" by reference to the term as specified in the Iowa State Code section 29C.2(1). An owner or operator may install and operate a generator under this rule with or without a gubernatorial or Federal disaster proclamation. The State submitted technical support documentation demonstrating that the exemption would not result in interference with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). EPA reviewed that documentation and found it to be a reasonable representation of the expected emissions. EPA agrees with the State's demonstration that the emergency generator exemption will not limit the State's ability to maintain compliance with the NAAQS. The documentation submitted by the State is included in the docket for this action.

C. Addition of PSD Amendments

The State revised its rules, IA Rules 567–33.3(17) and 567–33.3(18), to address the reopening of the public comment period if substantial new issues are raised during the initial public comment period. These revisions clarified the public participation procedures by allowing for the reopening of the public comment period when necessary. These provisions add clarity for those applying for PSD permits and for those seeking to comment on draft PSD permits. Provisions were also added (paragraphs "c" and "d" of IA Rule 567–33.3(18)) to clarify that a source owner or operator is subject to enforcement action if a source is not constructed according to its PSD application and the PSD permit, and if a source owner or operator does not obtain the required PSD permit prior to construction. These revisions also clarified the time period allowed for commencing and completing construction on PSD projects. EPA is approving these clarifications as they are consistent with the Federal PSD rules in 40 CFR 51.166.

D. Addition of PSD Administrative Rule

The State adopted a new PSD subrule, IA Rule 567–33.3(21), to add provisions for administrative amendments such as typographical errors, word processing errors, or changes in the name, address, or telephone number of any person identified in the permit. This provision adds clarity for those applying for administrative amendments to PSD permits. EPA is approving this revision as it is administrative in nature and does not alter the stringency of the SIP.

E. Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified

The State made revisions to a section of IA Rule 567–22.4 that applies to special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). The change was made to cross-reference from this section of the rule to the chapter containing the State's PSD rules. EPA is approving this revision as it is administrative in nature and does not alter the stringency of the SIP.

F. Changes To Permit Exemption Requirements for New or Existing Sources

The State made several changes to IA Rules 567–22.1(2)"r", 567–22.1(2)"w"(6), 567–22.1(2)"aa," and 567–22.1(2)"nn". The State added information to a minor source (non-PSD) construction permit exemption clarifying that an internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft may be subject to the new source performance standard (NSPS) for stationary compression ignition internal combustion engines (as set forth in 40 CFR Part 60). The revision further states that using the exemption does not relieve the owner or operator from any obligation to comply with the NSPS requirements.

The State also corrected an error in the "small unit" exemption provisions. The existing subparagraph (numbered paragraph 8) incorrectly lists the threshold for a "substantial small unit" for "any combination of hazardous air pollutants" as 9.375 tons per year. The amendment corrects the threshold to 3.75 tons per year.

Two corrections were made to construction permit exemptions. The first correction, IA Rule 567–22.1(2)"aa," clarifies that the exemption for pretreatment application processes that use aqueous-based chemistries (wash booths) applies to all pretreatment wash processes using aqueous-based chemistries and not just processes preparing a substrate for an organic coating. The second correction, IA Rule 567–22.1(2)"nn," applies to emissions from agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at non-major equipment repair shops or equipment dealerships. The amendment adds "emissions from over-the-road truck internal combustion engines" to the description of emissions covered under this exemption. This exemption was inadvertently excluded from the list of mobile source equipment types included in the original rulemaking. EPA is approving these revisions as they are administrative in nature and do not alter the stringency of the SIP.

G. Amendment of Emissions Standards and Measurement

In IA Rule 567–23.1(6)"a"(2) and 567–25.1(9) revisions were made to amend the methods and procedures for stack sampling and associated analytical methods to include the most recent date of Federally-approved revisions and corrected the symbol for "good engineering practice stack height." EPA is approving these clarifications as they are consistent with the Federal rules.

H. Modification of Notification Requirements for Portable Plant Relocations

An amendment to IA Rule 567–22.3(3)"f" reduces the notification requirement for portable plant relocations (facilities which have been previously permitted and are minor sources) from 30 days prior to relocation to 14 days prior to relocation. This change will allow more flexibility for owners and operators at portable plants, while still allowing sufficient time for the Iowa Department of Natural Resources to conduct air quality inspections at these portable plants. This revision does not apply to facility relocations located in non-attainment areas or areas that are maintenance for the NAAQS. The notification requirement remains at 30 days for those relocations. EPA is approving this revision as it is administrative in nature and does not alter the stringency of the SIP.

I. Addition of Vehicle Speed Control as a Preventative Measure for Fugitive Dust

A new provision was added to IA Rule 23.3(2)"c"(1) for the control of fugitive dust to include "vehicle speed control" as a reasonable precaution to control the discharge of visible emissions of fugitive dust beyond the lot line of property on which emissions are generated. Fugitive dust generated from a road or other surface used for vehicle movement is greatly influenced by the speed of a vehicle on the surface and reducing the allowable speed is a reasonable method to help control the discharge of visible fugitive dust emissions. EPA is approving this

revision as it does not alter the stringency of the SIP.

J. Clarification of Incinerator Provision

In IA Rule 567–23.4(12), the State clarified the visible emissions (opacity) limit for incinerators. The limit is 40 percent and the rules are intended to allow incinerators to exhibit no greater than 60 percent opacity in the case of an operation breakdown or the cleaning of control equipment for specified periods of time. The amendment clarifies that this 60 percent opacity limit applies in such instances. The amendment also includes minor editorial changes. EPA approves this revision solely because it corrects an error in the prior rule which allowed sources to emit above 60 percent opacity during breakdown or cleaning of control equipment.

K. Cross Reference Connection to the Construction Permits Rule

IA Rule 567–22.207(1) was amended to correct the cross reference to subrule 567–22.105(1) which includes the "duty to apply" provisions for the Title V Operating Permits Program. EPA is approving this revision as it is administrative in nature and does not alter the stringency of the SIP.

III. What Part 70 revisions is EPA approving?

A. Update To Incorporate the Date for EPA Reference Method

In IA Rule 567–22.100 the state amended the definition of "EPA reference method" to reflect Federal amendments to EPA reference methods. EPA is approving this revision as it is consistent with Federal requirements.

B. Clarification of Title V Permit Application Provisions

Several revisions were made to IA Rule 547–22.105(1)"a" except (9), 567–22.110, and 567–22.116(2) in the Iowa Operating Permits Program. The "duty to apply" was revised to provide a better description of application forms for the Title V facility owners or operators who must submit timely applications, revisions and notifications. The term "off-permit revision" was added in another section of the Operating Permits Program that is sometimes used to refer to a change at a Title V source that does not require a revision to the current Title V permit. One sentence was removed from subrule 22.116(2). This sentence required testing to be completed prior to the submission of an application for a Title V permit. This sentence is no longer needed because the State has established procedures, such as compliance plan requirements, to address compliance testing. EPA is approving these revisions as they are administrative in nature and do not alter the stringency of the State's Operating Permits Program.

C. Issuance of Multiple Title V Permits

The State added a subrule, IA Rule 567–22.105(5), that allows a source to obtain more than one Title V permit under certain circumstances. The appropriateness of this approach will be reviewed by the State prior to issuance. EPA is approving this revision as it is consistent with Federal requirements and does not alter the stringency of the Operating Permits Program.

D. Correction of Errors

The State added a subrule, IA Rule 567–22.106(8), that requires owners or operators to submit revised forms as soon as possible after an error is discovered, or upon notification of an error by the State, in a Title V emissions inventory or Title V fee payment. EPA is approving this revision as it is consistent with Federal requirements and does not alter the stringency of the Operating Permits Program.

IV. What revisions is EPA not taking action on?

The State's submittal included revisions to certain parts of the Acid Rain Program to include the most recent revisions of Federally-approved rulemakings. EPA is taking no action on the provisions related to the Acid Rain Program because the State's Acid Rain rules are not part of the State's SIP or Title V program.

The State added a provision to portions of IA Rule 567–21.1(3), 567–21.1(4), 567–22.1(3), 567–22.105(1)"a"(9), and 567–22.106(3)"b" to allow for the submittal of emissions inventory information and new or modified construction permit applications (unless a conditional permit is required) in an electronic format. EPA is not acting on any provision allowing electronic submittal of information. In order for EPA to approve provisions that allow for the electronic submittal of information, the State must seek and obtain approval from EPA of its electronic document receiving system consistent with the Cross-Media Electronic Reporting Rule found at 40 CFR Part 3.

V. What action is EPA taking?

EPA is approving the request to amend the Iowa SIP and the Iowa Operating Permits Program. The revisions pertain to routine updates, corrections, clarifications and improvements as listed previously in this document. These modifications will not adversely affect air quality and will not relax the SIP. The State has provided adequate justification where certain revisions could result in emissions increases. EPA is not taking action on the revisions to the Acid Rain Program or the revisions pertaining to "electronic submittal."

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. The revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. These revisions are also consistent with applicable EPA requirements in Title V of the CAA and 40 CFR part 70.

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) because it approves a State rule implementing a Federal standard.

In reviewing State submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a State submission, to use VCS in place of a State submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 15, 2009.

William Rice,

Acting Regional Administrator, Region 7.

■ 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 Q—Iowa

■ 2. In § 52.820(c) the table is amended by:

■ a. Revising the entries for 567–20.2, 567–22.1, 567–22.3, 567–22.4, 567–22.207, 567–23.1, 567–23.3, 567–23.4, 567–25.1, and 567–33.3; and

■ b. Adding in numerical order an entry for 567–21.6.

The revisions and addition read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title—Definitions—Forms—Rules of Practice				
*	*	*	*	*
567–20.2	Definitions	10/15/08	12/29/09 [*insert FR page number where the document begins*].	The definitions for anaerobic lagoon, odor, odorous substance, odorous substance and greenhouse gas are not SIP approved.
*	*	*	*	*
Chapter 21—Compliance				

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
567–21.6	Temporary Electricity Generation for Disaster Situations.	10/15/08	12/29/09 [*insert FR page number where the document begins*].	
Chapter 22—Controlling Pollution				
567–22.1	Permits required for New or Existing Stationary Sources.	6/11/08	12/29/09 [*insert FR page number where the document begins*].	Electronic submittal referred to in 22.1(3) is not SIP approved.
*	*	*	*	*
567–22.3	Issuing Permits	10/15/08	12/29/09 [*insert FR page number where the document begins*].	
567–22.4	Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD).	6/11/08	12/29/09 [*insert FR page number where the document begins*].	
*	*	*	*	*
567–22.207	Relation to Construction Permits	10/15/08	12/29/09 [*insert FR page number where the document begins*].	
*	*	*	*	*
Chapter 23—Emission Standards for Contaminants				
567–23.1	Emission Standards	6/11/08	12/29/09 [*insert FR page number where the document begins*].	Subrules 23.1(2)–(5) are not SIP approved.
*	*	*	*	*
567–23.3	Specific Contaminants	6/11/08	12/29/09 [*insert FR page number where the document begins*].	Subrule 23.3(3) "d" is not SIP approved.
567–23.4	Specific Processes	6/11/08	12/29/09 [*insert FR page number where the document begins*].	Subrule 23.4(10) is not SIP approved.
*	*	*	*	*
Chapter 25—Measurement of Emissions				
567–25.1	Testing and Sampling of New and Existing Equipment.	10/15/08	12/29/09 [*insert FR page number where the document begins*].	
*	*	*	*	*
Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality				
*	*	*	*	*
567–33.3	Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD).	10/15/08	12/29/09 [*insert FR page number where the document begins*].	
*	*	*	*	*

* * * * *

PART 70—[AMENDED]

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A to part 70 is amended by adding paragraph (k) under Iowa to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Program

* * * * *

Iowa

* * * * *

(k) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100, 567–22.105(1)"a", except subparagraph (9); new subrules 567–22.105(5) and 567–22.106(8); 567–22.110, and 567–22.116 on November 18, 2008. The state effective dates were October 15, 2008. These revisions to the Iowa program are approved effective March 1, 2010.

* * * * *

[FR Doc. E9–30775 Filed 12–28–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8109]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
Virginia:				
Augusta County, Unincorporated Areas	510013	July 24, 1974, Emerg; May 17, 1990, Reg; January 6, 2010, Susp.	Jan. 6, 2010	Jan. 6, 2010
Franklin County, Unincorporated Areas	510061	May 23, 1974, Emerg; May 19, 1981, Reg; January 6, 2010, Susp.	do	Do.
Staunton, City of, Independent City	510155	December 24, 1974, Emerg; December 1, 1978, Reg; January 6, 2010, Susp.	do	Do.
Region IV				
Alabama: Greensboro, City of, Hale County	010336	March 19, 1975, Emerg; August 19, 1985, Reg; January 6, 2010, Susp.	do	Do.
Kentucky: Marion County, Unincorporated Areas.	210160	June 7, 1984, Emerg; August 19, 1985, Reg; January 6, 2010, Susp.	do	Do.
Mississippi:				
Chickasaw County, Unincorporated Areas.	280269	November 15, 2007, Emerg; September 1, 2008, Reg; January 6, 2010, Susp.	do	Do.
Eupora, Town of, Webster County	280183	December 12, 1974, Emerg; June 17, 1986, Reg; January 6, 2010, Susp.	do	Do.
Houston, City of, Chickasaw County	280030	February 14, 1975, Emerg; September 4, 1985, Reg; January 6, 2010, Susp.	do	Do.
Mathiston, Town of, Webster County	280184	June 19, 1975, Emerg; September 29, 1986, Reg; January 6, 2010, Susp.	do	Do.
New Houlka, Town of, Chickasaw County.	280067	October 25, 2007, Emerg; N/A, Reg; January 6, 2010, Susp.	do	Do.
Okolona, City of, Chickasaw County	280031	December 24, 1974, Emerg; September 4, 1985, Reg; January 6, 2010, Susp.	do	Do.
Roxie, Town of, Franklin County	280055	May 8, 1975, Emerg; June 17, 1986, Reg; January 6, 2010, Susp.	do	Do.
Webster County, Unincorporated Areas	280284	December 21, 1978, Emerg; September 18, 1985, Reg; January 6, 2010, Susp.	do	Do.
North Carolina:				
Asheville, City of, Buncombe County	370032	June 30, 1976, Emerg; July 16, 1980, Reg; January 6, 2010, Susp.	do	Do.
Montreat, Town of, Buncombe County	370476	N/A, Emerg; September 19, 2005, Reg; January 6, 2010, Susp.	do	Do.
Weaverville, Town of, Buncombe County.	370269	N/A, Emerg; May 6, 1997, Reg; January 6, 2010, Susp.	do	Do.
Woodfin, Town of, Buncombe County	370380	February 18, 1975, Emerg; February 1, 1980, Reg; January 6, 2010, Susp.	do	Do.
Region VII				
Kansas:				
Buhler, City of, Reno County	200472	August 7, 1975, Emerg; July 20, 1984, Reg; January 6, 2010, Susp.	do	Do.
Hutchinson, City of, Reno County	200283	January 19, 1973, Emerg; September 5, 1978, Reg; January 6, 2010, Susp.	do	Do.
Nickerson, City of, Reno County	200284	January 16, 1975, Emerg; January 3, 1979, Reg; January 6, 2010, Susp.	do	Do.
Pretty Prairie, City of, Reno County	200549	June 10, 1977, Emerg; September 28, 1990, Reg; January 6, 2010, Susp.	do	Do.
South Hutchinson, City of, Reno County	200530	August 7, 1975, Emerg; September 28, 1990, Reg; January 6, 2010, Susp.	do	Do.
Willowbrook, City of, Reno County	200285	May 1, 1975, Emerg; August 1, 1986, Reg; January 6, 2010, Susp.	do	Do.
Nebraska:				
Central City, City of, Merrick County	310148	May 20, 1975, Emerg; August 15, 1979, Reg; January 6, 2010, Susp.	do	Do.
Clarks, Village of, Merrick County	310149	August 26, 1975, Emerg; August 19, 1987, Reg; January 6, 2010, Susp.	do	Do.
Merrick County, Unincorporated Areas	310457	N/A, Emerg; January 31, 1994, Reg; January 6, 2010, Susp.	do	Do.
Pender, Village of, Thurston County	310221	September 20, 1973, Emerg; April 3, 1978, Reg; January 6, 2010, Susp.	do	Do.
Silver Creek, Village of, Merrick County	310150	July 2, 1975, Emerg; August 26, 1977, Reg; January 6, 2010, Susp.	do	Do.
Walthill, Village of, Thurston County	310222	May 7, 1975, Emerg; September 1, 1986, Reg; January 6, 2010, Susp.	do	Do.
Winnebago, Town of, Thurston County	310223	January 17, 1975, Emerg; September 1, 1986, Reg; January 6, 2010, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Winnebago Indian Tribe, Thurston County.	315498	August 6, 1996, Emerg; N/A, Reg; January 6, 2010, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 14, 2009.

Edward L. Connor,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–30731 Filed 12–28–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207 and 227

[DFARS Case 2006–D055]

Defense Federal Acquisition Regulation Supplement; Technical Data and Computer Software Requirements for Major Weapon Systems

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with a minor change, the interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802(a) of the National Defense Authorization Act for Fiscal Year 2007 and DoD policy requirements. Section 802(a) contains requirements for DoD to assess long-term technical data needs when acquiring major weapon systems and subsystems. DoD policy requires similar assessment for computer software needs.

DATES: *Effective Date:* December 29, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2006–D055.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 51188 on September 6, 2007, to implement Section 802(a) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 802(a) adds a new subsection (e) to 10 U.S.C. 2320 regarding technical data needs for sustainment of major weapon systems. DoD received one response to the interim rule. This response provided general comments, specific comments, and a proposed alternative.

1. General Comments

a. The rule should better articulate selected policy points. The respondent comments that the rule should better articulate policy points in order to provide insight into the intent of the statute and the program managers' responsibilities—primarily by referencing or reinforcing existing statements of policy and practice, such as those found in the USD (AT&L) Guidebook "Intellectual Property: Navigating Through Commercial Waters". The respondent suggests that contractors rely strongly on these existing policy guidelines and that any "fundamental change to the DoD policy" in the rule could negatively impact contractors' long-term plans for participation in DoD weapons systems programs.

Response: There is no fundamental change in long-standing policy in this rule, only a clarified and enhanced requirement to expressly address specific data rights considerations in the acquisition strategy documentation.

b. The new rule may increase the potential for contractors to "walk away from the Government market." The respondent notes that small or medium sized companies would be more likely to avoid Government contracts "[if they] had to turn all their data over to the Government with the possibility that it would then be given to a competitor * * *"

Response: Contractors of any size might avoid business opportunities with the Government—or with any other party for that matter—that would require the uncompensated relinquishment of valuable intellectual property assets. However, nothing in the interim rule alters the Government's ability to require delivery of data or software, nor expands (nor limits nor affects in any way) the Government's ability to disclose proprietary or other sensitive information to a competitor. Nothing in the interim rule changes long-standing, statutorily-based, DoD policy that contractors shall not be required to relinquish proprietary rights as a condition of responding to or receiving award of a DoD solicitation. No revisions have been made in the final rule in response to this comment.

c. Clarify the effect on pre-existing statutory requirements. The respondent requests clarification of whether the rule is intended to affect preexisting statutory requirements such as "march-in rights" under the Bayh-Dole Act.

Response: This rule does not conflict with any pre-existing statutory, policy, or regulatory requirements. For example, the rule covers pre-contractual requirements to address technical data and computer software in acquisition strategies, and has absolutely no relationship, express or implied, to the Government's post-contractual interest or ability in exercising its statutory "march-in rights" for patented inventions made during the contract. Accordingly, no clarification in the final rule is necessary.

2. Specific Comments

a. Extension of rule to cover computer software. The respondent objects to the extension of the precepts of section 802(a) to computer software documentation.

Response: This issue was anticipated and expressly addressed in the background materials published with the interim rule. DoD strongly reaffirms the policy-based application of these new requirements to computer software, in addition to the mandatory implementation of the statutorily-based requirements for technical data.

The respondent correctly notes that section 802(a) does not expressly apply to computer software—it amends 10 U.S.C. 2320, which applies only to technical data. Accordingly, the mandatory statutory changes could, technically, be implemented without affecting in any way the detailed requirements for documenting software-specific considerations in acquisition

strategies. There is no other Title 10 statute that establishes requirements for the acquisition of computer software (*e.g.*, equivalent 10 U.S.C. 2320). Similarly, there is nothing in the legislative history of section 802(a) that indicates congressional intent that these requirements should *not* apply to computer software.

It is long-standing DoD policy to treat computer software and technical data in the same manner, to the maximum extent practicable. During the 1980s and early 1990s, technical data and computer software were both covered by the same combined rules in DFARS Subpart 227.40. In 1995, this coverage was completely reworked and the materials were split into two separate subparts—227.71 for technical data, and 227.72 for computer software. However, the substance and language of these two subparts was, and continues to be, nearly identical except for the interchangeable use of the terms "technical data" and "computer software." This unnecessary split, resulting in unnecessary duplication of DFARS language, was noted and proposed for elimination in the DFARS Transformation of Part 227 (DFARS Case 2003–D049, approved by the DARC, and currently in pre-publication review), which proposes to recombine the coverage for technical data and computer software into a single subpart to eliminate the massive redundancy, while staunchly maintaining all of the substantive distinctions in the detailed coverage. The rule in the current case also follows this model: Applying the same policies and rules for both technical data and computer software when appropriate, and recognizing any instance in which technical data and computer software should be treated differently.

In the current case, the new statutory-based requirements for technical data are equally applicable to computer software—both under the long-standing policy of equivalent treatment for technical data and computer software, and in view of the most current acquisition policies. In fact, the new requirements are so top-level, and so consistent with existing policy objectives for both technical data and computer software, that it would be inconsistent with the current DFARS coverage if the new rule did not apply equally to computer software.

In review of this issue, DoD has noted and corrected an apparent typographical error/omission in the interim rule: The requirements specified at DFARS 207.106(S–70)(1)(ii) inadvertently omitted the phrase "and computer software" prior to the term "deliverables." This error is remedied by inserting the omitted text in the final rule.

b. Impact on acquisition of computer software. The respondent also comments in some detail on the differences required for maintenance of software as opposed to hardware, and that there is danger that Program Managers may seek to acquire computer software in the same manner they acquire technical data, even when this does not make sense.

Response: The DFARS rule establishes only top-level requirements to assess long-term needs, establish acquisition strategies to meet those needs, and to expressly address more specific considerations in the acquisition strategy documentation. The interim rule is directed towards the acquisition planning stage. At this preliminary planning stage, both computer software and technical data needs can be assessed and both have similar issues and needs that can be accounted for. DoD acquisition personnel have always been required to consider intellectual property requirements and costs when determining acquisition strategies.

c. Acquisition of rights. The respondent notes that Government personnel could become confused about the requirements of the interim rule when creating the acquisition strategy. In particular, the respondent notes that a program manager could "unnecessarily interpret" the rule as requiring the acquisition of more rights than required under the current "Limited Rights" regime.

Response: DoD does find the respondent's argument persuasive that Government personnel will become confused. The respondent notes that such an interpretation would be unnecessary. The simple requirement to address technical data and computer software in acquisition strategies for major weapon systems does not override any current policies on acquiring limited rights.

d. Information regarding the data sought by the Government. The respondent also raises numerous issues regarding the language contained in Part 227.106 of the interim rule, including the information which the contractor would possess regarding the data being sought by the Government, who would access the data, and the future value of the data.

Response: This information would usually be routinely provided in the solicitation or in the course of communications with the Government. It is unnecessary to amend the rule to include this information.

e. Term "option." The respondent requests clarification of the term "option," as used in the phrase "priced contract option" in both the interim rule and the statutory requirement.

Response: DoD considers that this term/phrase is unambiguous in this context.

f. Change orders. Another issue raised by the respondent involves the ability of the Government to issue change orders modifying the option following contract award. The respondent notes that these changes would entitle the contractor to request equitable adjustments and that such an ability to issue change orders would remove many of the guidelines governing the contracting officer's behavior.

Response: Nothing in the interim rule eliminates, limits, or affects in any way any preexisting requirements, rules, or procedures—including those governing change orders.

g. Desired license options. The last issue raised by the respondent in its "Specific Comments" section is a request to amend the interim rule to require program managers to provide detailed guidance on the details of their desired license options. It is also requested that the interim rule be amended to limit the scope of the desired license option to the sustainment of the system or subsystems underlying the solicitation.

Response: DoD does not agree that amendments of this sort are warranted. The DFARS does not provide direction to program managers.

3. Alternative Proposal

The respondent provides an alternate proposal for consideration, in which the DoD approach to technical data needed for sustainment would be modeled after a commercial model used for FAA-certified aircraft.

Response: Nothing in the rule would prohibit the use of such a model in appropriate circumstances. Although this approach, or a variation thereof, may be useful in individual or specific circumstances, it would be unnecessarily restrictive (and in some cases likely inapplicable or unworkable) for other DoD weapon systems programs.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

because this rule pertains to acquisition planning that is performed by the Government.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 207 and 227

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 207 and 227, which was published at 72 FR 51188 on September 6, 2007, is adopted as a final rule with the following changes:

PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 207.106 is amended by revising paragraph (S–70)(1)(ii) to read as follows:

207.106 Additional requirements for major systems.

* * * * *

(S–70)(1) * * *

(ii) Establish acquisition strategies that provide for the technical data and computer software deliverables and associated license rights needed to sustain those systems and subsystems over their life cycle. The strategy may include—

* * * * *

[FR Doc. E9–30672 Filed 12–28–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 171

[Docket No. PHMSA–2009–0411]

RIN 2137–AE48

Hazardous Materials: Adjustment of Maximum and Minimum Civil Penalties

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is adjusting the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. The maximum civil penalty is increased to $55,000, and to $110,000 for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. The minimum civil penalty is increased to $275, and to $495 for a violation related to training. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* This final rule is effective on December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas S. Smith, Office of Hazardous Materials Enforcement, 202–366–4700, or Joseph Solomey, Assistant Chief Counsel for Hazardous Materials Safety, 202–366–4400, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996, requires each Federal agency to periodically adjust civil penalties it administers to consider the effects of inflation. The Act is set forth in the note to 28 U.S.C. 2461.

According to Section 5 of the Act, the maximum and minimum civil penalties must be increased based on a "cost-of-living adjustment" determined by the increase in the Consumer Price Index (CPI–U) for the month of June of the calendar year preceding the adjustment as compared to the CPI–U for the month of June of the calendar year in which the last adjustment was made. The Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of $5,000, for a penalty between $10,000 and $100,000, and that the first adjustment to a civil penalty is limited to 10%. Any increased civil penalty amount applies only to violations that occur after the date the increase takes effect.

Section 7120 of the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA–LU," Pub. L. 109–59, 119 Stat. 1905)) amended 49 U.S.C. 5123(a) to reset the maximum and minimum civil penalties for a knowing violation of Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, or a regulation, order, special permit, or approval issued under that law as follows:

—Maximum civil penalty—$50,000, except that amount may be increased to $100,000 for a violation that results in death, serious illness, or severe injury to a person or substantial destruction of property.

—Minimum civil penalty—$250, except that the minimum civil penalty for a violation related to training is $450.

Because these maximum and minimum civil penalties were reset by statute, they applied to any violation that occurred on or after August 10, 2005, the date on which SAFETEA–LU became law.

Under the Act, PHMSA is now required to adjust the maximum and minimum civil penalties set forth in 49 U.S.C. 5123(a), as amended by SAFETEA–LU. Because these adjustments are the first adjustment to the amounts reset in SAFETEA–LU, any increase in the maximum and minimum civil penalty amounts is limited to 10%.

Applying the adjustment formula in the Act, PHMSA has compared the CPI–U in June 2008 (218.815)—the year before the year in which the adjustment is being made—to the CPI–U in June 2005 (194.5)—the year in which the maximum and minimum civil penalties were reset in SAFETEA–LU. This comparison shows that the CPI–U increased by 12.5% during that period, which is greater than the 10% maximum increase allowed for the first adjustment. Accordingly, PHMSA is increasing the maximum and minimum civil penalties by 10%. Because this adjustment and the amount thereof are mandated by statute, notice of proposed rulemaking is unnecessary, and there is good cause to make the adjusted maximum and minimum civil penalties applicable to any violation occurring on or after January 1, 2010. 5 U.S.C. 553(b), (d).

Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of (1) Federal hazardous material transportation law, which, at 49 U.S.C. 5123, provides civil penalties for a knowing violation of that law or a regulation, order, special permit, or approval issued under that law, and also (2) the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996 (see 28 U.S.C. 2461 note) which requires that maximum and minimum civil penalties

must be adjusted periodically to consider the effects of inflation.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11024). The economic impact of this final rule is minimal, and preparation of a regulatory evaluation is not warranted.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the President's May 20, 2009 memorandum on "Preemption" (74 FR 24693, May 22, 2009). As amended in 2005, 49 U.S.C. 5125(h) provided that the preemption provisions in Federal hazardous material transportation law do "not apply to any * * * penalty * * * utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material. Accordingly, this final rule does not have any preemptive effect on the amount or nature of penalties imposed by a State, local, or Indian tribe for violations of their requirements which are consistent with requirements in Federal hazardous material transportation law and the regulations prescribed under that law. Preparation of a federalism assessment is not warranted.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

I certify that this final rule will not have an significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials and persons who manufacture, mark, certify or sell packagings, containers, and packaging components as qualified for use in transporting hazardous materials in commerce, some of whom are small entities. However, there is no economic impact on any person who complies with Federal hazardous material transportation law and the regulations, orders, special permits, and approvals issued under that law.

F. Paperwork Reduction Act

There are no new information requirements in this final rule.

G. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in annual costs of $141.3 million or more to either State, local, or Indian tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

J. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action in the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous wastes, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR, Subtitle B, Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note), Pub. L. 104–134 section 31001.

§ 107.329 [Amended]

■ 2. In § 107.329(a) and (b), revise the following dollar figures:

■ a. Revise "$50,000" to read "$55,000" each time it appears.

■ b. Revise "$250" to read "$275" each time it appears.

■ c. Revise "$100,000" to read "$110,000" each time it appears.

■ d. Revise "$450" to read "$495" each time it appears.

Appendix A to Subpart D of Part 107 [Amended]

■ 3. In Appendix A to subpart D of part 107, in Part IV under the section entitled "Penalty Increases for Multiple Counts" (Section IV.C.), revise "$50,000 or $100,000 for a violation occurring on or after August 10, 2005" to read "$55,000 or $110,000 for a violation occurring on or after January 1, 2010."

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 1461 note), Pub. L. 104–134 section 31001.

§ 171.1 [Amended]

■ 5. In § 171.1(g), revise the following dollar figures:

■ a. Revise "$50,000" to read "$55,000".

■ b. Revise "$250" to read "$275".

■ c. Revise "$100,000" to read "$110,000".

■ d. Revise "$450" to read "$495".

Issued in Washington, DC on December 18, 2009, under authority delegated in 49 CFR part 1.

Cynthia Douglass,

Assistant Administrator/Chief Safety Officer.

[FR Doc. E9–30696 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 386, 390, 392, and 396

[Docket No. FMCSA–2005–23315]

RIN 2126–AB25

Requirements for Intermodal Equipment Providers and for Motor Carriers and Drivers Operating Intermodal Equipment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; technical amendments, response to petitions for reconsideration, and; partial extension of deadline.

SUMMARY: FMCSA amends its December 17, 2008, final rule implementing section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The 2008 final rule makes intermodal equipment providers (IEPs) subject to certain Federal Motor Carrier Safety Regulations (FMCSRs), and establishes shared safety responsibility among IEPs, motor carriers, and drivers. These amendments create a fifth marking option for identifying the IEP responsible for the inspection, repair, and maintenance of items of intermodal equipment (IME) in response to a petition for reconsideration from the Intermodal Association of North America (IANA); clarify regulatory text and correct an inadvertent error in response to a petition for reconsideration from the Ocean Carrier Equipment Management Association (OCEMA); and extend the deadline for IEPs, motor carriers, and drivers operating IME to comply with certain provisions pertaining to driver-vehicle inspections in response to a petition filed by OCEMA.

DATES: *Effective Date:* The amendments in this final rule become effective December 29, 2009.

Implementation Date: IEPs must establish systematic inspection, repair, and maintenance programs, recordkeeping systems and identify its operations by submitting Form MCS–150C by December 17, 2009, except for the requirements of Sections 396.9(d), 396.11(a)(2), 396.12(a), 396.12(c), and 396.12(d), which they must comply with by June 30, 2010. IEPs must mark their intermodal chassis with its legal name or a single trade name and a USDOT identification number by December 17, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations (MC–PSV), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–4325.

SUPPLEMENTARY INFORMATION: *Public Access to the Docket:* You may view, print, and download this final rule and all related documents and background material on-line at *http://www.regulations.gov,* using the Docket ID Number FMCSA–2005–23315. These documents can also be examined and copied for a fee at the U.S. Department of Transportation, Docket Operations, 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.

Background

FMCSA received petitions for reconsideration, filed timely, from IANA and OCEMA. IANA requested that FMCSA reconsider the final rule's requirements for marking of IME. OCEMA requested that FMCSA reconsider several other items in the final rule. OCEMA also requested a delay in the implementation requirements for specific documentation-related items in Part 396 of the final rule. A discussion of each item, followed by the Agency's assessment and decision, follows.

Legal Basis

The legal basis of the December 17, 2008 final rule (73 FR 76794) is also applicable to this final rule.

Marking of Intermodal Equipment

On December 21, 2006 (71 FR 76795), FMCSA published a notice of proposed rulemaking (NPRM) in response to Congressional direction in section 4118 of SAFETEA–LU. It proposed, among other things, to require display of the USDOT Number, or other unique identifier, issued by FMCSA, on each intermodal container chassis offered for transportation in interstate commerce.

On May 21, 2007, IANA and other parties (American Association of Port Authorities (AAPA), Association of American Railroads (AAR), the Institute of International Container Lessors (IICL), OCEMA, the National Association of Waterfront Employers (NAWE), and the United States Maritime Alliance, Ltd. (USMX), collectively known as the Consensus Group) submitted supplemental comments to the docket for the NPRM. IANA and its co-signatories presented a different solution to the challenge of identifying the responsible IEP for individual items of IME. The Consensus Group supported use of the 10-character alphanumeric identifier currently in use to mark IME, and recommended the establishment of a Web-based equipment registry that IANA would administer by recording and maintaining the identifying information for IEPs and their equipment. This registry would take the form of an online database that would be accessible to Federal, State, and local enforcement authorities, as well as industry participants, on a real-time basis.

In its comments to the NPRM, dated March 21, 2007, OCEMA stated that "the Intermodal Association of North America already maintains a substantial database of intermodal truckers and equipment providers. As an association already providing various facilitation services to intermodal stakeholders, this may be an appropriate task for IANA to undertake. Additionally, OCEMA is in the process of developing a software system for its CCM [1] chassis pool program that could be modified to include a chassis identification module. The CCM system is expected to be implemented by the beginning of 2008."

On January 2, 2008, IANA *et al.* requested that FMCSA consider initiating a pilot program to evaluate an alternative approach to meet the IME marking requirements of 49 CFR 390.21. IANA suggested that use of its proposed Global Intermodal Equipment Registry (GIER), a centralized, Web-based IME database, would enable IEPs and motor carrier safety enforcement personnel to identify the responsible IEP without a need to physically mark each item of IME, as proposed in the NPRM. IANA stated that the GIER would identify each intermodal chassis by its existing unique alphanumeric identifier (ID), which consists of four letters followed by six numbers. It would also include the USDOT number of the IEP responsible for the intermodal equipment on a given day and at any given time, so this information could be accurately recorded on roadside inspection records. The database would be accessible to Federal, State, and local enforcement authorities, as well as, industry participants, on a real time basis. The Agency denied IANA's initial request because there were no rules in effect that could preclude them from testing the GIER concept. Therefore, a pilot program, as provided under 49 CFR part 381, was not necessary.

[1] CCM LLC was formed in 2005 to develop and own chassis pools. It is an affiliate of the Ocean Carrier Equipment Management Association, Inc.

In addition, many commenters to the NPRM expressed concerns with the proposed marking requirements, citing the large population of IME (over 850,000 units in service) and the IME turnover in some IEP's operations (for example, a Virginia port experiences turnover amounting to several hundred chassis each month).

FMCSA determined that it would be reasonable and appropriate to offer additional regulatory alternatives that would meet the statutory requirements to (1) identify IEPs responsible for inspection and maintenance, and (2) to match IME to an IEP through a unique identifying number. For this reason, the final rule of December 17, 2008 (73 FR 76794) offered four options for the IEP to identify its IME: (1) A label or other method of marking; (2) identification of the IME on the interchange agreement, if that document includes additional information to identify the specific item of IME; (3) marking the IME with a USDOT number in the same manner required under § 390.21, except the marking would only be required on the curb side of the equipment; or (4) identification of the IEP on trailer documentation carried in a weatherproof compartment attached to the item of IME. In order to provide IEPs sufficient time to inventory their equipment and implement procedures to identify their IME, the final rule allows IEPs two years from the publication date of the final rule (that is, until December 17, 2010) to comply with this requirement.

Although FMCSA did not accept the proposal outlined by IANA and its co-applicants in their NPRM comments, it acknowledged the logistical challenges IEPs will collectively face in accounting for and marking their 800,000-plus chassis. The final rule stated that, during the implementation period, IANA and its partners may continue their efforts to demonstrate the feasibility of their system for future consideration by the Agency (73 FR at 76801). While FMCSA stated in the final rule that the Administrator had denied IANA's request to initiate a pilot program, the Agency asked IANA to communicate with it in the future concerning its progress in developing the GIER. In the preamble to the final rule, the Agency said it would consider allowing the GIER if its use could serve as an additional alternative method of complying with the provisions of 49 CFR 390.21 (73 FR at 76810).

On January 16, 2009, IANA petitioned FMCSA to reconsider the same provisions of 49 CFR 390.21 that formed the basis of its earlier petition. Two other parties that co-signed the 2008 petition, the Intermodal Carriers Conference of the American Trucking Associations and the Commercial Vehicle Safety Alliance (CVSA), submitted letters supporting IANA's request. For the most part, the technical elements of the January 2009 petition for reconsideration are essentially the same as those contained in the January 2008 request to initiate a pilot program.

Agency's Assessment and Decision

For the reasons set forth below, FMCSA amends § 390.21 to include a fifth option for marking/identifying IME. The Agency has determined that the use of publicly-accessible identification systems which, under the conditions prescribed below, utilize existing, unique alpha-numeric control numbers associated with items of IME to match IME to the responsible IEP at any given time (1) meet the marking/identification requirements outlined in the statute and (2) will be at least as effective as the current requirements of § 390.21 of the FMCSRs.

The December 2008 final rule requires IME to be marked/identified so it can be matched to the IEP that is responsible for its systematic inspection, repair, and maintenance. Because IME tends to change hands quite often, it will be costly for many IEPs to apply a permanent marking (stenciled or applied identification code) to the equipment. It is also unlikely that such marking would effectively identify the appropriate party for those scenarios in which the change of hands occurs faster than the vehicle marking could be completed. Also, as commenters noted, there is a large population of IME subject to these requirements. According to IANA, tracking the responsible IEPs through the use of its identification system will (1) save IEPs time and the costs of physically marking IME, and (2) provide FMCSA and its State partners an alternative way to "match" IME to the IEP. The Agency agrees.

Importantly, while IANA's development of the GIER provided the impetus for this regulatory amendment, FMCSA emphasizes that the fifth marking option established by today's rulemaking is not limited specifically to the GIER.

To ensure that the IEP responsible for the inspection, repair, and maintenance of any item of IME can be definitively identified through an identification system permitted under the fifth option, the Agency requires that the following conditions be satisfied:

1. The identification system must utilize a unique alpha-numeric control number associated with each item of IME to match the IME to the responsible IEP at any given time. The identification system shall use at least one of the following:

a. Standard Carrier Alpha Code (SCAC) plus 6 trailing digits;

b. License plate number and State of license;

c. Vehicle Identification Number (VIN)

2. The identification system shall be publicly-available, and offer read-only access for inquiries on individual items of IME without requiring advance user registration, a password, or a usage fee. The identification system must be accessible through:

a. Real-time internet access via a public web portal; and

b. Toll-free telephonic access

IEPs' interest in maintaining the accuracy of their IME inventory is likely to serve as an incentive for them to maintain the accuracy and currency of the information contained in an identification system. Furthermore, FMCSA will benefit from permitting the alternative identification system by having accurate and current information on IEPs responsible for IME at a given point in time, allowing the Agency to identify patterns of noncompliance rapidly. State partners' interest in this fifth option is indicated by CVSA's status as co-petitioner.

Operating Condition of Intermodal Equipment

Background

In its 2006 NPRM, FMCSA proposed language for a new § 390.40 concerning IEPs' responsibilities under the FMCSRs. Proposed § 390.40(h) (71 FR at 76828) reads as follows:

"At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made in a timely manner after being notified by a driver of such damage, defects, or deficiencies".

Many of the commenters to the rulemaking indicated that the phrase "timely manner" was vague, impractical, and possibly unenforceable.

As discussed in the 2008 final rule (73 FR at 76800), FMCSA considered several potential revisions to this regulatory text. The first was to replace the word "timely" with a fixed period of time. FMCSA rejected that option because it could result in an overemphasis on the time element of the IME interchange process compared to the quality and completeness of repairs.

A second alternative considered was to remove the word "timely." However, the Agency believed this could be viewed as allowing a continuation of the status quo—some IEPs would continue their practice of tendering equipment in need of repairs and requiring drivers to decide between operating faulty equipment, with the attendant risk of fines or roadside breakdowns, and the certainty of delay if they requested repairs or a different chassis.

In the final rule, FMCSA removed the term "timely" from the regulatory text, but also added a new provision to § 390.40(d), *Ensure that intermodal equipment intended for interchange with motor carriers is in safe and proper operating condition.*

This revision was intended to serve two purposes. First, it reemphasized the language of 49 U.S.C. 31151(a)(l): "* * * equipment used to transport intermodal containers is safe and systematically maintained." Second, it acknowledged that a subjective requirement ("timely") was not necessarily in the best interests of the tendering or receiving party (73 FR at 76800).

On January 16, 2009, OCEMA filed a petition for reconsideration of the final rule. A copy of the petition is in the docket referenced at the beginning of this notice. OCEMA asserts that § 390.40(d) of the new regulation adds a non-statutory duty for IEPs to "ensure" the operating condition of IME prior to interchange.

OCEMA is concerned that the word "ensure" in paragraph (d) places a greater level of responsibility on IEPs than the SAFETEA–LU provisions intended. OCEMA believes the use of this term is inconsistent with the "shared responsibility" approach, delineating specific obligations for each stakeholder (IEP, motor carrier, driver), that was part of the legislation.

Furthermore, OCEMA believes that the use of the word "ensure," commonly construed as "to secure or guarantee," would have the effect of requiring IEPs to perform constant, virtually daily inspections of IME. In contrast, OCEMA points out that the regulatory analysis for the final rule requires IEPs to conduct inspections and preventive maintenance at more regularly scheduled intervals, but sets no explicit requirements for the number of inspections per chassis under a systematic inspection, repair, and maintenance program.

OCEMA suggests that FMCSA delete § 390.40(d) and revise § 390.1 to read as follows, with its proposed text revisions underlined:

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter. *Requirements relating to the interchange, operation, inspection, or maintenance and repair of intermodal equipment are intended to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.*

Agency's Assessment and Decision

FMCSA believes OCEMA's proposed amendment is appropriate. However, there is a simpler solution. FMCSA has decided to revise § 390.40(d) to read: "Provide intermodal equipment intended for interchange that is in safe and proper operating condition." This revision responds to the petitioner's request by removing the problematic word "ensure" while continuing to stress the requirement to provide IME in safe and proper operating condition.

Section 390.5, Definition of "Intermodal Equipment Provider"

OCEMA requests that FMCSA confirm (1) that there will be only one IEP for a particular piece of equipment, which is the party that identifies itself as such to FMCSA as required under the final rule, and (2) that the IEP can be either the interchanging party or a party having contractual responsibility for the systematic inspection, maintenance and repair of the equipment. OCEMA believes this can be achieved by providing guidance through additional comments to the supplementary information to the final rule, rather than requiring a change to the text of the rule itself.

Agency's Assessment and Decision

OCEMA's understanding is correct. The statutory definition of "intermodal equipment provider" is clear: "* * * any person that interchanges intermodal equipment with a motor carrier * * * *or* has a contractual responsibility for the maintenance of the intermodal equipment." [emphasis added] (49 U.S.C. 31151(f)(3)).

FMCSA has posted new Frequently Asked Questions to the IEP area of its web site to clarify this point. The web address is: *www.fmcsa.dot.gov/iep*

Sanction for Failure To Pay Civil Penalties or Abide by Payment Plan

Section 386.83(a)(1) reads as follows:

General rule. A CMV owner or operator, or intermodal equipment provider that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, *is prohibited from operating in interstate commerce* starting on the next (i.e., the 91st) day [emphasis added].

OCEMA requested FMCSA to confirm that any restrictions on an IEP's operations in interstate commerce would be limited to the IEP's tendering of intermodal equipment, and would not affect the IEP's other interstate transportation operations. OCEMA believes this can be achieved by additional guidance in the supplementary information to the final rule, rather than requiring a change to the text of the rule itself.

Agency's Assessment and Decision

FMCSA agrees with OCEMA's reading of § 386.83(a)(1). The scope of the prohibition against an IEP is limited to the tendering of IME. These technical amendments revise the text of § 386.83(a)(1) to clarify this.

Section 392.7 Equipment, Inspection, and Use; § 396.11 Driver Vehicle Inspection Report(s)

FMCSA made limited revisions to § 392.7 and § 396.11 in the final rule. This was done to provide new regulatory language consistent with the legislative direction and also to maintain the integrity of the existing regulatory text. The new text at § 392.7(b) applies to the pre-trip inspections of IME, and the new text of § 396.11 to post-trip inspections.

Although OCEMA acknowledges that IME components that drivers are required to inspect are clearly described in the final rule, it questions why the lists are different for the pre- and post-trip inspections. In order to maximize the effectiveness and impact on equipment safety resulting from driver pre-trip inspections, OCEMA recommends the Agency adopt a pre-trip inspection list which mirrors the post-trip inspection list.

Agency's Assessment and Decision:

FMCSA believes OCEMA's request is reasonable, and that it could aid both drivers and IMEs in performing and reporting the results of pre-trip and post-trip inspections. The Agency revises the text of § 392.7(b) to make it more consistent with § 396.11 and also revises the order of the items in § 396.11 so they conform to that of § 392.7(b).

The Agency also revises the text of § 396.11(a) to clarify its application to commercial motor vehicles other than intermodal equipment.

Finally, FMCSA clarifies its intent and corrects an error in the text of § 396.12(d) concerning the driver's pre-trip assessment. The last paragraph of the discussion of § 392.7 in the preamble of the final rule (73 FR 76804) reads as follows:

"Responding to commenters who expressed concern about (1) the documentation of IME defects and (2) how citations of equipment violations are assigned (to the IEP or to the motor carrier), the first is a matter to be addressed during the driver's pre-trip assessment of the IME. Drivers must document the results of their pre-trip assessment, and the IEP must have a process to receive that document and determine how to resolve deficiencies that are noted. Drivers operating CMVs currently must submit a driver vehicle inspection report to the motor carrier at the completion of each day's work on each vehicle operated. The new provision in 49 U.S.C. 31151(a)(3)(L) calls for an analogous process: IEPs must establish a process by which drivers or motor carriers transporting their IME may report to the IEP or the IEP's designated agent any defects or deficiencies the driver or motor carrier are aware of at the time the IME is returned to the IEP's facility."

FMCSA clarifies that drivers must advise the IEP of the results of their pre-trip assessment, and the IEP must have a process to determine how to resolve the deficiencies that the driver reports. There is no explicit requirement for documentation of the *pre-trip* assessment. Neither the underlying statute, nor the rule itself, requires a written pre-trip inspection report. The regulation gives the IEP the choice of providing FMCSR-compliant IME; repairing defects or deficiencies the driver brings to the IEP's attention; or providing the driver with a different piece of IME. The outcome would be the same in each case: the IME tendered for operation in interstate commerce should not have any defects or deficiencies that would make it non-compliant with the FMCSRs.

FMCSA recognizes that IEPs and motor carriers may voluntarily choose to use a written or electronic pretrip inspection form. Provided the content of the form does not conflict with the FMCSRs, FMCSA has no objections to use of such forms. However, the Agency emphasizes that there is no requirement for written documentation of driver pre-trip assessments.

Partial Extension of Compliance Date

Background

On October 27, 2009, OCEMA requested that the FMCSA extend the December 17, 2009 deadline for complying with specific elements of part 396 of the IME safety rule until June 30, 2010.

1. § 396.9(d)—Requirements for drivers to deliver Driver Vehicle Examination Reports (DVERs) to IEP, corrective actions, and recordkeeping requirements.

2. § 396.11(a)(2) and § 396.12(a)—Every intermodal equipment provider must have a process to receive driver reports of defects or deficiencies in the intermodal equipment operated.

3. § 396.12(c)—Corrective action

4. § 396.12(d)—Retention period for Driver Vehicle Inspection Reports (DVIRs).

A copy of the petition for rulemaking is in the docket referenced at the beginning of this notice.

OCEMA believes that IEPs' processes and systems required by the December 2008 regulations, relating to pre-trip inspection, periodic maintenance, systematic maintenance, and recordkeeping, should be substantially in place by the December 17, 2009 compliance date. However, requirements in sections 396.9, 396.11, and 396.12, relating to the DVIR and the DVER physically cannot be implemented at the over 1,000 facilities where interchanges take place nationwide by that date.

OCEMA states that it was an active participant in all phases of the rulemaking process and was a key stakeholder in the negotiations that led to the compromise roadability legislation that was enacted in SAFETEA–LU. The Petitioner estimates that its member IEPs own or have under long term lease over 50% of all intermodal chassis operated in the United States (approximately 450,000 units). An OCEMA affiliate, CCM, has organized regional chassis pools at numerous locations in the U.S. The pools will serve as the IEPs for over 100,000 chassis. As such, Petitioners have a significant interest in the rule at issue in this proceeding.

OCEMA provides several reasons for requesting an extension of the compliance date for the provisions of the December 2008 rule that form the subject of its petition:

- The Regulations inadvertently create a gap by requiring IEPs to have in place a process to receive Driver Vehicle Inspection Reports (DVIRs), including identification of the IEP, by December 17, 2009, while not requiring marking of the IEP on the equipment until December 17, 2010.
- The in-gate procedures and communication technologies are so varied at marine terminals, rail facilities, container yards, and other inland locations that any effort to implement the subject requirements without the ready availability of IEP information will lead to congestion and gate delays, while undermining existing systems for handling inbound defects.
- Failure to extend the compliance date will place much of the intermodal industry in the position of having to choose between non-compliance with regulatory requirements and discontinued operations.
- OCEMA is building an open architecture paperless DVIR Receipt System (DRS) that, when implemented, will significantly facilitate the ability of all segments of the industry to comply with DVIR requirements. Design of the DRS is expected to be complete on or around the compliance date. However, OCEMA members will still need to work with the over 1,000 facilities at which chassis are interchanged to complete deployment, including establishment of communication links and gate procedures.
- A key component of the DRS is interface with the GIER system currently under development by IANA. The GIER database will provide a mechanism for matching the IEP to the IME. However, as of the date of OCEMA's request, the GIER is not yet available.

Agency's Assessment and Decision

FMCSA has carefully reviewed OCEMA's petition for an extension of the compliance date. The Agency acknowledges the need for considerable planning and coordinating among IEPs, motor carriers, and the operators of terminals and other intermodal facilities that are necessary so that the vehicle safety oversight activities contemplated by Congress in the SAFETEA–LU provision, as well as by FMCSA in the implementing regulation, can move forward. The large number of intermodal facilities, and the significant variations in their operating practices, make the implementation of the enhanced IME safety oversight activities a challenging task.

Although OCEMA and its member organizations have made considerable progress since the final rule was published nearly a year ago, they have also noted the challenges they continue to face. The Agency believes they have made a compelling argument for extending the compliance date for these specific elements of the new regulations as they apply to IME. The Agency also agrees that a six-month extension of the compliance date for these elements would enable IEPs and the terminal operators they work with sufficient time to complete any necessary adjustments to their IME operational procedures.

FMCSA also agrees with OCEMA's assertion that, even with a delayed compliance date for the requested sections of the FMCSRs, IEPs' operations will continue to be subject to all the inspection, repair, and maintenance requirements essential to ensuring safety and compliance with the December 17, 2008 final rule. By the December 17, 2009 implementation

date, IEPs will have identified themselves to the FMCSA and obtained USDOT numbers. They will also have in place a process to repair or replace defective equipment prior to its departure from terminal, in response to notification by drivers after their pre-trip inspection. IEPs will have in place systematic inspection, maintenance and repair programs, periodic inspection procedures, and their associated recordkeeping systems.

The Agency acknowledges OCEMA's point, that, considering that the DVIR and DVER requirements cannot be fully implemented at this point in time, safety cannot be said to be sacrificed by delaying enforcement of such requirements. In addition, OCEMA states that existing systems for receipt of driver damage or defect information will continue to be used. The Agency takes note of this, and anticipates a smooth transition between existing and new systems during the next few months.

Accordingly, FMCSA grants the petition to extend the effective date portions of Sections 396.9, 396.11, and 396.12 of the FMCSRs as they apply to IEPs and the IME they are responsible for maintaining.

Rulemaking Analyses and Notices

Administrative Procedure Act

If an agency determines that the prior notice and opportunity for public comment on a rule normally required by the Administrative Procedure Act are impracticable, unnecessary, or contrary to the public interest (the so-called "good cause" finding), it may publish the rule without such notice. (*See* 5 U.S.C. 553(b).)

The amendments made by this final rule accomplish three purposes. They provide an additional option for IEPs to identify their IME for FMCSA and State enforcement personnel. The Agency believes that this method will allow IEPs to meet the marking/identification requirements in a manner that will be comparable to or as effective as the current requirements of § 390.21 of the FMCSRs.

The amendments also make minor changes to improve clarity and consistency and correct an inadvertent error. Although the amended list of items in the pre-trip inspection checklist at § 392.7(b) is more substantial, it simply reflects the requirements of the current post-trip inspection checklist and therefore does not impose requirements unfamiliar to drivers.

Finally, the amendments suspend the deadline for compliance with specific provisions of part 396 of the FMCSRs as they apply to IEPs. However, the Agency believes that, even with a delayed compliance date for those provisions, IEPs' operations will very likely be at a level of safety comparable to, or as effective as, the provisions of the December 17, 2008 final rule. FMCSA believes there is no discernable impact on safety because the substantive requirements that have the greatest impact on safety will go into effect on schedule. These include a process to repair or replace defective equipment prior to its departure from terminal, in response to notification by drivers after their pre-trip inspection, as well as systematic inspection, maintenance and repair programs, periodic inspection procedures, and their associated recordkeeping systems.

For these reasons, FMCSA finds good cause that notice and public comment are unnecessary. Further, the Agency finds good cause under 5 U.S.C. 553(d)(3) to make the amendments effective upon publication. The partial extension of the deadline for compliance with the specified elements of part 396 will remain in effect until June 30, 2010.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. The Office of Management and Budget (OMB) did not review this document. We expect the final rule will have minimal costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. The rule provides an additional option for IEPs to mark their IME in accordance with the requirements of § 390.21. This change reflects current operational practices of physically marking IME and thus places no new requirements on the regulated industry. The rule also makes several changes to improve clarity and consistency and to correct an inadvertent error. Although the change to make two inspection checklists is more substantial, it reflects current operational practices and thus places no new requirements on the regulated industry. It also provides a partial extension of the compliance date for specific elements of Part 396 as they apply to the operations of IEPs. The partial extension will promote a smoother and more effective transition towards IEPs' compliance with the December 2008 rule. For these reasons, FMCSA therefore certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We determined that this rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. Although the 2008 final rule had Federalism implications, FMCSA determined that it did not create a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rulemaking does not change that determination in any way.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding

intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that no new information collection requirements are associated with the technical amendments to this final rule.

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement. FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it has no effect on the environment.

Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a "significant energy action" under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials, Intermodal equipment provider, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Intermodal equipment providers, Motor carriers.

49 CFR Part 396

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle.

■ In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, subtitle B, chapter III, as follows:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 521, 5123, 13301, 13902, 14915, 31132–31133, 31136, 31144, 31151, 31502, 31504; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 2. Amend § 386.83 by revising paragraph (a)(1) to read as follows:

§ 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) *General rule.* (i) A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(ii) An intermodal equipment provider that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from tendering intermodal equipment to motor carriers for operation in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 3. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1767, 1773; and 49 CFR 1.73.

■ 4. Amend § 390.21 by adding paragraph (g)(4)(v) to read as follows:

§ 390.21 Marking of self-propelled CMVs and intermodal equipment.

* * * * *

(g) * * *

(4) * * *

(v) The USDOT number of the intermodal equipment provider is maintained in a database that is available via real-time internet and telephonic access. The database must:

(A) Identify the name and USDOT number of the intermodal equipment provider responsible for the intermodal equipment, in response to an inquiry that includes:

(*i*) Standard Carrier Alpha Code (SCAC) plus trailing digits, or

(*ii*) License plate number and State of license, or

(*iii*) Vehicle Identification Number (VIN) of the item of intermodal equipment.

(B) Offer read-only access for inquiries on individual items of intermodal equipment, without requiring advance user registration, a password, or a usage fee.

■ 5. Revise § 390.40(d) to read as follows:

§ 390.40 What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399)?

* * * * *

(d) Provide intermodal equipment intended for interchange that is in safe and proper operating condition.

* * * * *

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

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

Authority: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

■ 7. Revise § 392.7(b) to read as follows:

§ 392.7 Equipment, inspection and use.

* * * * *

(b) Drivers preparing to transport intermodal equipment must make an inspection of the following components, and must be satisfied they are in good working order before the equipment is operated over the road. Drivers who operate the equipment over the road shall be deemed to have confirmed the following components were in good working order when the driver accepted the equipment:

—Service brake components that are readily visible to a driver performing

as thorough a visual inspection as possible without physically going under the vehicle, and trailer brake connections
—Lighting devices, lamps, markers, and conspicuity marking material
—Wheels, rims, lugs, tires
—Air line connections, hoses, and couplers
—King pin upper coupling device
—Rails or support frames
—Tie down bolsters
—Locking pins, clevises, clamps, or hooks
—Sliders or sliding frame lock

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

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

Authority: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

■ 9. Revise § 396.11(a)(1) introductory text and (a)(2) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

(a) *Report Required*—(1) *Motor Carriers.* Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated, except for intermodal equipment tendered by an intermodal equipment provider. The report shall cover at least the following parts and accessories:

* * * * *

(2) *Intermodal equipment providers.* Every intermodal equipment provider must have a process to receive driver reports of defects or deficiencies in the intermodal equipment operated. The driver must report on, and the process to receive reports must cover, at least the following parts and accessories:

—Brakes
—Lighting devices, lamps, markers, and conspicuity marking material
—Wheels, rims, lugs, tires
—Air line connections, hoses, and couplers
—King pin upper coupling device
—Rails or support frames
—Tie down bolsters
—Locking pins, clevises, clamps, or hooks
—Sliders or sliding frame lock

* * * * *

■ 10. Revise § 396.12(d) to read as follows:

§ 396.12 Procedures for intermodal equipment providers to accept reports required by 390.42(b) of this chapter.

* * * * *

(d) *Retention period for reports.* Each intermodal equipment provider must maintain all documentation required by this section, including the original driver report and the certification of repairs on all intermodal equipment, for a period of three months from the date that a motor carrier or its driver submits the report to the intermodal equipment provider or its agent.

Issued on: December 18, 2009.

Anne S. Ferro,

Administrator.

[FR Doc. E9–30654 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XT23

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the month of January 2010, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic Tunas General category permitted vessels and Highly Migratory Species Charter/Headboat category permitted vessels (when fishing commercially for BFT).

DATES: Effective January 1, 2010, through January 31, 2010.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP).

The 2010 BFT fishing year, which is managed on a calendar year basis and subject to an annual calendar year quota, begins January 1, 2010. Starting on January 1, 2010, the General category daily retention limit (§ 635.23(a)(2)), is scheduled to revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) CFL) or greater per vessel per day/trip. This default retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

Each of the General category time periods (January, June–August, September, October–November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities in years when catch rates are high and quota is available. For the 2009 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: Two large medium or giant BFT for January, and three large medium or giant BFT for June through December (73 FR 76972, December 18, 2008; 74 FR 26110, June 1, 2009; and 74 FR 44296, August 28, 2009).

The 2008 ICCAT recommendation regarding Western BFT management resulted in a U.S. quota of 1,034.9 mt for 2009 and 977.4 mt for 2010. Consistent with the allocation scheme established in the Consolidated HMS FMP, the baseline General category share was 475.7 mt for 2009 and is 448.6 mt for 2010, and the baseline January General category subquota was 25.2 mt for 2009 and is 23.8 mt for 2010.

In order to implement the ICCAT recommendation for the 2010 fishing year, NMFS has published proposed quota specifications to set BFT quotas for each of the established domestic fishing categories (74 FR 63095, December 2, 2009). Until the 2010 specifications are finalized (most likely in February 2010), the January General category quota of 25.2 mt remains in effect.

Adjustment of General Category Daily Retention Limits

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from

catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered the set of criteria cited above and their applicability to the General category BFT retention limit for the January 2010 General category fishery. For example, under the 2-fish limit that applied in January 2009, January landings were very close to the base subquota of 25.2 mt, later adjusted in the final 2009 specifications to 33 mt. Under the proposed 2010 BFT quota specifications, the adjusted January 2010 January subquota would be 28.6 mt. Based on these considerations, NMFS has determined that the General category retention limit should be adjusted to allow for retention of the anticipated 2010 General category quota, and that the same approach used for January 2009 is warranted. Therefore, NMFS increases the General category retention limit from the default limit to two large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip, effective January 1, 2010, through January 31, 2010. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP.

Monitoring and Reporting

NMFS selected the daily retention limit for January 2010 after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register.** In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at *http://www.hmspermits.gov,* for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective January 1, 2010, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (*i.e.,* the default General category retention limit is one fish per vessel/trip whereas this action increases that limit and allows retention of additional fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and (b)(3) and is exempt from review under Executive Order 12866.

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

Dated: December 18, 2009.

Alan Risenhoover,

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

[FR Doc. E9–30843 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0909011267–91427–02]

RIN 0648–AY19

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States

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

ACTION: Final rule.

SUMMARY: NMFS is modifying the fishing vessel permit regulations to include specific terms and conditions for Federal fishing vessel permits obtained through the purchase of fishing vessels using Federal grant awards. The terms and conditions authorize the NMFS Administrator, Northeast Region (Regional Administrator), to suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, or the rights thereto, if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient.

DATES: This final rule is effective on January 28, 2010.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, phone (978) 281–9283.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements changes to the Northeast (NE) fisheries regulations at 50 CFR part 648 to authorize the Regional Administrator to suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, held by a person, corporation, non-profit organization, or government entity if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient. The intent of this action is to establish an effective regulatory mechanism through which NOAA will be able to enforce the terms and conditions of any Federal grant award used to obtain Federal fishing vessel permits in the NE Region.

As several fisheries in the NE Region begin to transition to catch-share management strategies, various fishing organizations, conservations groups, and states are exploring alternatives to the traditional vessel-permit ownership model. An alternative model known as "permit banking" is developing in the Northeast, whereby an organization obtains a suite of permits in a particular fishery, with the option to lease out the fishing rights associated with those permits.

Permit banks hold promise for addressing two important issues related to the development and implementation of effective catch-share management programs: First, permit banks could be used to ease the transition to catch-share management by expanding the pool of catch shares available for use; and, second, permit banks could be used to demonstrate that small fishing operations and small communities can be successful participants in catch-share management programs. Depending on the structure of the permit bank, and the criteria used for participation, permit banks could be very effective at protecting the fishing interests of small communities and small-scale fishing operations by mitigating some of the consolidation of fishing rights that often follows implementation of catch-share programs.

Interest in developing permit banking programs is expanding in the NE and, because of NOAA's policy position promoting catch-share management, the NMFS NE Regional Office has proposed a pilot program designed to guide the development and expansion of permit banks in order to facilitate the implementation of effective catch-share programs. In the spending plan for a recent Congressional authorization for New England fisheries assistance, NOAA proposed to award a $1–million grant to develop this pilot permit banking program in Maine. Since then, NMFS has been working in partnership with Maine's Department of Marine Resources on a program that would allow the State to use the grant award to purchase fishing vessels with associated permits. The fishing rights associated with the permits would then serve as the basis for a permit bank to be operated by the State, in partnership with NMFS, to facilitate the transition to catch-share management by leasing additional fishing opportunities to qualified vessel owners in small ports. The State of Maine is very interested in developing such a partnership and establishing a permit bank. If the pilot program proves successful, NOAA may consider expanding the program throughout other parts of the NE Region.

Absent this regulatory change, NOAA would not be able to retain sufficient control and oversight of the resulting permit banking program to ensure its success. Under current grant management rules and fishing vessel permit regulations, once a grant award is made to an organization, and the award is used to obtain fishing vessel permits, NOAA risks losing control over the implementation and operation of the resulting permit bank. Even if the grant includes special award conditions specifying the criteria to be used in operation of the permit bank, NOAA would have limited mechanisms to enforce those criteria once an organization obtains the permits. In order to protect NOAA's and the public's interests in the successful development, implementation, and operation of such a program, this regulatory change is necessary to provide NOAA with an appropriate oversight mechanism.

This action amends the NMFS NE Region regulations regarding fishing vessel permits to include specific terms and conditions that will apply to Federal fishing vessel permits obtained through the purchase of fishing vessels using Federal grant awards. The terms and conditions authorize the Regional Administrator to suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, held by a person, corporation, non-profit organization, or government entity if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient.

In addition, this final rule responds to three issues raised in the comments received on the proposed rule for this action. First, NMFS's intent is for this action to apply only to Federal grants issued by NOAA for the express purpose of purchasing fishing vessels, obtaining fishing vessel permits, and/or establishing or expanding a permit bank, and this action would not apply to permits obtained through grants of a more general nature or those awarded by other Federal agencies. Second, the new regulation implemented by this final rule is intended to provide an oversight mechanism for vessel permit-related grants that supplements but does not replace, supersede, or contravene existing enforcement provisions and procedures established under Department of Commerce regulations at 15 CFR parts 14 and 24. Third, it is NMFS's intent that any such controls applied to a permit bank as authorized by this action would be imposed either at the time of an application for a permit lease transaction or at the time of permit renewal, and it is not NMFS's intent for such permit sanctions to affect the intended recipients of the permit lease transactions.

Comments and Responses

Nine individual comment letters were received on the proposed rule.

Comment 1: One commenter objected to the suggestion that a potential pilot permit bank with the State of Maine may be limited to qualified vessels in small ports, and took issue with statements in the preamble to the

proposed rule regarding potential benefits of permit banks.

Response: NMFS understands that some stakeholders may object to some of the terms and conditions that may be placed on Federal grant awards used to obtain fishing vessel permits for the purpose of establishing one or more permit banks. However, nothing in this action imposes or constrains any future actions with respect to the specific terms and conditions that may be imposed on a state, or other party, regarding a Federal grant award that may be used to establish a permit bank. This action is wholly constrained to establishing an effective oversight mechanism such that NOAA, should it at some future time provide a Federal grant award to a state, or other party, for the purpose of obtaining one or more fishing vessels and the associated Federal permits, as a means to retain some level of oversight and control over how the fishing rights associated with the permits are used, beyond the duration of the Federal grant award. Regarding the perceived implications of permit banks for the affected public, NMFS considers permit banks as one potential tool to ease the transition to catch-share management programs and as a potential way to preserve fishing opportunities for small fishing operations and/or small fishing communities so that they can participate effectively in catch-share management programs. However, NMFS acknowledges that permit banks are not proven to achieve these goals in all cases. This is why the preamble to the proposed rule referred to a potential permit bank with the State of Maine as a pilot program. NMFS intends to utilize this opportunity, should a grant be awarded to the State of Maine for this purpose, to study the implications of establishing such a permit bank and would utilize the results of the pilot program to inform decisions on potential future expansion of the permit bank concept.

Comment 2: A commenter opposed the authority proposed in the rule because it would deny the permit bank the opportunity to be heard on the issues by an Administrative Law Judge, and because the fishermen who leased the fishing rights associated with the permits in question may suffer economic hardship if the permits are rescinded.

Response: Existing Department of Commerce regulations at 15 CFR parts 14 and 24 establish the overarching procedures and requirements for Federal grants to institutions of higher education, hospitals, other non-profits, commercial organization, and state and local governments, and also stipulate procedures to enforce the terms and conditions of such grants. Regulations at 15 CFR 14.62(a) and 15 CFR 24.43(a) provide as "remedies for noncompliance," that the awarding agency may take actions that include temporarily withholding cash payments, suspending or terminating the current award, withholding future awards, or taking "other remedies that may be legally available." By this rule, NMFS is establishing an additional remedy to be available for the enforcement of a Federal grant intended to be used for a permit bank. Regarding the comment that the rule would "deny the permit bank the opportunity to be heard on the issues," existing regulations at 15 CFR 14.62(b) and 24.43(b) provide such an opportunity for a hearing or appeal, as follows "In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled . . ." Nothing in this rule preempts or replaces these existing regulations. Also, as clarified above, NMFS does not intend for any enforcement action taken pursuant to this rule to adversely affect fishermen who leased the fishing rights associated with the subject permits. NMFS intends that any such enforcement action would be taken either at the time of an application for a permit lease transaction, at the time of permit renewal, or prior to the start of a fishing year.

Comment 3: A number of commenters indicated general support for the intent of the proposed rule and for permit banks in general, but raised several relevant questions regarding how this rule would be implemented. The commenters questioned: (1) The definition of what qualified as a Federal grant for the purposes of this rule; (2) who is responsible for determining when a violation of a grant agreement has occurred and what specific enforcement action the violation would merit; and (3) whether there would be a formal appeals or arbitration process established for cases when the parties disagree as to whether a violation has occurred.

Response: In response to the first question raised by the commenters, NMFS clarifies in this final rule that the intent is for this action to apply only to Federal grants issued by NOAA for the express purpose of purchasing fishing vessels, obtaining fishing vessel permits, and/or establishing or expanding a permit bank, and this action would not apply to permits obtained through grants of a more general nature or those awarded by other Federal agencies. Regarding who is responsible for determining whether a violation of a grant agreement has occurred, Department of Commerce regulations at 15 CFR 14.61, 14.62, 24.43, and 24.44 establish that the Grants Officer may terminate grant awards, or take appropriate enforcement actions. Upon closeout of the grant award, if the operation of a permit bank program continues under the terms of a memorandum of understanding or agreement between NMFS and the grant recipient, this authority shall transition to the Regional Administrator for the remaining effective period of the subject memorandum of understanding or agreement. Regarding the determination of the specific enforcement action would be taken if a violation is determined to have occurred, NMFS intends that this would depend on the scope and severity of the violation in question. NMFS intends first to attempt to resolve any concerns with the operation of a NOAA-funded permit bank informally between the program contact representatives for the respective parties. Failing this, concerns may be raised to the level of the respective signatories of the memorandum of understanding or agreement for resolution. If resolution cannot be achieved at this level, the Grants Officer or Regional Administrator will reserve the right to take appropriate enforcement action, as authorized by 15 CFR 14.62 and 24.43, and this action. Regarding the potential for an appeals or arbitration process in the event the parties disagree as to whether a violation has occurred, the Department of Commerce regulations at 15 CFR 14.62(b) and 14.43(b) provide for the grantee to have an opportunity for a hearing, appeal, or other administrative proceeding. Nothing in this action is intended to replace, supersede, or contravene existing Department of Commerce regulations on administration of Federal grants.

Comment 4: A comment letter on behalf of the State of Maine indicated general support for the proposed rule, but also raised a concern about the potential terms of the proposed grant to the State of Maine to establish a permit bank.

Response: The details of any terms and conditions applicable to a proposed grant to the State of Maine will be developed and finalized in a separate and future action, and are not relevant to this rule.

Comment 5: A comment letter on behalf of the New England Fishery Management Council requested that the

final rule make clear that all vessel permits obtained using Federal grant awards be used in a manner consistent with all fishery management plan provisions governing those permits, and that the permits should not be subject to additional constraints without Council consideration.

Response: NMFS intends for any fishing operations conducted by a vessel using access rights (e.g., DAS, ACE) associated with a Federal permit obtained using a Federal grant award to be consistent with applicable fishery management plan provisions and to fully comply with all applicable fishing regulations. However, NMFS reserves the right to establish more restrictive criteria for the operations of any permit banks established using Federal grant awards.

Comment 6: A commenter opposed the use of Federal funds to establish permit banks.

Response: While NMFS acknowledges that some stakeholders may have concerns regarding the use of Federal funds to establish permit banks, this action does not, in itself, create or authorize the use of Federal funds in this manner. This action is wholly constrained to establishing an effective enforcement mechanism such that NOAA, should it at some future time provide a Federal grant award to a state, or other party, for the purpose of obtaining one or more fishing vessels, and the associated Federal permits, retains some level of oversight and control over how the fishing rights associated with the permits are used, beyond the duration of the Federal grant award.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator determined that this final rule is consistent with the Fishery Management Plans (FMPs) of the NE Region, other provisions of the Magnuson-Stevens Act, and other applicable law, and is necessary to discharge the general responsibility to carry out said FMPs.

This final rule has been determined to be not significant for purposes of 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 22, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.4, add paragraph (n) to read as follows:

§ 648.4 Vessel permits.

* * * * *

(n) *Federal grant awards.* The Regional Administrator may suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, issued pursuant to this section, including the rights thereto, held by a person, corporation, non-profit organization, or government entity if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient.

[FR Doc. E9–30838 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XT52

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2010 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2010 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amounts based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2009, until the effective date of the final 2010 and 2011 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XT52, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management

Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2009 and 2010 harvest specifications for groundfish in the GOA (74 FR 7333, February 17, 2009) set the 2010 pollock TAC at 74,330 metric tons (mt) and the 2010 Pacific cod TAC at 60,102 mt in the GOA. In December 2009, the Council recommended a 2010 pollock TAC of 84,745 mt for the GOA, which is more than the 74,330 mt established by the final 2009 and 2010 GOA harvest specifications. The Council also recommended a 2010 Pacific cod TAC of 59,563 mt for the GOA, which is less than the 60,102 mt established by the final 2009 and 2010 harvest specifications for groundfish in the GOA. The Council's recommended TACs are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2009, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock and Pacific cod are a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specify how the Pacific cod TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2009 SAFE report for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently, pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2010 GOA pollock TAC to 84,745 mt and the 2010 GOA Pacific cod TAC to 59,563 mt.

Pursuant to § 679.20(a)(5)(iv), Table 6 of the final 2009 and 2010 harvest specifications for groundfish in the GOA (74 FR 7333, February 17, 2009) is revised for the 2010 pollock TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 6—FINAL 2010 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; PERCENTAGE SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES OF ANNUAL TAC

(Values are rounded to the nearest metric ton)

Season	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total[1]
A (Jan 20–Mar 10)	5,551	30.22%	8,414	45.81%	4,403	23.97%	18,368
B (Mar 10–May 31)	5,551	30.22%	9,926	54.04%	2,891	15.74%	18,367
C (Aug 25–Oct 1)	7,576	41.25%	4,877	26.55%	5,912	32.19%	18,367
D (Oct 1–Nov 1)	7,576	41.25%	4,877	26.55%	5,912	32.19%	18,367
Annual Total	26,256		28,095		19,118		73,469

[1] The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table. Note: As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

Pursuant to § 679.20(a)(6)(ii) and § 679.20(a)(12)(i), Table 8 of the final 2009 and 2010 harvest specifications for groundfish in the GOA (74 FR 7333, February 17, 2009) is revised for the 2010 Pacific cod TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 8–FINAL 2010 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

(values are rounded to the nearest metric ton)

Regulatory area	Season	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Western	Annual	20,764	18,688	2,076
	A season (60%)	12,458	11,213	1,246
	B season (40%)	8,306	7,475	831
Central	Annual	36,782	33,104	3,678
	A season (60%)	22,069	19,862	2,207
	B season (40%)	14,713	13,242	1,471
Eastern	Annual	2,017	1,815	202
	Total	59,563	53,607	5,956

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 21, 2009, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

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

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 13, 2010.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 22, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–30839 Filed 12–28–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XT40

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2010 Bering Sea Pollock Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2010 total allowable catch (TAC) amount for the Bering Sea pollock fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the Bering Sea pollock TAC does not exceed the appropriate amount based on the best available scientific information for pollock in the Bering Sea subarea. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2009, until the effective date of the final 2010 and 2011 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register.**

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XT40, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comment will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

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

The 2010 pollock TAC in the Bering Sea subarea was set at 1,230,000 metric tons (mt) by the final 2009 and 2010 harvest specification for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In December 2009, the Council recommended a 2010 pollock TAC of 813,000 mt for the Bering Sea subarea. This amount is less than the 1,230,000 mt established by the final 2009 and 2010 harvest specification for groundfish in the BSAI (74 FR 7359, February 17, 2009). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2009, which NMFS has determined is the best available scientific information for this fishery.

Steller sea lions occur in the same location as the pollock fishery and are listed as endangered under the Endangered Species Act (ESA). Pollock is a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(i)(A) specify how the pollock TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2009 SAFE report for this fishery, the current Bering Sea pollock TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2010 pollock TAC to 813,000 mt in the Bering Sea subarea.

Pursuant to § 679.20(a)(5), Table 3 of the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) is revised for the 2010 pollock TACs consistent with this adjustment.

TABLE 3—FINAL 2009 AND 2010 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]

[Amounts are in metric tons]

Area and sector	2009 Allocations	2009 A season[1]		2009 B season[1]	2010 Allocations	2010 A season[1]		2010 B season[1]
		A season DFA	SCA harvest limit[2]	B season DFA		A season DFA	SCA harvest limit[2]	B season DFA
Bering Sea subarea	815,000	n/a	n/a	n/a	813,000	n/a	n/a	n/a
CDQ DFA	81,500	32,600	22,820	48,900	81,300	32,520	22,764	48,780
ICA[1]	29,340	n/a	n/a	n/a	29,268	n/a	n/a	n/a
AFA Inshore	352,080	140,832	98,582	211,248	351,216	140,486	98,340	210,730
AFA Catcher/Processors[3]	281,664	112,666	78,866	168,998	280,973	112,389	78,672	168,584
Catch by C/Ps	257,723	103,089	n/a	154,634	257,090	102,836		154,254
Catch by CVs[3]	23,941	9,577	n/a	14,365	23,883	9,553		14,330
Unlisted C/P Limit[4]	1,408	563	n/a	845	1,405	562		843
AFA Motherships	70,416	28,166	19,716	42,250	70,243	28,097	19,668	42,146
Excessive Harvesting Limit[5]	123,228	n/a	n/a	n/a	122,926	n/a	n/a	n/a
Excessive Processing Limit	211,248	n/a	n/a	n/a	210,730	n/a	n/a	n/a
Total Bering Sea DFA	704,160	281,664	197,165	422,495	702,432	280,973	196,681	421,459
Aleutian Islands subarea[1]	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0

TABLE 3—FINAL 2009 AND 2010 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]—Continued

[Amounts are in metric tons]

Area and sector	2009 Allocations	2009 A season[1]		2009 B season[1]	2010 Allocations	2010 A season[1]		2010 B season[1]
		A season DFA	SCA harvest limit[2]	B season DFA		A season DFA	SCA harvest limit[2]	B season DFA
Bogoslof District ICA	50	n/a	n/a	n/a	10	n/a	n/a	n/a

[1] Pursuant to (§ 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (4 percent), is allocated as a DFA as follows: inshore sector–50 percent, catcher/processor sector (C/P)–40 percent, and mothership sector–10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector(s annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 14, 2009, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

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

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 13, 2010.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 18, 2009.

Emily Menashes,

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

[FR Doc. E9–30533 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XT41

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2010 Bering Sea and Aleutian Islands Pacific Cod Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2010 total allowable catch (TAC) amount for the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the BSAI Pacific cod TAC does not exceed the appropriate amount based on the best available scientific information for Pacific cod in the BSAI. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2009, until the effective date of the final 2010 and 2011 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register.**

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XT41, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comment will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

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

The 2010 Pacific cod TAC in the BSAI was set at 193,030 metric tons (mt) by the final 2009 and 2010 harvest specification for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In December 2009, the Council recommended a 2010 Pacific cod TAC of 168,780 mt for the BSAI. This amount is less than the 193,030 mt established by the final 2009 and 2010 harvest specification for groundfish in the BSAI (74 FR 7359, February 17, 2009). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2009, which NMFS has determined is the best available scientific information for this fishery.

Steller sea lions occur in the same location as the Pacific cod fishery and are listed as endangered under the Endangered Species Act (ESA). Pacific cod is a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(7)(i)(B) specify how the Pacific cod TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2009 SAFE report for this fishery, the current BSAI Pacific cod TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2010 Pacific cod TAC to 168,780 mt in the Bering Sea subarea.

Pursuant to § 679.20(a)(7), Table 5b of the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) is revised for the 2010 Pacific cod TACs consistent with this adjustment.

TABLE 5BB FINAL 2010 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2010 share of gear sector total	2010 share of sector total	2010 seasonal apportionment	
				Dates	Amount
Total TAC	100	168,780	n/a	n/a	n/a
CDQ	10.7	18,059	n/a	see § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	91,638	n/a	n/a	n/a
Hook-and-line/pot ICA[1]	n/a	500	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	91.138	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	73,000	Jan 1–Jun 10 Jun 10–Dec 31	37,230 35,770
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	300	Jan 1–Jun 10 Jun 10–Dec 31	153 147
Pot catcher/processor	1.5	n/a	2,248	Jan 1–Jun 10 Sept 1–Dec 31	1,147 1,102
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	12,591	Jan 1–Jun 10 Sept 1–Dec 31	6,422 6,170
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2	n/a	2,998	n/a	n/a
Trawl catcher vessel	22.1	33,309	n/a	Jan 20–Apr 1 Apr 1–Jun 10 Jun 10–Nov 1	24,649 3,564 4,996
AFA trawl catcher/processor	2.3	3,467	n/a	Jan 20–Apr 1 Apr 1-Jun 10 Jun 10–Nov 1	2,600 867 0
Amendment 80	13.4	20,197	n/a	Jan 20–Apr 1 Apr 1- Jun 10 Jun 10–Nov 1	15,844 5281 0
Amendment 80 limited access	n/a	n/a	3,319	Jan 20–Apr 1 Apr 1- Jun 10 Jun 10–Nov 1	2,489 830 0

TABLE 5BB FINAL 2010 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Gear sector	Percent	2010 share of gear sector total	2010 share of sector total	2010 seasonal apportionment	
				Dates	Amount
Amendment 80 cooperatives	n/a	n/a	16,878	Jan 20–Apr 1 Apr 1- Jun 10 Jun 10–Nov 1	12,659 4,220 0
Jig	1.4	2.110	n/a	Jan 1–Apr 30 Apr 30–Aug 31 Aug 31–Dec 31	1,266 422 422

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2010 based on anticipated incidental catch in these fisheries.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 14, 2009, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

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

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 13, 2010.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 18, 2009.

Emily H. Menashes,

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

[FR Doc. E9–30534 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 248
Tuesday, December 29, 2009

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 ENERGY

10 CFR Part 1021

Request for Information Regarding Categorical Exclusions

AGENCY: Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) intends to update its National Environmental Policy Act (NEPA) categorical exclusions, and seeks input from interested parties to help identify activities that should be considered for new or revised categorical exclusions.

DATES: Responses should be e-mailed or postmarked by January 25, 2010. Late responses will be considered to the extent practicable.

ADDRESSES: E-mail submissions are encouraged due to the delivery time required for mail, and should be sent to *yardena.mansoor@hq.doe.gov*. Alternatively, submissions may be faxed to 202–586–7031 or mailed to Yardena Mansoor; Office of NEPA Policy and Compliance (GC–54); U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585.

Additional information on this Request for Information, including what information should be submitted and how to submit responses, may be found at *http://www.gc.energy.gov/nepa/*.

FOR FURTHER INFORMATION CONTACT: Yardena Mansoor, Office of NEPA Policy and Compliance (GC–54), 202–586–9326, *yardena.mansoor@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Categorical exclusions are classes of actions that DOE has by regulation determined do not individually or cumulatively have a significant effect on the human environment and, therefore, normally require neither an environmental impact statement nor an environmental assessment. DOE's categorical exclusions are listed at 10 CFR part 1021, appendices A and B to subpart D.

Issued in Washington, DC on December 23, 2009.

Scott Blake Harris,

General Counsel.

[FR Doc. E9–30829 Filed 12–28–09; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 106

[Notice 2009–31]

Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission ("Commission") proposes removing its rules regarding funds received in response to solicitations. The Commission also proposes removing two additional rules regarding the allocation of certain expenses by separate segregated funds and nonconnected committees. The United States District Court for the District of Columbia ordered that these rules are vacated, in accordance with a Court of Appeals decision. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before January 28, 2010.

ADDRESSES: All comments must be in writing, must be addressed to Mr. Robert M. Knop, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to *emilyslistrepeal@fec.gov*. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post all comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On September 18, 2009, the United States Court of Appeals for the D.C. Circuit ("D.C. Circuit Court") ruled that 11 CFR 100.57, 106.6(c), and 106.6(f) violated the First Amendment of the United States Constitution. *See EMILY's List* v. *FEC*, 581 F.3d 1 (D.C. Cir. 2009). The court also ruled that 11 CFR 100.57 and 106.6(f), as well as one provision of 106.6(c), exceeded the Commission's authority under the Federal Election Campaign Act ("Act"). *See id.* At the direction of the D.C. Circuit Court, the United States District Court for the District of Columbia ordered that these rules are vacated. *See Final Order, EMILY's List* v. *FEC*, No. 05–0049 (D.D.C. Nov. 30, 2009). The Commission now proposes to remove these rules from its regulations.

I. Proposed Deletion of 11 CFR 100.57—Funds Received in Response to Solicitations

The Commission regulation at 11 CFR 100.57 went into effect on January 1, 2005. *See* Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 FR 68056 (Nov. 23, 2004). Under paragraph (a) of section 100.57, funds provided in response to a communication are treated as contributions if the communication indicates that any portion of the funds received would be used to support or oppose the election of a clearly identified Federal candidate. Paragraph (b)(1) of section 100.57 provides that all funds received in response to a solicitation described in section 100.57(a) that refers to both a clearly identified Federal candidate and a political party, but not to any non-Federal candidates, have to be treated as contributions. Paragraph (b)(2) states that if a solicitation described in section 100.57 refers to at least one clearly identified Federal candidate and one or more clearly identified non-Federal candidate, then at least fifty percent of the funds received in response to the

solicitation has to be treated as contributions. Paragraph (c) of section 100.57 provides an exception for certain solicitations for joint fundraisers conducted between or among authorized committees of Federal candidates and the campaign organizations of non-Federal candidates.

The Commission proposes removing section 100.57 from its regulations because the D.C. Circuit Court held that this rule is unconstitutional and that it exceeded the Commission's statutory authority under the Act. *See EMILY's List* v. *FEC*, 581 F.3d 1 (D.C. Cir. 2009). Moreover, as explained above, the D.C. District Court has ordered that 11 CFR 100.57 is vacated. *See Final Order, EMILY's List* v. *FEC*, No. 05–0049 (D.D.C. Nov. 30, 2009).

II. Proposed Deletion of 11 CFR 106.6(c) and 106.6(f)—Allocation of Expenses Between Federal and Non-Federal Activities by Separate Segregated Funds and Nonconnected Committees

At the same time that the Commission adopted 11 CFR 100.57, the Commission substantially revised its allocation rules at 11 CFR 106.6. *See* Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 FR 68056 (Nov. 23, 2004). The revised rule at 11 CFR 106.6(c) requires nonconnected committees and separate segregated funds (SSFs) to use at least fifty percent Federal funds to pay for administrative expenses, generic voter drives, and public communications that refer to a political party, but not to any Federal or non-Federal candidates.[1] The Commission also added a new paragraph (f) to section 106.6, which specifies that nonconnected committees and SSFs must pay for public communications and voter drives that refer to both Federal and non-Federal candidates using a percentage of Federal funds proportionate to the amount of the communication that is devoted to the Federal candidates. *Id.*

The Commission proposes removing paragraphs (c) and (f) from section 106.6 because the DC Circuit Court held that these provisions are unconstitutional. *See EMILY's List* v. *FEC*, 581 F.3d 1 (D.C. Cir. 2009). Moreover, as explained above, the DC District Court ordered that paragraphs (c) and (f) of section 106.6 are vacated. *See Final Order, EMILY's List* v. *FEC*, No. 05–0049 (D.D.C. Nov. 30, 2009).

In an abundance of caution with respect to the notice and comment requirements under the Administrative Procedure Act, 5 U.S.C. 552 *et seq.*, the Commission seeks public comments on how best to effectuate the courts' opinion and order in *EMILY'S List*. The Commission invites comment on whether the DC Circuit Court's opinion is subject to a reading that the ruling, as well as the District Court's order that the rules are vacated, is limited only to non-profit, non-connected entities.

Thus, the Commission invites public comment on whether the DC Circuit Court's decision extends to SSFs as well as to nonconnected committees. The section 106.6 allocation rules, including paragraphs (c) and (f), apply to nonconnected committees and to SSFs. EMILY's List is a non-profit non-connected political committee, not an SSF. The *EMILY's List* decision stated that "this case concerns the FEC's regulation of *non-profit entities* that are not connected to a * * * for-profit corporation." (Emphasis in original). *See EMILY's List*, 581 F.3d at 8. Moreover, in footnote 7 of the decision, the court stated: "In referring to non-profit entities, we mean non-connected non-profit corporations * * * as well as unincorporated non-profit groups. 'Non-connected' means that the non-profit is not a * * * committee established by a corporation or labor union." *Id., n.7.* Does the *EMILY's List* analysis provide any basis for treating SSFs differently from the non-connected committee at issue in the *EMILY's List* case?

Alternatively, the Commission seeks comment on whether the DC Circuit Court's statutory analysis should be read as not depending on the type of entity involved, but rather on the nature of the expenses that the entity incurs. *See e.g., EMILY's List*, 581 F.3d at 21–22. Moreover, even under the constitutional analysis, could the DC Circuit Court's rationale reasonably be read to apply to SSFs as well as nonconnected committees? For example, the DC Circuit Court's opinion seems to rely more on the distinction between parties and other entities than the corporate status of those other entities.

The Commission invites comments on the merits of these two alternative readings. In short, the Commission seeks comment as to whether the allocation provisions in paragraphs (c) and (f) of section 106.6 should be removed in their entirety, or revised so as not to apply to nonconnected committees but to continue to apply to SSFs. Alternatively, is the court's order vacating 11 CFR 106.6(c) and (f) so clear that the Commission has no discretion to do anything but repeal those provisions in their entirety?

Please note that the Commission intends to initiate a separate rulemaking regarding other potential changes to its regulations, such as conforming changes to the remaining portions of 11 CFR 106.6 and other changes to 11 CFR 102.5. The Commission invites comment regarding what other changes to its regulations it should consider implementing in order to conform to the DC Circuit Court's ruling.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by this rulemaking. The Commission is proposing to remove regulations that a Federal court ordered vacated. Accordingly, removing these regulations would not have a significant impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 106

Campaign Funds, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

§ 100.57 [Removed and Reserved]

2. Section 100.57 is removed and reserved.

[1] Section 106.6(a) defines a non-connected committee as "any committee which conducts activities in connection with an election but which is not a party committee, an authorized committee of any candidate for Federal election, or a separate segregated fund." A separate segregated fund is a political committee established, administered, or financially supported by a corporation or labor organization. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). A generic voter drive includes voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. 11 CFR 106.6(b)(1)(iii).

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

§ 106.6 [Amended]

4. In § 106.6, paragraphs (c) and (f) are removed and reserved.

Dated: December 21, 2009.

On behalf of the Commission,

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–30768 Filed 12–28–09; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD65

Chartering and Field of Membership for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board proposes to amend its chartering and field of membership manual to update its community chartering policies. These amendments include using objective and quantifiable criteria to determine the existence of a local community and defining the term "rural district." The amendments clarify NCUA's marketing plan requirements for credit unions converting to or expanding their community charters and define the term "in danger of insolvency" for emergency merger purposes.

DATES: Comments must be postmarked or received by March 1, 2010.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Rule IRPS 09–1," in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Deputy General Counsel; John K. Ianno, Associate General Counsel; Frank Kressman, Staff Attorney, Office of General Counsel, or Robert Leonard, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540 or (703) 518–6396.

SUPPLEMENTARY INFORMATION:

A. Background and Overview

In 1998, Congress passed the Credit Union Membership Access Act ("CUMAA") and reiterated its longstanding support for credit unions, noting that they "have the specif[ic] mission of meeting the credit and savings needs of consumers, especially persons of modest means." Public Law 105–219, § 2, 112 Stat. 913 (August 7, 1998). The Federal Credit Union Act ("FCUA") grants the NCUA Board broad general rulemaking authority over Federal credit unions. 12 U.S.C. 1766(a). In passing CUMAA, Congress amended the FCUA and specifically delegated to the Board the authority to define by regulation the meaning of a "well-defined local community" (WDLC) and rural district for Federal credit union charters. 12 U.S.C. 1759(g).

The Board continues to recognize two important characteristics of a WDLC. First, there is geographic certainty to the community's boundaries, which must be well-defined. Second, there is sufficient social and economic activity among enough community members to assure that a viable community exists. Since CUMAA, NCUA has expressed this latter requirement as "interaction and/or shared common interests." NCUA Chartering and Field of Membership Manual (Chartering Manual), Interpretive Ruling and Policy Statement (IRPS) 08–2, Chapter 2, V.A.1.

The Board has gained broad experience in determining what constitutes a WDLC by analyzing numerous applications for community charter conversions and expansions. In this process, the Board has exercised its regulatory judgment in determining whether, in a particular case, a WDLC exists. This involves applying its expertise to the question of whether a proposed area has a sufficient level of interaction and/or shared common interests to be considered a WDLC. The Board is aware that there is considerable uncertainty among community charter applicants regarding two important issues, particularly in connection with applications involving large multi-jurisdictional areas. The first is how an applicant can best demonstrate the requisite interaction and/or shared common interests of a WDLC. The second is how much evidence is required in a particular case. The primary purpose of this proposal is to eliminate that uncertainty and conserve the economic and human resources of applicants and NCUA. To this end, the Board proposes to define WDLC in terms of objective and quantifiable criteria that, in the Board's opinion, conclusively demonstrate interaction and/or common interests.

Using objective and easy to apply criteria will replace the current, burdensome practice of requiring an applicant to demonstrate the existence of a WDLC using a narrative approach with supporting documents. This approach will enable applicants to easily, quickly, and inexpensively determine, with certainty, if the geographic area they wish to serve is a WDLC.

Under the current proposal, as discussed more fully below, a geographic area would automatically qualify as a WDLC in the following three ways:

1. As a single political jurisdiction less than an entire State, or a defined portion of that single political jurisdiction;

2. As a statistical area limited to 2.5 million or less people, so designated by the Office of Management and Budget (OMB), if it has a single core area and the core satisfies a concentration threshold for employment and population or as a portion of that statistical area provided the smaller area independently meets the same employment and population requirements; and

3. As an existing, previously approved area "grandfathered" for use by future applicants.

Additionally, the NCUA Board proposes to define the term "rural district" for chartering purposes. The Board believes this will help extend credit union services to individuals living in rural America without adequate access to reasonably priced financial services. Finally, the Board proposes to provide community charter applicants with more detailed guidance on NCUA's expectations regarding the adequacy of an applicant's business and marketing plans required as part of the charter application.

B. Current Community Charter Rules

In the single political jurisdiction context, it is easy to demonstrate that an area is a WDLC, a single, geographically well-defined local community or neighborhood where individuals have common interests and/or interact. A single political jurisdiction such as a city, county, or their political equivalent or any contiguous portion thereof automatically qualifies as a WDLC.

It is much more complicated, however, for an applicant to demonstrate that an area comprised of multiple, contiguous political jurisdictions is a WDLC. In that instance, the current rules require a credit union to submit a narrative describing how the area meets the standards for community interaction and/or common interests with supporting documentation. Supporting documentation often includes information regarding commuting patterns, employment patterns, major trade areas, shared common facilities, organizations and clubs within the requested area, newspaper penetration, festivals, and entertainment centers. Compiling this potentially voluminous amount of information can be difficult, time consuming, and expensive for the applicant and is a wasted effort in those instances where the narrative and supporting documents do not sufficiently make the case for the existence of a WDLC.

Because the nature of the supporting documentation can be subjective, it is time consuming and labor intensive for NCUA to review a narrative application. As part of the process, NCUA often requests the applicant clarify some of the information provided or supply additional information to help NCUA properly analyze the application in accordance with the requirements of the Chartering Manual. While requesting more or clarified information is often necessary for NCUA to make a decision, it increases the credit union's time and expense of preparing a community charter application.

Another problem related to NCUA determining that a multiple, contiguous political jurisdiction is a WDLC based on a narrative application is the risk of litigation. Because the narrative approach is inherently a subjective one, it is vulnerable to legal challenges. NCUA believes it would benefit all involved to eliminate the great expense, effort, and uncertainty associated with the narrative approach in favor of a simpler, more objective method.

Finally, NCUA believes the absence of a regulatory definition of "rural district" in NCUA's current chartering rules is an impediment to expanding credit union services to individuals in rural areas.

C. May 2007 Proposal

The NCUA Board issued proposed revisions to the Chartering Manual in May 2007 to clarify and amend NCUA's community chartering policies and solicited public comment on the proposed amendments. 72 FR 30988 (June 5, 2007). In that rulemaking, NCUA sought to clarify the meaning of WDLC. Specifically, the proposal identified single political jurisdictions and statistical areas as presumptive WDLCs and required a credit union seeking a local community consisting of multiple political jurisdictions, if not a presumed WDLC, to provide a narrative with documentation to support that the requested geographical area meets the standards for community interaction and/or common interests. While the May 2007 proposal embraced using more objective standards to determine whether a particular area is a WDLC, it continued to allow community charter applicants to submit narrative applications with supporting documentation in the multiple, political jurisdictions context where there was no presumed WDLC. For the reasons discussed above, that aspect of the proposal is undesirable and would perpetuate the inefficiencies of the current process.

The 2007 proposal also provided that when the narrative approach was required to support the existence of a WDLC, a public notice and comment period would be used to inform the public about the application and assist NCUA in determining if the area was a WDLC. At the time, the Board thought a 30-day public notice and comment period might assist it in its critical analysis of the evidence and provide the public with an opportunity to provide timely comments and relevant information on the proposed local community. The notice and comment provision has become moot because the NCUA Board is proposing to eliminate the continued use of the narrative application.

NCUA had not attempted to define the term "rural district" prior to the 2007 proposal, although there is statutory language authorizing credit unions to be chartered to serve a rural district. Rural districts tend to lack the traditional characteristics of interaction or shared common interests found in WDLCs. In 2007, the Board proposed a definition of rural district stating it expected a rural district would be less densely populated than WDLCs NCUA had considered in the past and noted that rural districts frequently lack any centralized urban core or cluster. The Board also stated that although a proposed rural district may include contiguous counties it believed such a district should have a relatively small, widely disbursed, population. The Board proposed to define a rural district as an area that is not in a metropolitan statistical area (MSA) or micropolitan statistical area (MicroSA), as those terms are defined below, has a population density that does not exceed 100 people per square mile, and where the total population does not exceed 100,000. That definition would have excluded the majority of the United States population that lives in and around large urban areas yet, based on census data, still include the vast majority of counties in the United States having fewer than 100,000 persons. Population density varies widely but many counties also have a density of less than 100 persons per square mile. Those requirements would have assured that an area under consideration as a rural district would have a small total population and a relatively light population density.

When developing that proposed definition, the Board considered the criteria other executive branch agencies use as a framework for defining what is rural in the United States. These agencies are the U.S. Census Bureau (Census), OMB, and the Economic Research Service (ERS) of the U.S. Department of Agriculture (USDA). The following table summarizes each agency's definition of what constitutes a rural area.

	Definition of rural area
Census	The Census Bureau defines rural area by exclusion by considering areas *outside* urbanized areas or urban clusters rural. • The Census defines an *urbanized area* as an area consisting of adjacent, densely settled, census block groups and census blocks that meet minimum population density requirements. The urbanized area definition also includes adjacent densely settled census blocks that collectively have a population of at least 50,000 people.

	Definition of rural area
	• The Census defines *urban clusters* as contiguous, densely settled, census block groups and census blocks that meet minimum population density requirements. This definition also includes adjacent densely settled census blocks that collectively have populations ranging from 2,500 to less than 50,000 people. • The Census Bureau relies upon the standards implemented by the OMB, as discussed below, for classifying areas as metropolitan areas. The Census Bureau considers all other areas rural. [*Reference: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-6186-filed.pdf.*]
OMB	The OMB defines MSAs, or metropolitan areas, as central (core) counties with one or more urbanized areas, and outlying counties that are economically tied to the core counties as measured by work commuting. OMB uses the MicroSA classification to identify a non-metro county with an urban cluster of at least 10,000 persons or more. Non-core counties are neither micro nor metro. Agencies outside of OMB often designate non-metro counties as rural. [*Reference: http://www.whitehouse.gov/omb/bulletins/fy2007/b07-01.pdf.*]
ERS	ERS of the USDA considers areas rural if the OMB has not designated any part of the area as an MSA or core county. ERS also consider some areas designated by OMB as MSAs rural based on their assessments of Census data and other agency research. ERS has developed several classifications to measure rurality within individual MSAs. ERS researchers who discuss conditions in rural America refer to non-MSA areas that include both micropolitan and non-core counties as rural areas. When the OMB classifies an area as a MicroSA, the ERS still considers these areas rural according to their definition. Rurality is a term used by the USDA ERS to explain the rural nature of an area. [*Reference: http://www.ers.usda.gov/Briefing/Rurality/WhatIsRural/.*]

The Census Bureau, the OMB, and the ERS all provide definitions of rurality based on their analysis of 2000 census data. *See* 72 FR 30988, 30992 (June 5, 2007).

After a review of the comments, and upon further consideration, the Board believes the definition of rural district proposed in 2007 does not adequately reflect the unique nature of rural areas. Accordingly, the Board proposes a revised definition of rural district in the current proposal, as discussed below, that it believes is easier to apply and better reflects NCUA's goal to use a simpler, more objective approach to reviewing community charter applications.

D. Current Proposal

Upon further reflection, including having considered the public comments to the May 2007 proposed rule, the NCUA Board has decided to issue this proposal as a substitute for the May 2007 proposal. As noted, some provisions of the May 2007 proposal have been brought forward into the current proposal without change, while others have been modified or eliminated. NCUA believes the current proposal is a better method for improving the community charter policies of NCUA's Chartering Manual.

1. Well Defined Local Communities

NCUA believes it continues to be prudent policy to consider single political jurisdictions and statistical areas, as those terms are described more fully below, as WDLCs because they meet reasonable objective and quantifiable standards. For reasons discussed more fully below, single political jurisdictions are treated the same in the current proposal as in the May 2007 proposal. Statistical areas, however, are treated somewhat differently in the current proposal from how they were treated in the May 2007 proposal. In the current proposal, NCUA has added an additional criterion an applicant must meet to establish that a statistical area with multiple jurisdictions is a WDLC. Specifically, the additional criterion limits a multiple jurisdiction WDLC's population to 2.5 million or less people, as discussed further below.

a. WDLCs

i. Single Political Jurisdictions

The FCUA provides that a "community credit union" consists of "persons or organizations within a well-defined local community, neighborhood, or rural district." 12 U.S.C. 1759(b)(3). The FCUA expressly requires the Board to apply its regulatory expertise and define what constitutes a WDLC. 12 U.S.C. 1759(g). It has done so in the Chartering Manual, Chapter 2, Section V, Community Charter Requirements. In 2003, the Board, after issuing notice and seeking comments, issued IRPS 03–1 that stated any county, city, or smaller political jurisdiction, regardless of population size, is by definition a WDLC. 68 FR 18334, 18337 (Apr. 15, 2003). An entire State is not acceptable as a WDLC. Under this definition, no documentation demonstrating that the political jurisdiction is a WDLC is required.

After more than six years of experience, the Board has reviewed this definition of WDLC and still finds it compelling. The Board finds that a single governmental unit below the State level is well-defined and local, consistent with the governmental system in the United States consisting of a local, State, and Federal government structure. A single political jurisdiction also has strong indicia of a community, including common interests and interaction among residents. Local governments by their nature generally must provide residents with common services and facilities, such as educational, police, fire, emergency, water, waste, and medical services. Further, a single political jurisdiction frequently has other indicia of a WDLC such as a major trade area, employment patterns, local organizations and/or a local newspaper. Such examples of commonalities are indicia that single political jurisdictions are WDLCs where residents have common interests and/or interact.

ii. Statistical Areas

The Board proposes to establish a statistical definition of WDLC in cases involving multiple political jurisdictions. In that context, a geographically certain area will be considered a WDLC when the following four requirements are met: (1) The area is a recognized core based statistical area (CBSA), or in the case of a CBSA with Metropolitan Divisions, the area is a single Metropolitan Division; (2) the area contains a dominant city, county or equivalent with a majority of all jobs in the CBSA or in the metropolitan division; (3) the dominant city, county or equivalent contains at least ⅓ of the CBSA's or metropolitan division's total population; and (4) the area has a population of 2.5 million or less people.

The Board's experience has been that WDLCs can come in various population and geographic sizes. While the statutory language 'local community' does imply some limit, Congress has directed NCUA to establish a regulatory

definition consistent with the mission of credit unions. While single political jurisdictions below the State level meet the definition of a WDLC, nothing precludes a larger area comprised of multiple political jurisdictions from also meeting the regulatory definition. There is no statutory requirement or economic rationale that compels the Board to charter only the smallest WDLC in a particular area.

The Board's experience has been that applicants have the most difficulty in preparing applications involving larger areas with multiple political jurisdictions. This is because, as the population and the geographic area increase and multiple jurisdictions are involved, it can be more difficult to demonstrate interaction and/or shared common interests. This often causes some confusion to the applicant about what evidence is required and what criteria are considered to be most significant under such circumstances.

The current chartering manual provides examples of the types of information an applicant can provide that would normally evidence interaction and/or shared common interests. These include but are not limited to: (1) Defined political jurisdictions; (2) major trade areas; (3) shared common facilities; (4) organizations within the community area; and (5) newspapers or other periodicals about the area.

These examples are helpful but the Board's experience is that very often in situations involving multiple jurisdictions, where it has determined that a WDLC exists, interaction or common interests are evidenced by a major trade area that is an economic hub, usually a dominant city, county or equivalent, containing a significant portion of the area's employment and population. This central core often acts as a nucleus drawing a sufficiently large critical mass of area residents into the core area for employment and other social activities such as entertainment, shopping, and educational pursuits. By providing jobs to residents from outside the dominant core area, it also provides income that then generates further interaction both in the hub and in outlying areas as those individuals spend their earnings for a wide variety of purposes in outlying counties where they live. This commonality through interaction and/or shared common interests in connection with an economic hub is conducive to a credit union's success and supports a finding that such an area is a local community.

The Board views evidence that an area is anchored by a dominant trade area or economic hub as a strong indication that there is sufficient interaction and/or common interests to support a finding of a WDLC capable of sustaining a credit union. This type of geographic model greatly increases the likelihood that the residents of the community manifest a "commonality of routine interaction, shared and related work experiences, interests, or activities * * *" that are essential to support a strong healthy credit union capable of providing financial services to members throughout the area. Public Law 105–219, § 2(3), 112 Stat. 913 (August 7, 1998).

OMB publishes the geographic areas its analysis indicates exhibit these important criteria. The Board is familiar with and has utilized these statistics. In the past six years, the agency has approved in excess of 50 community charters involving MSAs, usually involving a community based around a dominant core trade area.

The Board believes that when statistics can demonstrate the existence of such relevant characteristics it is appropriate to presume that sufficient interaction and/or common interests exist to support a viable community based credit union. In such situations, the area will be considered to have met the regulatory definition of a WDLC.

Certain areas, however, do not have one dominant economic hub, but rather may contain two or more dominant hubs. These situations diminish the persuasiveness of the evidence and make it inappropriate to automatically conclude that they qualify as WDLCs.

On December 27, 2000, OMB published Standards for Defining MSAs and MicroSAs. 65 FR 82228. The following definitions established by OMB are relevant here:

CBSA—"A statistical geographic entity consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and Micropolitan Statistical Areas are the two categories of Core Based Statistical Areas." 65 FR 82238 (Dec. 27, 2000).

Metropolitan Division—"A county or group of counties within a Core Based Statistical Area that contains a core with a population of at least 2.5 million." 65 FR 82238 (Dec. 27, 2000). OMB recognizes that Metropolitan Divisions often function as distinct, social, economic, and cultural areas within a larger Metropolitan Statistical Area. *See* OMB Bulletin NO. 07–01, December 18, 2006.

Metropolitan Statistical Area—"A Core Based Statistical Area associated with at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting." 65 FR 82238 (Dec. 27, 2000).

Micropolitan Statistical Area—"A Core Based Statistical Area associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting." 65 FR 82238 (Dec. 27, 2000).

Demonstrated commuting patterns supporting a high degree of social and economic integration are a very significant factor in community chartering, particularly in situations involving large areas with multiple political jurisdictions. In a community based model, significant interaction through commuting patterns into one central area or urban core strengthens the membership of a credit union and allows a community based credit union to efficiently serve the needs of the membership throughout the area. Such data demonstrates a high degree of interaction through the major life activity of working and activities associated with employment. Large numbers of residents share common interests in the various economic and social activities contained within the core economic area.

Historically, commuting has been an uncomplicated method of demonstrating functional integration. NCUA agrees with OMB's conclusion that "Commuting to work is an easily understood measure that reflects the social and economic integration of geographic areas." 65 FR 82233 (Dec. 27, 2000). The Board also finds compelling OMB's conclusion that commuting patterns within statistical areas demonstrate a high degree of social and economic integration with the central county. OMB's threshold for qualifying a county as an outlying county eligible for inclusion in either a MSA or MicroSA is a threshold of 25% inter-county commuting. OMB also considers a multiplier effect (a standard method used in economic analysis to determine the impact of new jobs on a local economy) that each commuter would have on the economy of the

county in which he or she lives and notes that a multiple of two or three generally is accepted by economic development analysts for most areas. 65 FR 82233 (Dec. 27, 2000).

"Applying such a measure in the case of a county with the minimum 25 percent commuting requirement means that the incomes of at least half of the workers residing in the outlying county are connected either directly (through commuting to jobs located in the central county) or indirectly (by providing services to local residents whose jobs are in the central county) to the economy of the central county or counties of the CBSA within which the county at issue qualifies for inclusion." 65 FR 82233 (Dec. 27, 2000).

The Board continues to favor the establishment of a standard statistical definition of a WDLC. The Board believes that the application of strictly statistical rules for determining whether a CBSA is a WDLC has the advantage of minimizing ambiguity and making the application process less time consuming. In addition to finding evidence established in this manner compelling, the Board also believes that the reasonableness of the conclusion is further strengthened when additional factors establishing the dominance of the core area are present. These additional factors are also objective and easily measurable.

As OMB has noted, Metropolitan Divisions often function as distinct social, economic, and cultural areas. In the Board's view, this evidence detracts from the cohesiveness of a CBSA with Metropolitan Divisions. Accordingly, under the proposal, a CBSA with Metropolitan Divisions will not meet the definition of a WDLC. Individual Metropolitan Divisions within the CBSA will qualify as a WDLC if the population and employment criteria are met. Similarly, the Board believes that when multiple political jurisdictions are present, an overly large population can detract from the cohesiveness of a geographic area. For that reason, the Board believes that capping a multijurisdictional area at 2.5 million or less people in order to qualify as a WDLC is appropriate. The Board chose that population threshold because OMB generally designates a metropolitan division within a CBSA that has a core of at least 2.5 million people. The Board takes that established threshold as a logical breaking point in terms of community cohesiveness with respect to a multijurisdictional area.

Also, the Board acknowledges that not all areas of the country are the same and there may be a CBSA that does not contain a sufficiently dominant core area or contains several significant core areas. Such situations also dilute the cohesiveness of a CBSA. For these reasons, the Board proposes to require that a CBSA contain a dominant core city, county, or equivalent that contains the majority of all jobs and ⅓ of the total population contained in the CBSA in order to meet the definition of a WDLC. These additional requirements will assure that the core area dominates any other area within the CBSA with respect to jobs and population. Applicants can find information about an area's population and number of local jobs, based upon an analysis of where people who work in an area reside, at the Census' Internet site (*http://www.census.gov*). Information about the current definitions of CBSAs is available at OMB's Internet site (*http://www.whitehouse.gov/omb*). Community charter applications for part of a CBSA are acceptable provided they include the dominant core city, county or equivalent.

Accordingly, the Board proposes to establish a statistical definition of WDLC in cases involving multiple political jurisdictions. Specifically, a geographically well defined area will be considered a WDLC in that context when the following four requirements are met:

- The area must be a recognized CBSA, or in the case of a CBSA with Metropolitan Divisions the area must be a single Metropolitan Division; and
- The area must contain a dominant city, county or equivalent with a majority of all jobs in the CBSA or metropolitan division; and
- The dominant city, county or equivalent must contain at least ⅓ of the CBSA's or metropolitan division's total population; and
- The area must have a population of 2.5 million or less people.

NCUA believes the presence of these criteria clearly demonstrate that individuals in those communities have sufficient interaction and/or common interests. As previously mentioned, NCUA believes this more objective approach will benefit all involved by making the application and review process faster, simpler, and less labor intensive, and will provide a more certain outcome. Also, using objective criteria as the basis for granting a community charter will help ensure that NCUA makes consistent and uniform decisions from regional office to regional office.

Finally, an applicant that does not wish to serve an entire single political jurisdiction or statistical area that is defined as a WDLC may apply for a portion of that area. With respect to single political jurisdictions, the existing community definition will still apply. With respect to statistical areas, for reasons discussed throughout, the definition does not automatically apply. Rather, the applicant must demonstrate that the portion of the statistical area it wishes to serve independently satisfies the criteria for establishing a statistical area is a WDLC that meets the required population and employment criteria as discussed throughout.

2. Narrative Approach

As mentioned previously, NCUA does not believe it is beneficial to continue the practice of permitting a community charter applicant to provide a narrative statement with documentation to support the credit union's assertion that an area containing multiple political jurisdictions meets the standards for community interaction and/or common interests to qualify as a WDLC. As noted, the narrative approach is cumbersome, difficult for credit unions to fully understand, and time consuming. Accordingly, the NCUA proposes to eliminate from the community chartering process the narrative approach and all related aspects of that procedure.

While not every area will qualify as a WDLC, NCUA believes the consistency of this objective approach will enhance its chartering policy and greatly ease the burden for any community charter applicant.

To put this in perspective, NCUA analyzed the sixty-one largest statistical areas in the United States, based on 2007 population estimates, to determine how many would qualify as WDLCs under the proposed policy changes. Eleven of those statistical areas contain metropolitan divisions. Of the sixty-one statistical areas, twenty-seven would qualify in their entirety. Of the remaining thirty-four statistical areas that would not qualify as WDLCs as a whole, NCUA found virtually all of the areas encompass smaller segments that would include a majority of the statistical area's residents by virtue of: (1) Having a large single political jurisdiction within the statistical area; (2) having been previously approved as a WDLC by the NCUA Board; or (3) containing a metropolitan division that would qualify as a WDLC on its own.

3. Grandfathered WDLCs

An area previously approved by NCUA as a WDLC, prior to the effective date of any amendment to the Chartering Manual, in the event the subject proposed amendments are finalized, will continue to be considered a WDLC for subsequent applicants who

wish to serve that exact geographic area. After that effective date, an applicant applying for a geographic area that is not exactly the same as the previously approved WDLC must comply with the Chartering Manual's WDLC criteria then in place.

4. Rural District

NCUA is proposing a different definition of "rural district" from that in the May 2007 proposal. For the same reasons discussed with respect to WDLCs, the NCUA Board believes the definition of a rural district should be based on quantifiable and objective criteria. The Board continues to believe that a rural district should be less densely populated and smaller in population than those areas that qualify as a WDLC.

The NCUA Board proposes to define a rural district as a contiguous area that has more than 50% of its population in census blocks that are designated as rural and the total population of the area does not exceed 100,000 persons. These requirements will ensure that a rural district has both a small total population and a majority of its population in areas classified as rural by Census. The Board believes this definition will help credit unions serve future members in areas that currently have few financial services options. In addition, the Board believes there will be minimal overlap between the definitions of "rural district" and "statistical area" but recognizes that the definitions of "rural district" and "single political jurisdiction" could overlap in some cases.

5. Underserved Communities

The FCUA defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The Board proposes to amend the language in the Chartering Manual's underserved communities section concerning the "local community, neighborhood, or rural district" requirement to conform it with the proposed new definitions of WDLC and rural district by referring the reader to Chapter 2 for the actual text of the definitions. This change will avoid confusion and eliminate any need for future changes to the underserved communities section in the event additional changes are made to the definitions in Chapter 2.

In December 2008, NCUA adopted a final rule modifying its Chartering Manual to update and clarify four aspects of the process and criteria for approving credit union service to underserved areas. 73 FR 73392 (Dec. 2, 2008). First, the rule clarified that an underserved area must independently qualify as a WDLC. Second, it made explicit that the Community Development Financial Institution Fund's "geographic units" of measure and 85 percent population threshold, when applicable, must be used to determine whether a proposed area meets the "criteria of economic distress" incorporated by reference in the FCUA. Third, it updated the documentation requirements for demonstrating that a proposed area has "significant unmet needs" among a range of specified financial products and services. Finally, the rule adopted a "concentration of facilities" methodology to implement the statutory requirement that a proposed area must be "underserved by other depository institutions." 73 FR 73392, 73396 (Dec. 2, 2008).

Using data supplied by NCUA, the "concentration of facilities" methodology compares the ratio of depository institution facilities to the population within a proposed area's "non-distressed" portions against the same facilities-to-population ratio in the proposed area as a whole. When that ratio in the area as a whole shows more persons per facility than does the same ratio in the "non-distressed" portions, the rule deems the area to be "underserved by other depository institutions." Since the final rule was adopted, a perception has arisen that this methodology is an obstacle to establishing that an area which clearly meets the "economic distress criteria" also is "underserved by other depository institutions" as required for the area to qualify as underserved. For example, there could be a distressed area that contains more financial institutions than a non-distressed area, but the products and services offered by the financial institutions in the distressed area are geared to businesses and high-income individuals. In this instance, the distressed area would not qualify as underserved despite truly lacking affordable financial services for low to moderate income individuals. Accordingly, the NCUA Board invites public comment on alternative methodologies, based on publicly accessible data about both credit unions and other depository institutions, for implementing the Act's "underserved by other depository institutions" criterion.

6. Ability To Serve and Marketing Plans

Establishing that an area is a WDLC is only the first of two criteria an FCU must satisfy to obtain a community charter or community charter expansion. The second criterion, after establishing the existence of a WDLC, is for an FCU to demonstrate it is able to serve the WDLC. This applies to all WDLCs including single political jurisdictions, statistical areas, and grandfathered communities. Typically, an FCU can demonstrate its ability to serve an established WDLC in its marketing plan.

Under the current Chartering Manual, a credit union converting to or expanding its community charter must provide "a marketing plan that addresses how the community will be served." The Board proposes clarifying NCUA's marketing plan requirement to provide credit unions with additional guidance on NCUA's expectations. FCUs need to be realistic in assessing their ability to serve a particular community. For example, an FCU with $150 million in assets cannot reasonably expect to be able to serve a community of 1.5 million people. NCUA believes that a meaningful marketing plan must demonstrate, in detail:

- How the credit union will implement its business plan to serve the entire community;
- The unique needs of the various demographic groups in the proposed community;
- How the credit union will market to each group, particularly underserved groups;
- Which community-based organizations the credit union will target in its outreach efforts;
- The credit union's marketing budget projections dedicating greater resources to reaching new members; and
- The credit union's timetable for implementation, not just a calendar of events.

These requirements will serve to ensure that if the community charter is granted, the credit union will be well positioned to safely serve the entire community. Additionally, the appropriate regional office will follow up with an FCU every year for three years after the FCU has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine if the FCU is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms will be subject to supervisory action. As part of this review process, the regional office will report to the NCUA Board instances where an FCU is failing to satisfy the terms of its marketing and business plan and indicate what administrative actions the region intends to take.

NCUA recognizes that determining from a marketing plan if an FCU has the ability to serve a particular WDLC requires some degree of subjectivity, and NCUA believes its substantial experience enables it to make that determination. NCUA would prefer, however, to receive comments from interested parties on whether there are other more objective ways to measure an FCU's ability to serve a particular WDLC.

7. Timing

NCUA will accept community charter applications based only on grandfathered WDLCs, as discussed above, and single political jurisdictions between the issuance of this proposal on December 17, 2009 and the effective date of any final amendments the Board adopts regarding the Chartering Manual. NCUA will accept all community charter applications, based on any permitted criteria, on or after that effective date. Those applications will be considered under the revised version of NCUA's community chartering policies as amended by this proposal.

8. Emergency Mergers

Under the emergency merger provision of section 205(h) of the Act, the NCUA Board may allow a credit union that is either insolvent or in danger of insolvency to merge with another credit union if the NCUA Board finds that an emergency requiring expeditious action exists, no other reasonable alternatives are available, and the action is in the public interest. 12 U.S.C. 1785(h). The Board may approve an emergency merger without regard to common bond or other legal constraints, such as obtaining the approval of the members of the merging credit union to the merger. The emergency merger statute addresses exigent circumstances and is intended to serve the public interest and credit union members by providing for the continuation of credit union service to members from a financially strong credit union.

NCUA must first determine that a credit union is either insolvent or in danger of insolvency before it makes the additional findings that an emergency exists, other alternatives are not reasonably available, and that the public interest would be served by the merger. The statute, however, does not define when a credit union is "in danger of insolvency" nor has NCUA previously issued a formal definition. NCUA now believes it advisable to adopt an objective standard to aid it in making the "in danger of insolvency" determination. This will provide certainty and consistency in how NCUA interprets the standard.

NCUA believes that a credit union is in danger of insolvency if it falls into one or more of the following three categories:

1. The credit union's net worth is declining at a rate that will render it insolvent within 24 months. In NCUA's experience with troubled credit unions, the trend line to zero net worth often worsens once a credit union actually approaches zero net worth. It is more difficult for NCUA to keep the costs to the National Credit Union Share Insurance Fund (NCUSIF) low when a credit union is near, or below, zero net worth. [1]

2. The credit union's net worth is declining at a rate that will take it under two percent (2%) net worth within 12 months. A credit union with a net worth ratio of less than two percent (2%) falls into the PCA category of "critically undercapitalized." 12 U.S.C. 1790d(c)(1)(E); 12 CFR 702.102(a)(5). Congress, in adding the PCA mandates to the Act, created a presumption that a critically undercapitalized credit union should be liquidated or conserved if its financial condition does not improve within a short period. 12 U.S.C. 1790d(i); 12 CFR 702.204(c). Note also that NCUA staff reviewed State credit union statutes and found that the Illinois Credit Union Act defines a credit union as "in danger of insolvency" if its net worth to asset ratio falls below two percent (2%).[2] This is the same as the critically undercapitalized net worth category under NCUA's PCA provisions.

3. The credit union's net worth, as self-reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months. A credit union with a net worth ratio between two percent (2%) or more but less than four percent (4%) falls into the PCA category of "significantly undercapitalized." 12 U.S.C. 1790d(c)(1)(D); 12 CFR 702.102(a)(4). A credit union with a net worth ratio of six percent (6%) falls into the PCA category of "adequately capitalized." 12 U.S.C. 1709d(c)(1)(B); 12 CFR 702.102(a)(2).

Section 702.203(c) of NCUA's PCA regulation states:

> Discretionary conservatorship or liquidation if no prospect of becoming "adequately capitalized." Notwithstanding any other actions required or permitted to be taken under this section, when a credit union becomes "significantly undercapitalized" * * *, the NCUA Board may place the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i), provided that the credit union has no reasonable prospect of becoming "adequately capitalized."

12 CFR 702.203(c). An example of no reasonable prospect of becoming adequately capitalized would be a credit union's inability, after working with NCUA, to demonstrate how it would restore net worth to this level. This could include the credit union's failure, after working with NCUA, and considering both possible increases in retained earnings and decreases in assets, to develop an acceptable Net Worth Restoration Plan (NWRP). It could also include the credit union's failure, after working with NCUA, to materially comply with an approved NWRP. In either case, NCUA must document that the credit union is unable to become adequately capitalized within a 36-month timeframe.

E. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions, primarily those under ten million dollars in assets. The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number assigned to § 701.1 is 3133–0015, and to the forms included in Appendix D is 3133–0116. NCUA has determined that the proposed amendments will not increase paperwork requirements and a

[1] Under NCUA's system of prompt corrective action (PCA), as a credit union's net worth declines below minimum requirements, the credit union faces progressively more stringent safeguards. The goal is to resolve net worth deficiencies promptly, before they become more serious, and in any event before they cause losses to the NCUSIF. The PCA statute sets forth NCUA's duty to take prompt corrective action to resolve the problems of troubled credit unions to avoid or minimize loss to the NCUSIF. S. Rpt. No. 193, 105th Cong., 2d Sess. 12 (1998); 12 U.S.C. 1790d; 12 CFR part 702.

[2] 17 Ill. Comp. Stat. Ann. 305/1.1. An alternative definition of danger of insolvency under the Illinois statute is if the State supervisory authority is unable to ascertain, upon examination, the true financial condition of the credit union. *Id.*

paperwork reduction analysis is not required.

Executive Order 13132

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

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

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

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 17, 2009.

Mary Rupp,

Secretary of the Board.

For the reasons discussed above, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNION

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions, also known as the Chartering and Field of Membership Manual, are set forth in appendix B to this part and are available on-line at *http://www.ncua.gov* .

3. The first paragraph of Section II.D.2. of Chapter 2 of appendix B to part 701 is revised to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

II.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

* * * * *

4. The first paragraph of Section III.D.2. of Chapter 2 of appendix B to part 701 is revised to read as follows:

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

* * * * *

5. The first paragraph of Section IV.D.3. of Chapter 2 of appendix B to part 701 is revised to read as follows:

IV.D.3—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

* * * * *

6. Section V.A. of Chapter 2 of appendix B to part 701 is revised to read as follows:

Chapter 2

V.A.1—General

There are two types of community charters. One is based on a single, geographically well-defined local community or neighborhood; the other is a rural district. More than one credit union may serve the same community.

NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, attend school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership.

NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined; and
- The area is a well-defined local community or a rural district.

V.A.2—Definition of Well-Defined Local Community and Rural District

In addition to the documentation requirements in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

An applicant has the burden of demonstrating to NCUA that the proposed community area meets the statutory requirements of being: (1) Well-defined, and (2) a local community or rural district.

"Well-defined" means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (single, multiple, or portions of a county) or their political equivalent, school districts, or a clearly identifiable neighborhood. Although congressional districts and State boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community or rural district.

The well-defined local community requirement is met if:

- *Single Political Jurisdiction*—The area to be served is in a recognized single political jurisdiction, *i.e.*, a city, county, or their political equivalent, or any contiguous portion thereof.
- Statistical Area—
- The area is a designated Core Based Statistical Area (CBSA) or part thereof, or in the case of a CBSA with Metropolitan Divisions, the area is a Metropolitan Division or part thereof; and
- The area contains a city, county or equivalent with a majority of all jobs in the CBSA or metropolitan division; and
- The city, county or equivalent contains at least ⅓ of the CBSA's or metropolitan division's total population; and
- The area must have a population of 2.5 million or less people.

The rural district requirement is met if:

- Rural District—
- The district has well-defined, contiguous geographic boundaries;
- More than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the United States Census Bureau; and
- The total population of the district does not exceed 100,000 people.

The OMB definitions of CBSA and Metropolitan Division may be found at 65 FR 82238 (Dec. 27, 2000). They are incorporated herein by reference. Access to these definitions is available through the main page of the **Federal Register** Web site at *http://www.gpoaccess.gov/fr/index.html* and on NCUA's Web site at *http://www.ncua.gov*.

The requirements in Chapter 2, Sections V.A.4 through V.G. also apply to a credit union that serves a rural district.

V.A.3—Previously Approved Communities

If prior to ____ (insert effective date of final amendments) NCUA has determined that a specific geographic area is a well defined local community, then a new applicant need not reestablish that fact as part of its application to serve the exact area. The new applicant must, however, note NCUA's previous determination as part of its overall application. An applicant applying for an area after that date that is not exactly the same as the previously approved well defined local community must comply with the current criteria in place for determining a well defined local community.

V.A.4—Business Plan Requirements for a Community Credit Union

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development and promotion of savings programs and in the collection of loans. Accordingly, to support an application for a community charter, an applicant Federal credit union must develop a business plan incorporating the following data:

- *Pro forma* financial statements for a minimum of 24 months after the proposed conversion, including the underlying assumptions and rationale for projected member, share, loan, and asset growth;
- Anticipated financial impact on the credit union, including the need for additional employees and fixed assets, and the associated costs;
- A description of the current and proposed office/branch structure, including a general description of the location(s); parking availability, public transportation availability, drive-through service, lobby capacity, or any other service feature illustrating community access;
- A marketing plan addressing how the community will be served for the 24-month period after the proposed conversion to a community charter, including detailing: how the credit union will implement its business plan; the unique needs of the various demographic groups in the proposed community; how the credit union will market to each group, particularly underserved groups; which community-based organizations the credit union will target in its outreach efforts; the credit union's marketing budget projections dedicating greater resources to reaching new members; and the credit union's timetable for implementation, not just a calendar of events;
- Details, terms and conditions of the credit union's financial products, programs, and services to be provided to the entire community; and
- Maps showing the current and proposed service facilities, ATMs, political boundaries, major roads, and other pertinent information.

An existing Federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership, but outside the new community credit union's boundaries, may not be included in the new community charter. Therefore, the credit union must notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the credit union will be viable and capable of providing services to its members.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plans submitted with their applications. Additionally, NCUA will follow-up with an FCU every year for three years after the FCU has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine if the FCU is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms will be subject to supervisory action. As part of this review process, the regional office will report to the NCUA Board instances where an FCU is failing to satisfy the terms of its marketing and business plan and indicate what administrative actions the region intends to take.

V.A.5—Community Boundaries

The geographic boundaries of a community Federal credit union are the areas defined in its charter. The boundaries can usually be defined using political borders, streets, rivers, railroad tracks, or other static geographical feature.

A community that is a recognized legal entity may be stated in the field of membership—for example, "Gus Township, Texas," "Isabella City, Georgia," or "Fairfax County, Virginia."

A community that is a recognized MSA must state in the field of membership the political jurisdiction(s) that comprise the MSA.

V.A.6—Special Community Charters

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.7—Sample Community Fields of Membership

A community charter does not have to include all four affinities (*i.e.*, live, work, worship, or attend school in a community). Some examples of community fields of membership are:

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, work (or regularly conduct business in), or attend school on the University of Dayton campus, in Dayton, Ohio;
- Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York;
- Persons who live, work, or worship in the Binghamton, New York, MSA, consisting of Broome and Tioga Counties, New York (a qualifying CBSA in its entirety);
- Persons who live, work, worship, or attend school in the portion of the Oklahoma City, OK MSA that includes Canadian and Oklahoma counties, Oklahoma (two contiguous counties in a portion of a qualifying CBSA that has seven counties in total); or
- Persons who live, work, worship, or attend school in Adams County and Lincoln County, Wyoming, a rural district.

Some examples of insufficiently defined local communities, neighborhoods, or rural districts are:

- Persons who live or work within and businesses located within a ten-mile radius of Washington, DC (using a radius does not establish a well-defined area);
- Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district); or
- Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

- Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).
- Persons who live in the first congressional district of Florida. (does not meet the definition of local community, neighborhood, or rural district).

7. The first paragraph of Section V.D.2. of Chapter 2 of appendix B to part 701 is revised to read as follows:

V.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and

• The public interest would best be served by approving the merger.

* * * * *

8. Section III.B.1 of Chapter 3 of appendix B to part 701 is amended by removing the last sentence of that section.

9. The glossary to appendix B to part 701 is amended by adding a definition of "in danger of insolvency" to be added in alphabetical order to read as follows:

* * * * *

In danger of insolvency—In making the determination that a particular credit union is in danger of insolvency, NCUA will establish that the credit union falls into one or more of the following categories:

1. The credit union's net worth is declining at a rate that will render it insolvent within 24 months. In projecting future net worth, NCUA may rely on data in addition to Call Report data. The trend must be supported by at least 12 months of historic data.

2. The credit union's net worth is declining at a rate that will take it under two percent (2%) net worth within 12 months. In projecting future net worth, NCUA may rely on data in addition to Call Report data. The trend must be supported by at least 12 months of historic data.

3. The credit union's net worth, as self-reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months. In making its determination on the prospect of achieving adequate capitalization, NCUA will assume that, if adverse economic conditions are affecting the value of the credit union's assets and liabilities, including property values and loan delinquencies related to unemployment, these adverse conditions will not further deteriorate.

* * * * *

[FR Doc. E9–30557 Filed 12–28–09; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. SW014; Notice No. 29–014–SC]

Special Conditions: Erickson Air-Crane Incorporated S–64E and S–64F Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Erickson Air-Crane Incorporated (Erickson Air-Crane) S–64E and S–64F rotorcraft. These rotorcraft have novel or unusual design feature(s) associated with being transport category rotorcraft designed only for use in heavy external-load operations. At the time of original type certification, a special condition was issued for each model helicopter because the applicable airworthiness regulations did not contain adequate or appropriate safety standards for turbine-engine rotorcraft or for rotorcraft with a maximum gross weight over 20,000 pounds that were designed solely to perform external-load operations. At the request of Erickson Air-Crane, the current type certificate (TC) holder for these helicopter models, we propose the following to resolve reported difficulty in applying the existing special conditions and to eliminate any confusion that has occurred in Erickson's dealings with a foreign authority. Specifically, we are proposing to consolidate the separate special conditions for each model helicopter into one special condition to clarify and more specifically reference certain special condition requirements to the regulatory requirements, to add an inadvertently omitted fire protection requirement, to recognize that occupants may be permitted in the two observer seats and the rear-facing operator seat during other than external-load operations, and to clarify the requirements relating to operations within 5 minutes of a suitable landing area.

The requirements in this special condition continue to contain safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards existing at the time of certification.

DATES: We must receive your comments by February 12, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration (FAA), Rotorcraft Standards Staff, Attention: Docket No. SW014 (ASW–111), Fort Worth, Texas 76193–0110. You may deliver two copies to the Rotorcraft Standards Staff (ASW–111) at 2601 Meacham Blvd., Fort Worth, Texas 76137. You must mark your comments: Docket No. SW014. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m. The docket is maintained in the Rotorcraft Directorate at 2601 Meacham Blvd., Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Stephen Barbini, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff (ASW–111), Fort Worth, Texas 76193–0110, telephone (817) 222–5196, facsimile (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to take part in this rulemaking by sending written comments, data, or views on the changes made by this special condition, which are detailed in the Discussion section of this preamble. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel on these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 27, 1967, Sikorsky Aircraft Corporation (Sikorsky) filed an application for type certification for its Model S–64E helicopter. This rotorcraft is the civil version of the United States Army Model CH–54A flying crane. The S–64E has a maximum weight of approximately 30,000 pounds when flying only with internal fuel loadings and personnel, and without external loads. It has a maximum weight of 42,000 pounds, of which a maximum of 20,000 pounds may be external loads. Type certificate H6EA was issued on August 21, 1969, which included special condition No. 29–6–EA–2. This special condition includes conditions for type certification for carrying Class B external loads.

On April 2, 1969, Sikorsky filed for an amendment to its type certificate to add the Model S–64F. This aircraft is the civil version of the United States Army Model CH–54B flying crane. The S–64F has a maximum weight of approximately 30,000 pounds when flying only with internal fuel loadings

and personnel, and without external loads. It has a maximum weight of 47,000 pounds, of which a maximum of 25,000 pounds may be external loads. Type certificate H6EA was amended on November 25, 1970, to add the F model, including special condition No. 29–16–EA–5 and Amendment No. 1 to that special condition. This Model S–64F special condition includes requirements for type certification for carrying Class A and B external loads.

The 14 CFR part 29 regulations applicable at the time of certification required the Models S–64E and S–64F to comply with Category A regulations. However, strict adherence to those regulations was deemed inappropriate for these model aircraft and their intended operations. The special conditions created for the Model S–64E and Model S–64F combined the appropriate standards from both Category A and B, plus added safety and other requirements necessary to establish compliance with the airworthiness requirements of Subpart D of 14 CFR part 133 for Class A and B rotorcraft load combinations. Additionally, the special conditions allowed operations under 14 CFR part 91. The combination of regulations and special conditions ensured a level of safety equivalent to 14 CFR part 29 requirements at the time of certification.

Both aircraft were specifically type certificated as "industrial flying cranes," which are used only to carry cargo and all cargo is carried as an external load. The cockpit contains only five seats, allowing for two pilots, an aft-facing hoist operator and two observers. The rotorcraft does not have a passenger compartment and is not designed to transport passengers. 14 CFR part 91 operations are allowed. The aircraft are powered by two Pratt and Whitney turbo shaft engines (Series JFTD12A); the S–64E uses the model 4A which generates 4,500 horsepower and the S–64F uses the model 5A which generates 4,800 horsepower. The engines drive a six-blade single main rotor approximately 72 feet in diameter and a four-blade tail rotor approximately 16 feet in diameter.

Since the time of original certification, 14 CFR part 29 has been modified to recognize that most transport category rotorcraft are being used in utility work, rather than in air carrier operations. The regulatory changes now enable a rotorcraft of more than 20,000 pounds and nine or less passenger seats to be certificated as Category B provided certain Category A subparts are met.

Since the S–64's certification, the regulations have been amended to better accommodate rotorcraft designed to operate under the external load provisions of 14 CFR part 133. However, no transport category rotorcraft (over 20,000 pounds) has been designed with the unique and novel features of the "skycrane." In 1992, the type certificate for the Model S–64E and Model S–64F was transferred from Sikorsky to Erickson Air-Crane Incorporated. In 2004, the Model S–64F received a type certificate from the European Aviation Safety Agency (EASA). In 2005, the Model S–64E was certificated to carry Class A external loads under 14 CFR part 133.

Type Certification Basis

The original type certification basis is as follows:

For the *Model S–64E:* 14 CFR part 29, 1 February 1965, including Amendments 29–1 and 29–2 except 14 CFR § 29.855(d), and Special Condition No. 29–6–EA–2. For the *Model S–64F:* 14 CFR part 29, dated 1 February 1965 including Amendments 29–1 and 29–2 except 14 CFR § 29.855(d), and Special Condition No. 29–16–EA–5 including Amendment No. 1.

We have found that the applicable airworthiness regulations for 14 CFR part 29 do not contain adequate or appropriate safety standards for the Erickson S–64E and S–64F rotorcraft because of novel or unusual design features. Therefore, special conditions were prescribed under the provisions of § 21.16. Special conditions, as appropriate, are defined in § 11.19 and issued per § 11.38, and become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model per § 21.101(a)(1).

Novel or Unusual Design Features

The Erickson Air-Crane S–64 rotorcraft incorporates the following novel or unusual design features:

The aircraft was designed specifically as an industrial flying crane—

(a) With an airframe—

(1) Designed solely for external load capabilities with no passenger cabin and accommodations in the cockpit only for—

(i) One pilot,

(ii) One copilot,

(iii) One aft-stick operator, and

(iv) Two observers.

(2) Designed with two small baggage compartments in the nose.

(3) Designed with multiple "hard points" each with load ratings specifically for the carriage of external loads.

(b) With a rear-facing aft-stick operator seat, which allows for—

(1) precision placement of external loads, and

(2) limited flight operations capabilities.

(c) With neither engine equipped with a cowling.

(d) That weighs over 20,000 pounds, but is designed solely to carry cargo in external load operations.

Discussion

The type certification basis for the Model S–64E helicopter contained Special Condition No. 29–6–EA–2, dated January 13, 1969. The type certification basis for the model S–64F helicopter contained Special Condition No. 29–16–EA–5, issued December 3, 1969 and Amendment 1 to that Special Condition issued November 13, 1970. The special condition for the model S–64E included requirements for type certification without external loads (including flight conditions, propulsion conditions, systems condition, and operating limitations conditions) and requirements for type certification with external loads (including general conditions, flight conditions, propulsion conditions, systems condition, and operating conditions). The special condition including Amendment 1 for the model S–64F included essentially the same requirements as those for the model S–64E, but included additional requirements for Class A load combinations.

We have reviewed Special Conditions No. 29–6–EA–2 and No. 29–16–EA–5, including Amendment No. 1. We have determined that the original special conditions applied to the model S–64 ensure a level of safety equivalent to 14 CFR part 29 requirements at the time of certification for both the E and F model rotorcraft.

At the request of Erickson Air Crane, we propose to:

(a) Consolidate the special conditions for both model helicopters into one document.

(b) Indicate whether a special condition requirement is "in lieu of" or "in addition to" a standard certification requirement and make specific reference to the certification requirement. The original Special Conditions did not delineate the novel or unusual design

features of the Air-Crane, which resulted in an unclear application of the "in addition to" and "in lieu of" requirements as they pertained to the rules existing at the time of certification.

(c) Reference 14 CFR part 133 instead of the various rotorcraft load combination classes for the special condition requirements concerning placards.

(d) Modify the occupancy special condition to allow non-crewmembers who are not providing compensation to the operator, to be transported, as otherwise permitted by the regulations. Operations are currently limited to occupants that are flight crewmembers, flight crewmember trainees, or other persons performing essential functions connected with external load operations or necessary for an activity directly associated with external load operations.

(e) Remove the special condition operating limitation that required the helicopters be operated so that a suitable landing area could be reached in no more than 5 minutes, and now requiring that only when flying over a congested area must the helicopter be operated so that a suitable landing area can be reached in no more than 5 minutes.

(f) Add a requirement to comply with § 29.855(d), at Amendment level 29–3, effective February 25, 1968, which was excluded from the original special condition as indicated on the type certificate data sheet, requiring the baggage compartment in the airframe nose be sealed to contain cargo or baggage compartment fires.

Neither consolidating the requirements, specifying the "in lieu of" or "in addition to" references, nor referencing 14 CFR part 133 are intended to make any substantive changes from the requirements contained in Special Condition No. 29–6–EA–2 nor Special Condition 29–16–EA–5, as amended. However, one change that has been proposed is to the "occupant" standard.

The original special conditions only permitted flight crewmembers, flight crewmember trainees, or persons performing an essential or necessary function in connection with the external load operation to be carried on board the helicopter. This occupancy standard was taken directly from 14 CFR § 133.35, dealing with the carriage of persons during rotorcraft external-load operations. At the time of original certification, there was no intent to allow the carriage of persons other than crewmember trainees and those required in connection with the external-load operation: Flights conducted under 14 CFR part 91, regulations were only expected to occur when the helicopter was being re-positioned with two pilot-crewmembers. In addition, limitations were placed on the S–64E and S–64F helicopter designs because they were not the typical transport category helicopter because they did not meet all appropriate 14 CFR part 29 transport category helicopter requirements. In particular, the designs do not include a power-plant fire extinguishing system and the related cowlings that assist in engine fire suppression.

Since original certification, operators have stated that they would like the option to use the additional three seats, which includes the one rear-facing seat occupied by a crewmember during external-load operations, to carry support crews between operational bases and the worksites. The intended effect of removing the essential crewmember and crewmember trainee limitation recognizes that these model helicopters are not operated exclusively under 14 CFR part 133. Under this proposal, we recognize that the two observer seats and the rear-facing aft-stick operator's seat *may* be occupied by persons other than persons performing an essential or necessary function in connection with the external load operation during 14 CFR part 91 operations. The intent of this provision is to allow the two observer seats and the rear-facing operator's seat, when the rear-facing aft-stick operator's controls are disengaged and the collective guard is installed to prevent unintentional movement, to be occupied during other than external-load operations. As described in the FAA-approved flight manual, the aft-stick operator's controls are only to be engaged when a qualified crewmember is at the main and aft-stick operator's controls.

From an engine-fire safety standpoint, single-engine helicopters certificated to Category B requirements of 14 CFR part 29 are permitted to carry up to nine passengers. However, if an engine fails due to a fire, although the fire may be extinguished, the helicopter will still be forced to execute an auto-rotation. Depending on where the helicopter is operating, a safe autorotative landing may not be possible. In addition, helicopters certificated to 14 CFR part 27 requirements are not required to have a power-plant fire protection system, but are certificated to carry up to nine passengers. If a twin-engine model S–64E or S–64F helicopter has an engine failure due to an engine fire, these helicopters can still fly on a single engine and the certification standards require that they must be safely controlled so that the essential structure, controls, and parts can perform their essential functions for at least five minutes in order to reach a possible suitable landing area.

Although we propose to remove the "occupant" limitation, when conducting other than external-load operations, which most commonly we anticipate may be 14 CFR part 91 operations, operators would still be required to comply with the other FAA operating requirements applicable to their particular operation.[1]

Another current special condition operating limitation requires that the helicopters be operated at an altitude and over routes, which provide suitable landing areas that can be reached in no more than 5 minutes. We are proposing to qualify this limitation and only require this limitation when the helicopters are operated over a congested area. The 5-minute portion of the limitation complements the fire protection requirements in § 29.861, which for Category B rotorcraft requires that certain structure, controls, and other essential parts be able to perform their essential functions for at least 5 minutes under foreseeable powerplant fire conditions. Relaxing the limitation by allowing flights over other than congested areas that may not be within the 5-minute distance still exceeds the safety standard in the current § 133.33(d) provision, which allows the holder of a Rotorcraft External-Load Operator Certificate to conduct

[1] Some operational regulations that may apply during 14 CFR part 91 operations include, 14 CFR 61.113(a) which, with some exceptions, prohibits a private pilot from acting as pilot in command of an aircraft carrying passengers for compensation or hire, and from acting as pilot-in-command for compensation or hire. An exception to 14 CFR 61.113(a), 14 CFR 61.113(b) allows a private pilot to act as pilot in command of an aircraft for compensation or hire in connection with any business or employment if the flight is only incidental to that business or employment and the aircraft does not carry passengers or property for compensation or hire. Another regulation, 14 CFR 119.33 prohibits a person from providing or offering to provide air transportation when that person has control over the operational functions performed in providing that transportation unless that person has an air carrier certificate and operations specifications. Under our regulations, "compensation" has been interpreted very broadly and "need not be direct nor in the form of money. Goodwill is a form of prohibited compensation." *Administrator* v. *Murray*, EA–5061, October 29, 2003 citing *Administrator* v. *Blackburn*, 4 NTSB 409 (1982).

Intangible benefits, such as the expectation of future economic benefit or business, are sufficient to "render a flight one for 'compensation or hire'." See, e.g., *Administrator* v. *Platt*, NTSB Order No. EA–4012 (1993) at 6; *Administrator* v. *Blackburn*, 4 NTSB 409 (1982), aff'd., *Blackburn* v. *NTSB*, *NTSB, 709 F.2d 1514 (9th Cir. 1983); Administrator* v. *Pingel*, NTSB Order No. EA–3265, at n.4 (1991); *Administrator* v. *Mims*, NTSB Order No. EA–3284 (1991).

rotorcraft external-load operations under certain circumstances over congested areas notwithstanding the requirements of 14 CFR part 91. Therefore, this is consistent with that standard.

We also propose to change the current type certification basis of both model helicopters that excludes the requirement to comply with § 29.855(d). At the time of the application for type certification of the model S–64E helicopter on November 27, 1967, and before the changes to 14 CFR part 29 by Amendment level 29–3, effective February 25, 1968, § 29.855(d) required that cargo and baggage compartments be designed or have a device to ensure detection of fires by a crewmember at his station to prevent entry of harmful substances into the crew or passenger compartment. In Notice 65–42 in Proposal 22 published on December 28, 1965 (30 FR 16129, 16139), we proposed to change § 29.855(d) because experience had shown that the design requirements for cargo and baggage compartments were not specific enough for compartments that are not sealed against fire and for cargo-only compartments. Because of the novel design of this helicopter, it did not have a typical transport category rotorcraft cargo or baggage compartment, only two small baggage compartments in the nose of the rotorcraft that are inaccessible during flight. Therefore, because the model S–64E helicopter was not the type of transport category rotorcraft envisioned when the transport category requirements of 14 CFR part 29 were adopted to address rotorcraft use in air carrier service and the necessary higher degree of safety to protect common carriage passengers and the fact that the model S–64E did have a sealed cargo compartment meeting the new proposed standard in Notice 65–42, the type certification basis for the model S–64E helicopter excluded the requirements of § 29.855(d). However, when Amendment 29–3 was adopted with the amended § 29.855(d), the exclusion of § 29.855(d) from the type certification basis was not reversed. The type certification basis for the model S–64F is the same as that for the model S–64E. Therefore, we propose adding back to the type certification basis for both model helicopters the requirement to comply with § 29.855(d), at Amendment level 29–3, effective February 25, 1968.

Applicability

This special condition is applicable to the Erickson Air-Crane Model S–64E and Model S–64F rotorcraft. Should Erickson Air-Crane apply later for a change to the type certificate to include another model incorporating the same novel or unusual design features, this special condition would apply to that model according to the provisions of § 21.101(a)(1).

Conclusion

We have reviewed the original Special Conditions No. 29–6–EA–2 and No. 29–16–EA–5, including Amendment No. 1. Based on this review, we propose to combine the two current separate special conditions for the Model S–64E and Model S–64F helicopters into a single special condition that clearly establishes the novel or unusual design feature associated with each regulatory requirement. We also propose to change the special condition that limited who, specifically non-flight crewmembers, could be carried on board the helicopter during other than external-load operations. The original special conditions also required the Model S–64E and Model S–64F to be within 5 minutes of a suitable landing area at all times. We find it sufficient to require the rotorcraft to be no more than 5 minutes from a suitable landing area when operating over congested areas.

However, we are proposing to add a requirement to comply with the cargo and baggage compartment requirements of 29.855(d) that were inadvertently omitted from the original two special conditions.

This action affects only certain novel or unusual design features on the Model S–64E and Model S–64F helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

The substance of the original special conditions may have been subjected to comments in prior instances. However, due to the changes described within the "Discussion" section, we feel that it is prudent to request comments to allow interested persons to submit views on these changes.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes that Special Condition No. 29–6–EA–2, Docket No. 9351, issued January 13, 1969 for the Model S–64E and Special Condition No. 29–16–EA–5, Docket No. 10002, issued December 3, 1969 and Amendment 1 to Special Condition No. 29–16–EA–5, issued November 13, 1970 for the Model S–64F, be removed and the following special conditions be added as part of the type certification basis for Erickson Air-Crane models S–64E and S–64F helicopters. Unless otherwise noted, all regulatory references made within this proposed special condition would pertain to those 14 CFR par 29 regulations in effect at Amendment level 29–2, effective June 4, 1967 (32 FR 6908, May 5, 1967).

(a) *Takeoff and Landing Distance.* Because of the S–64's novel design as an industrial flying crane, the following apply:

(1) For operations without external load, the takeoff and landing distance must be determined by flight test over the ranges of weight, altitude, and temperature for which takeoff and landing data are scheduled. The flight tests must encompass the critical areas of a takeoff and landing flight path from a 50-foot hover. If the takeoff and landing distance throughout the operational range to be approved are zero, the minimum takeoff and landing area length must be one and one-half times the maximum helicopter overall length (main rotor forward tip path to tail rotor aft tip path) and the area width must be one and one-half times main rotor tip path diameter. Additionally, this information must be furnished in the performance information section of the Rotorcraft Flight Manual.

(2) For Class A rotorcraft load combination operations:

(i) Compliance must be shown with the provisions of § 29.51 (Takeoff data: general), except that in paragraph (a) of § 29.51, the references to §§ 29.53(b) (Critical decision point) and 29.59 (Takeoff path: Category A) are not applicable.

(ii) In lieu of the requirements of §§ 29.53 and 29.59, the following apply:

(A) Compliance must be shown with the provisions of § 29.63 (Takeoff: Category B),

(B) the horizontal takeoff distance to a point 50 feet above the plane of the takeoff surface must be established with both engines operating within their approved limits, and

(C) the takeoff climbout speed must be established.

(iii) Compliance must be shown with the provisions of § 29.79 (Limiting height-speed envelope).

(3) For Class B rotorcraft load combination operations:

(i) Compliance must be shown with § 29.51 (Takeoff data: general), except that in paragraph (a), the references to §§ 29.53(b) (Critical decision point), 29.59 (Takeoff path: Category A) and

29.67(a)(1) and (2) (Climb: one engine inoperative) are not applicable.

(ii) In lieu of the requirements of §§ 29.53 and 29.59, compliance must be shown with the provisions of § 29.63 (Takeoff: Category B).

(b) *Climb.* Because of the S–64's novel design as an industrial flying crane, the following apply:

(1) For Class A rotorcraft load combination operations, in lieu of the requirements of §§ 29.67 (Climb: one engine inoperative) and 29.71 (Helicopter angle of glide: Category B), compliance must be shown with §§ 29.65(a) (Category B climb: all engines operating) and 29.67(a)(1) and (2) (Climb: one engine inoperative).

(2) For Class B rotorcraft load combination operations, in lieu of the requirements of §§ 29.67 (Climb: one engine inoperative) and 29.71 (Helicopter angle of glide: Category B), compliance must be shown with § 29.65 (Category B climb: all engines operating).

(c) *Landing.* Because of the S–64's novel design as an industrial flying crane, for Class A rotorcraft load combination operations, in lieu of the requirements of §§ 29.77 (Balk landing: Category A) and 29.75 (Landing), compliance must be shown for 29.75(b)(5), and the following apply:

(1) The horizontal distance required to land and come to a complete stop, from a point 50 feet above the landing surface must be determined with a level, smooth, dry, hard surface.

(2) The approach and landing may not require exceptional piloting skill or exceptionally favorable conditions.

(3) The landing must be made without excessive vertical acceleration or tendency to bounce, nose over, or ground loop.

(4) The landing data must be determined at each weight, altitude, and temperature for which certification is sought with one engine inoperative and the remaining engine operating within approved operating limitations.

(5) The approach and landing speeds must be selected by the applicant and must be appropriate to the type rotorcraft.

(6) The approach and landing path must be established to avoid the critical areas of a limiting height-speed envelope established under § 29.79.

(d) *Performance at Minimum Operating Speed.* Because of the S–64's novel design as an industrial flying crane, in lieu of the requirements of § 29.73 (Performance at minimum operating speed) the following apply:

(1) For operations without external load, the hovering performance must be determined at 50 feet or more above the takeoff surface over the ranges of weight, altitude, and temperature for which takeoff data are scheduled. This must be shown with the most critical engine inoperative, the remaining engine at not more than the maximum certificated single engine rated power, and the landing gear extended.

(2) For Class A rotorcraft load combination operations, the hovering performance must be determined over the ranges of weight, altitude, and temperature for which certification is requested, and takeoff data must be scheduled—

(i) Up to takeoff power on each engine;

(ii) With landing gear extended; and

(iii) The helicopter at a height consistent with normal takeoff procedures.

(3) For Class B rotorcraft load combination operations, the hovering performance must be determined over the ranges of weight, altitude, and the temperature for which certification is requested, and takeoff data must be scheduled—

(i) Up to takeoff power on each engine;

(ii) With landing gear extended; and

(iii) The rotorcraft out of ground effect.

(e) *Airspeed Indicating System.* Because of the S–64's novel design as an industrial flying crane, for operations with and without external load, compliance must be shown with § 29.1323 (Airspeed indicating system) effective February 25, 1968 (Amendment 29–3), modified as follows:

(1) In addition to the flight conditions prescribed in subparagraph (b)(1), the system must be calibrated at operational rates of climb.

(2) In lieu of the speed range prescribed in subparagraph (c)(1), the airspeed error may not exceed the requirements throughout the speed range in level flight at forward airspeeds of 35 knots or more.

(f) *Power Boost and Power-Operated Control System.* Because of the S–64's novel design as an industrial flying crane, for operations without external load, in lieu of the requirements of § 29.695(a)(1) (Power boost and power-operated control system) as it applies to any single failure of the main rotor tandem servo housing, the following apply:

(1) It must be shown by endurance tests of the tandem servo that failure of the servo housing is extremely improbable.

(2) A tandem servo life limit must be established.

(3) A periodic inspection program for the tandem servo must be established.

(4) The hydraulic system must be provided with means to ensure that system pressure, including transient pressure and pressure from fluid volumetric changes in components which are likely to remain closed long enough for such changes to occur—

(i) are within 90 to 110 percent of pump average discharge pressure at each pump outlet or at the outlet of the pump transient pressure dampening device, if provided; and

(ii) may not exceed 135 percent of the design operating pressure, excluding pressures at the outlets specified in subparagraph (i) above. Design operating pressure is the maximum steady operating pressure.

(g) *Propulsion Conditions.* Because of the S–64's novel design as an industrial flying crane, its powerplant was designed without a cowling, and does not include a fire extinguishing system. Therefore, in lieu of the requirements of §§ 29.861(a) (Fire protection of structure, controls, and other parts), 29.1187(e) (Drainage and ventilation of fire zones), 29.1195 (Fire extinguishing systems), 29.1197 (Fire extinguishing agents), 29.1199 (Extinguishing agent containers), and 29.1201 (Fire extinguishing system materials), the following apply:

(1) *Fire protection of structure, control and other parts.* Compliance must be shown with § 29.861(b) (Fire protection of structure, controls, and other parts) so each part of the structure, controls, rotor mechanism, and other parts essential to controlled landing and flight must be protected so they can perform their essential functions for at least 5 minutes under any foreseeable powerplant fire condition.

(2) *Powerplant fire protection.* In addition to compliance with § 29.1183 (Lines and fittings), except for lines and fittings approved as part of the engine type certificate under 14 CFR part 33, design precautions must be taken in the powerplant compartment to safeguard against the ignition of fluids or vapors which could be caused by leakage or failure in flammable fluid systems.

(3) *Exhaust system drains.* In addition to compliance with § 29.1121 (Exhaust system: general), compliance must be shown with § 29.1121(h) (Exhaust system: general) effective February 25, 1968 (Amendment 29–3) in that if there are significant low spots or pockets in the engine exhaust system, the system must have drains that discharge clear of the rotorcraft, in normal ground and flight attitudes, to prevent the accumulation of fuel after the failure of an attempted engine start.

(4) *Rotor drive system testing.* If the engine power output to the transmission can exceed the highest engine or transmission power rating and the output is not directly controlled by the pilot under normal operating conditions (such as the control of the primary engine power control by the flight control), in addition to the endurance tests prescribed in § 29.923 (Rotor drive system and control mechanism tests), the following test must be made:

(i) With all engines operating, apply torque at least equal to the maximum torque used in meeting § 29.923 plus 10 percent for at least 220 seconds.

(ii) With each engine, in turn, inoperative, apply to the remaining transmission power inputs the maximum torque attainable under probable operating conditions, assuming that torque limiting devices are functioning properly. Each transmission input must be tested at this maximum torque for at least 5 minutes.

(5) *Powerplant installation.* In addition to the requirements of § 29.901 (Installation), compliance must be shown with § 29.901(b)(5) (Installation) effective February 25, 1968 (Amendment 29–3) in that the axial and radial expansion of the engines may not affect the safety of the powerplant installation.

(6) *Powerplant operation characteristics.* In addition to the requirements of § 29.939 (Turbine engine operating characteristics), the powerplant operating characteristics must be investigated in flight to determine that no adverse characteristics, such as stall, surge, or flameout are present to a hazardous degree during normal and emergency operation of the helicopter within the range of operating limitations of the helicopter and of the engine.

(7) *Powerplant control system.* In addition to the requirements of § 29.1141 (Powerplant controls: general), the powerplant control system must be investigated to ensure that no single, likely failure or malfunction in the helicopter installed components of the system can cause a hazardous condition that cannot be safely controlled in flight.

(8) *Fuel pump installation.* In addition to the requirements of § 29.991 (Fuel pumps), there must be provisions to maintain the fuel pressure at the inlet of the engine fuel system within the limits established for engine operation throughout the operating envelope of the helicopter.

(9) *Fuel strainer.* In addition to the requirements of § 29.997 (Fuel strainer or filter), compliance must be shown with § 29.997(e) (Fuel strainer or filter) effective February 25, 1968 (Amendment 29–3) in that unless there are means in the fuel system to prevent the accumulation of ice on the filter, there must be means to automatically maintain the fuel flow if ice-clogging of the filter occurs.

(10) *Cooling test.* In lieu of the requirements of § 29.1041(a) (Powerplant cooling: General), which includes requirements for reciprocating engines, compliance must be shown with § 29.1041(a) (Powerplant cooling: General) effective February 25, 1968 (Amendment 29–3) in that the powerplant cooling provisions must maintain the temperatures of powerplant components and engine fluids within safe values under critical surface and flight operating conditions and after normal engine shutdown.

(11) *Induction system icing protection.* The S–64 has two turbine engines; therefore, in lieu of § 29.1093 (Induction system icing protection), which includes requirements for reciprocating engines, compliance must be shown with § 29.1093(b) (Induction system icing protection) effective February 25, 1968 (Amendment 29–3) in that each engine must operate throughout its flight power range, without adverse effect on engine operation or serious loss of power or thrust under the icing conditions specified in Appendix C of 14 CFR part 25.

(12) *Induction system duct.* The S–64 has two turbine engines; therefore, in lieu of § 29.1091(d) and (e) (Air induction), which includes requirements for reciprocating engines, compliance must be shown with § 29.1091(f) (Air induction) effective February 25, 1968 (Amendment 29–3) in that:

(i) There must be means to prevent hazardous quantities of fuel leakage or overflow from drains, vents, or other components of flammable fluid systems from entering the engine intake system.

(ii) The air inlet ducts must be located or protected to minimize the ingestion of foreign matter during takeoff, landing, and taxiing.

(h) *Powerplant Instruments.* At the time of original certification, the S–64 had a novel design of being powered by two turbine engines; therefore, in lieu of § 29.1305 (Powerplant instruments), which includes requirements for reciprocating engines, compliance must be shown with § 29.1305 (Powerplant instruments) effective February 25, 1968 (Amendment 29–3) in that the following are required powerplant instruments:

(1) A fuel quantity indicator for each fuel tank.

(2) If an engine can be supplied with fuel from more than one tank, a warning device to indicate, for each tank, when a 5-minute usable fuel supply remains when the rotorcraft is in the most adverse fuel feed condition for that tank, regardless of whether that condition can be sustained for the 5 minutes.

(3) An oil pressure warning device for each pressure lubricated gearbox to indicate when the oil pressure falls below a safe value.

(4) An oil quantity indicator for each oil tank and each rotor drive gearbox, if lubricant is self-contained.

(5) An oil temperature indicator for each engine.

(6) An oil temperature warning device for each main rotor drive gearbox to indicate unsafe oil temperatures.

(7) A gas temperature indicator for each turbine engine.

(8) A gas producer rotor tachometer for each turbine engine.

(9) A tachometer for each engine that, if combined with the instrument required by subparagraph (10) of this paragraph, indicates rotor rpm during autorotation.

(10) A tachometer to indicate the main rotor rpm.

(11) A free power turbine tachometer for each engine.

(12) A means for each engine to indicate power for that engine.

(13) An individual oil pressure indicator for each engine, and either an independent warning device for each engine or a master warning device for the engines with means for isolating the individual warning circuit from the master warning device.

(14) An individual fuel pressure indicator or equivalent device for each engine, and either an independent warning device for each engine or a master warning device for the engines with means for isolating the individual warning circuit from the master warning device.

(15) Fire warning indicators.

(i) *Cargo and baggage compartments.* Since the S–64 includes an unusual design in that the baggage compartments are located in the nose of the airframe and are inaccessible during flight, in lieu of § 29.855(d), compliance must be shown with § 29.855(d) effective February 25, 1968 (Amendment 29–3) so that each cargo and baggage compartment is sealed to contain cargo or baggage compartment fires completely without endangering the safety of the rotorcraft or its occupants.

(j) *Auxiliary Control Station.* The S–64 includes a novel design for an optional aft-facing pilot position (auxiliary control station) which is used during precision placement rotorcraft

load combination operations. There are no specific requirements in the airworthiness standards for this type of pilot position. Therefore, if the auxiliary control station is equipped with flight controls—

(1) The rotorcraft must be safely controllable by the auxiliary controls, throughout the range of the auxiliary controls.

(2) The auxiliary controls may not interfere with the safe operation of the rotorcraft by the pilot or copilot when the station is not occupied.

(3) The auxiliary control station and its associated equipment must allow the operator to perform his or her duties without unreasonable concentration or fatigue.

(4) The vibration and noise characteristics of the auxiliary control station appurtenances must not interfere with the operator's assigned duties to an extent that would make the operation unsafe.

(5) The auxiliary control station must be arranged to give the operator sufficiently extensive, clear, and undistorted view for safe operation. The station must be free of glare and reflection that could interfere with the operator's view.

(6) There must be provisions to prevent unintentional movement of the controls when the rear-facing aft-stick operator's seat is occupied by other than essential crewmembers during other than external-load operations.

(k) *Quick-Release Devices.* The S–64 is specifically designed for rotorcraft load combination operations with particular weight-specified hard points designed into the airframe. Because of this unusual design, when quick release devices are required under 14 CFR part 133, it must enable the pilot to release the external-load quickly during flight. The quick-release system must comply with the following:

(1) An activating control for the quick-release system must be installed on one of the pilot's primary controls and must be designed and located so it may be operated by the pilot without hazardously limiting his or her ability to control the rotorcraft during an emergency situation.

(2) An alternative independent activating control for the quick-release system must be provided and must be readily accessible to the pilot or a crewmember.

(3) The design of the quick-release system must ensure that failure, which could prevent the release of external loads, is extremely improbable.

(4) The quick-release system must be capable of functioning properly after failure of all engines.

(5) The quick-release system must function properly with external loads up to and including the maximum weight for which certification is requested.

(6) The quick-release system must include a means to check for proper operation of the system at established intervals.

(l) *Maximum Weight-with External Load.* When establishing compliance with § 29.25, the maximum weight of the rotorcraft-load combination for operations with external loads must be established by the applicant and may not exceed the weight at which compliance with all applicable requirements has been shown.

(m) *External Load Jettisoning.* The external load must be jettisonable to the maximum weight for which the helicopter has been type certificated for operation without external loads or with Class A loads.

(n) *Minimum Flight Crew.* To meet the requirements of § 29.1523, the minimum flight crew consists of a pilot and a copilot. For pick up of the external-load and on-site maneuvering and release of the external-load, the copilot may act as the aft-facing hoist operator.

(o) *Occupancy.* When engaged in operations other than external-load operations under 14 CFR part 133, the carriage of passengers in the two observer seats and the rear-facing aft-stick operator's seat, when the aft-stick operator's controls are disengaged and the collective guard is installed, will be controlled by the FAA operating requirements applicable to that particular operation.

(p) *Operations.* The S–64 meets the Category B fire protection requirements for structures and controls in lieu of Category A requirements. Therefore, when operating over congested areas, the rotorcraft must be operated at an altitude and over routes that provide suitable landing areas that can be reached in no more than 5 minutes.

(q) *Markings and Placards.* For purposes of rotorcraft load combination operations, the following markings and placards must be displayed conspicuously and must be applied so they cannot be easily erased, disfigured, or obscured.

(1) A placard, plainly visible to appropriate crewmembers, referring to the helicopter flight manual limitations and restrictions for rotorcraft load combinations allowed under 14 CFR part 133.

(2) A placard, marking, or instructions (displayed next to the external-load attaching means) stating the maximum external-load prescribed as an operating limitation for rotorcraft load combinations allowed under 14 CFR part 133.

(3) A placard in the cockpit prescribing the occupancy limitation during rotorcraft load combination operations under 14 CFR part 133.

Issued in Fort Worth, TX, on December 17, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service, ASW–100.

[FR Doc. E9–30794 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1215; Directorate Identifier 2009–NM–126–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300, and Model A340–200, –300, –500 and 600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

* * * [P]artial blockage of the water absorbing filter element P/N (part number) QA06123 was observed several times. The blockage was created by carbon debris from the cartridge and from the burst disc of the Halon bottle."

This water absorbing filter element is part of Halon Dual-Filter Assembly installed also in the Flow Metering System (FMS) of the cargo compartment Fire Extinguishing System used in the A330 and A340 aeroplanes.

Blockage of the water absorbing filter element could lead to reduction of Halon outflow, leading to incapacity to maintain fire extinguishing agent concentration. Combined with fire, this could result in an uncontrolled fire in the affected compartment, which would constitute an unsafe condition.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 12, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1215; Directorate Identifier 2009–NM–126–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0064, dated March 12, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During the qualification test campaign at the supplier site of the prototype Flow Metering Compact Unit (FMCU) Part Number (P/N) QA07907–03, partial blockage of the water absorbing filter element P/N QA06123 was observed several times. The blockage was created by carbon debris from the cartridge and from the burst disc of the Halon bottle.
>
> This water absorbing filter element is part of Halon Dual-Filter Assembly installed also in the Flow Metering System (FMS) of the cargo compartment Fire Extinguishing System used in the A330 and A340 aeroplanes.
>
> Blockage of the water absorbing filter element could lead to reduction of Halon outflow, leading to incapacity to maintain fire extinguishing agent concentration. Combined with fire, this could result in an uncontrolled fire in the affected compartment, which would constitute an unsafe condition.
>
> To avoid water absorbing filter element blockage, this AD requires replacement [with improved dual-filter assemblies] or modification of the Halon dual-filter assemblies of the lower deck cargo compartment fire extinguishing system:
>
> —In the forward cargo compartment for aeroplanes fitted with Lower Deck Cargo Compartment (LDCC) and
>
> —In the bulk cargo compartment for aeroplanes fitted with Bulk Cargo Rest Compartment (BCRC) fire extinguishing system.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–26–3040, Revision 02, dated August 6, 2008; Mandatory Service Bulletin A340–26–4038, Revision 02, dated August 6, 2008; and Mandatory Service Bulletin A340–26–5019, Revision 03, dated May 19, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 32 products of U.S. registry. We also estimate that it would take about 13 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $708 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the

proposed AD on U.S. operators to be $55,936, or $1,748 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2009–1215; Directorate Identifier 2009–NM–126–AD.

Comments Due Date

(a) We must receive comments by February 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342 and –343 airplanes, all serial numbers, except those on which Airbus modification 55590 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312 –313, –541, and –642 airplanes, all serial numbers fitted with lower deck cargo compartment (LDCC), except those on which Airbus modification 55590 has been embodied in production.

(3) Airbus Model A340–311, –312 –313, –541, and –642 airplanes, all serial numbers fitted with bulk cargo rest compartment (BCRC), except those on which Airbus modification 56047 has been embodied in production.

Note 1: The BCRC is embodied in production on Airbus Model A340–300, A340–500, and A340–600 airplanes through the following Airbus modification (including but not limited to): 47198, 47884, 48895, 48710, 49136, 50107, 50900, 50901, or 51320.

Note 2: The fire extinguishing system for the BCRC is embodied in production on Model A340–500 and A340–600 airplanes through Mod 47197, (partial BCRC); on Model A340–500 and A340–600 airplanes through Mod 47883 (full BCRC); and on Model A340–300 airplanes through Mod 50108 (partial BCRC).

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During the qualification test campaign at the supplier site of the prototype Flow Metering Compact Unit (FMCU) Part Number (P/N) QA07907–03, partial blockage of the water absorbing filter element P/N QA06123 was observed several times. The blockage was created by carbon debris from the cartridge and from the burst disc of the Halon bottle.

This water absorbing filter element is part of Halon Dual-Filter Assembly installed also in the Flow Metering System (FMS) of the cargo compartment Fire Extinguishing System used in the A330 and A340 aeroplanes.

Blockage of the water absorbing filter element could lead to reduction of Halon outflow, leading to incapacity to maintain fire extinguishing agent concentration. Combined with fire, this could result in an uncontrolled fire in the affected compartment, which would constitute an unsafe condition.

To avoid water absorbing filter element blockage, this AD requires replacement [with improved dual-filter assemblies] or modification of the Halon dual-filter assemblies of the lower deck cargo compartment fire extinguishing system:

—In the forward cargo compartment for aeroplanes fitted with Lower Deck Cargo Compartment (LDCC) and

—In the bulk cargo compartment for aeroplanes fitted with Bulk Cargo Rest Compartment (BCRC) fire extinguishing system.

Actions and Compliance

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

(1) Replace or modify the Halon dual-filter assemblies of the flow metering fire extinguishing system in the forward and bulk cargo compartments, as applicable, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD, at the applicable time specified in paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD.

TABLE 1—SERVICE BULLETINS

Airbus model—	Airbus Mandatory Service Bulletin—	Revision—	Dated—
A330–200 and –300 airplanes	A330–26–3040	02	August 6, 2008.
A340–200 and –300 airplanes	A340–26–4038	02	August 6, 2008.
A340–500 and –600 airplanes	A340–26–5019	03	May 19, 2009.

(i) For airplanes fitted with Halon dual-filter assemblies part number (P/N) QA06753: Within 18 months after the effective date of this AD.

(ii) For Model A340–642 series airplanes, weight variant 101, 102, and 103 fitted with Halon dual-filter assembly P/N QA06753–01 or P/N QA06753–02: Within 18 months after the effective date of this AD.

(iii) For airplanes other than those identified in paragraph (f)(1)(ii) of this AD and fitted with Halon dual-filter assembly P/N QA06753–01 or P/N QA06753–02: Within 24 months after the effective date of this AD.

Note 3: The Halon dual-filter assembly P/N QA06753 is embodied in production through Airbus modification 40041. The Halon dual-filter assembly P/N QA06753–01 is only embodied in service through Airbus Service Bulletin A330–26–3030 or Airbus Service Bulletin A340–26–4030. The Halon dual-filter assembly P/N QA06753–02 is embodied in production through modification 47197 or 47883 or 50108 (BCRC) and 51065 or 51329 (LDCC) or in service through Airbus Service Bulletin A330–26–3030 or Airbus Service Bulletin A340–26–4030.

(2) Actions accomplished before the effective date of this AD according to the service bulletins listed in Table 2 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 2—CREDIT SERVICE BULLETINS

Airbus—	Revision—	Dated—
Mandatory Service Bulletin A340–26–5019	02	August 6, 2008.
Service Bulletin A330–26–3040	Original	March 29, 2007.
Service Bulletin A330–26–3040	01	December 19, 2007.
Service Bulletin A340–26–4038	Original	March 29, 2007.
Service Bulletin A340–26–4038	01	December 19, 2007.
Service Bulletin A340–26–5019	Original	July 27, 2007.
Service Bulletin A340–26–5019	01	January 23, 2008.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows:

(1) The second paragraph of the applicability of the MCAI specifies certain models except those on which Modification 55590 has been done. Paragraph (c)(2) of this AD specifies those models fitted with lower deck cargo compartment (LDCC), except those on which Modification 55590 has been done.

(2) Although the MCAI tells you to submit information to the manufacturer, this AD does not require such a submittal.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0064, dated March 12, 2009; and the service information identified in Table 3 of this AD for related information.

TABLE 3—RELATED SERVICE INFORMATION

Airbus Mandatory Service Bulletin	Revision	Date
A330–26–3040	02	August 6, 2008.
A340–26–4038	02	August 6, 2008.
A340–26–5019	03	May 19, 2009.

Issued in Renton, Washington, on December 16, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30649 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1214; Directorate Identifier 2009–NM–091–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. (Type Certificate Previously Held by Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited; British Aerospace (England)) Model BD–100–1A10 (Challenger 300) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

There has been an incident during a production flight test where the proximity-sensor electronic unit (PSEU) failed. This resulted in unannunciated loss of:

- Wheel brakes below 10 knots;
- Thrust reverser;
- Nose wheel steering; and
- Auto-deployment of the multi-function spoilers.

A similar condition, if not corrected, may result in reduced controllability of the aircraft upon landing and possible overrun of the runway.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 12, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Bruce Valentine, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7328; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1214; Directorate Identifier 2009–NM–091–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2005–12R1, dated December 23, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

There has been an incident during a production flight test where the proximity-sensor electronic unit (PSEU) failed. This resulted in unannunciated loss of:

- Wheel brakes below 10 knots;
- Thrust reverser;
- Nose wheel steering; and
- Auto-deployment of the multi-function spoilers.

A similar condition, if not corrected, may result in reduced controllability of the aircraft upon landing and possible overrun of the runway.

The original issue of this [Canadian] directive mandated the introduction of non-normal procedures to the airplane flight manual (AFM) as an interim corrective action to address PSEU failures.

Revision 1 of this directive amends the aircraft applicability and introduces a note providing terminating action, for use at operator discretion, if the aircraft has incorporated a PSEU with software version 12 in accordance with Bombardier Service Bulletin (SB) 100–32–12.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Temporary Revision TR–39, dated March 2, 2005, to the Bombardier Challenger 300 AFM, CSP 100–1. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the

MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 162 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $12,960, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Type Certificate Previously Held by Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited; British Aerospace (England)): Docket No. FAA–2009–1214; Directorate Identifier 2009–NM–091–AD.

Comments Due Date

(a) We must receive comments by February 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. (Type Certificate previously held by Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited; British Aerospace (England)) Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category, serial numbers 20002 through 20153 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There has been an incident during a production flight test where the proximity-sensor electronic unit (PSEU) failed. This resulted in unannunciated loss of:

- Wheel brakes below 10 knots;
- Thrust reverser;
- Nose wheel steering; and
- Auto-deployment of the multi-function spoilers.

A similar condition, if not corrected, may result in reduced controllability of the aircraft upon landing and possible overrun of the runway.

The original issue of this directive mandated the introduction of non-normal procedures to the airplane flight manual (AFM) as an interim corrective action to address PSEU failures.

Revision 1 of this directive amends the aircraft applicability and introduces a note providing terminating action, for use at operator discretion, if the aircraft has incorporated a PSEU with software version 12 in accordance with Bombardier Service Bulletin (SB) 100–32–12.

Actions and Compliance

(f) Unless already done, within 14 days after the effective date of this AD: Revise the Limitations Section of the Bombardier Challenger 300 AFM, CSP 100–1, to include the information in Bombardier Temporary Revision TR–39, dated March 2, 2005, as specified in the temporary revision. This temporary revision introduces a procedure for "PROX SYS FAULT (A)" and modifies the "WOW FAIL (C)" and "GEAR SYS FAIL (C)" procedures.

Note 1: This may be done by inserting a copy of Bombardier Temporary Revision TR–39, dated March 2, 2005, in the AFM. When this temporary revision has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Bombardier Temporary Revision TR–39, dated March 2, 2005.

Note 2: If the aircraft has incorporated a PSEU, part number (P/N) 30227–0401, 30227–0402, or 30227–0403, with software version 12, installed in accordance with Bombardier Service Bulletin 100–32–12, dated June 4, 2007, it is permissible to follow the revised AFM procedures included in Bombardier Temporary Revision TR–46, dated March 27, 2008, in lieu of using Bombardier Temporary Revision TR–39, dated March 2, 2005, specified in paragraph (f) of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Transport Canada Civil Aviation Airworthiness Directive CF–2005–12R1, dated December 23, 2008; and Bombardier Temporary Revision TR–39, dated March 2, 2005; for related information.

Issued in Renton, Washington, on December 16, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30651 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1221; Directorate Identifier 2008–NM–097–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 767 airplanes. This proposed AD would require installing new panel assemblies in the main equipment center and removing certain relays from some panels in the main equipment center. This proposed AD would also require revising the maintenance program to incorporate airworthiness limitations (AWLs) No. 28–AWL–27 and No. 28–AWL–28. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent possible sources of ignition in a fuel tank caused by electrical fault or uncommanded dry operation of the main tank boost pumps and center auxiliary tank override and jettison pumps. An ignition source in the fuel tank could result in a fire or an explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by February 12, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1221; Directorate Identifier 2008–NM–097–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent

modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Boeing advised us that wiring deterioration or damage in the main tank boost pumps or center auxiliary tank override and jettison pumps can result in electrical faults. Internal electrical faults in the pump or inside the pump wire bundle conduit could cause an ignition source in the fuel tank from an overheat condition or electrical arcs. There is also a safety concern that the center auxiliary tank override and jettison pumps might continue to operate dry for an extended period due to electrical faults or a single failure in the pump switch. The extended dry operation of the pump could cause overheating, electrical arcs, or frictional sparks in the fuel tank. An ignition source in the fuel tank could result in a fire or an explosion and consequent loss of the airplane.

Other Related Rulemaking

On May 8, 2008, we issued AD 2008–11–01, amendment 39–15523 (73 FR 29414, May 21, 2008), for certain Model 767–200, –300, –300F, and –400ER series airplanes. That AD requires revising the maintenance program to incorporate new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires an initial inspection to phase in certain repetitive AWL inspections, and repair if necessary. That AD resulted from a design review of the fuel tank systems. We issued that AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. Incorporating AWLs No. 28–AWL–27 and No. 28–AWL–28 into the maintenance program in accordance with paragraph (g)(2) of AD 2008–11–01 would terminate the action required by paragraph (h) of this proposed AD.

On July 24, 2009, we issued AD 2009–16–06, amendment 39–15989 (74 FR 38905, August 5, 2009), for all Model 767 airplanes. That AD requires installing an automatic shutoff system for the auxiliary fuel tank override/jettison fuel pumps (also referred to as center tank fuel pumps in the airplane flight manual (AFM)), revising the AFM to advise the flightcrew of certain operating restrictions for airplanes equipped with an automatic auxiliary fuel tank pump shutoff control, and, for certain airplanes, installing a placard to alert the flightcrew of certain fuel usage restrictions. That AD provides optional terminating actions for certain requirements. That AD results from a design review of the fuel tank systems. We issued that AD to prevent an overheat condition outside the center tank fuel pump explosion-resistance area that is open to the pump inlet, which could cause an ignition source for the fuel vapors in the fuel tank and result in fuel tank explosions and consequent loss of the airplane. That AD requires installing the automatic shutoff system in accordance with Boeing Service Bulletin 767–28A0083, Revision 2, dated February 12, 2009, for Model 767–200, –300, and –300F series airplanes; or Boeing Service Bulletin 767–28A0084, Revision 1, dated April 26, 2007, for Model 767–400ER series airplanes. Those service bulletins would be required to be done prior to or concurrently with the installation of the panel assemblies proposed in this NPRM.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–28A0085, dated January 10, 2008; and Boeing Service Bulletin 767–28A0085, Revision 1, dated June 25, 2009. Those service bulletins describe procedures for installing new P140 and P141 panel assemblies (including all applicable parts and components) in the main equipment center and removing certain relays. Applicable parts and components include, but are not limited to, support brackets and wiring supports. Removing certain relays involves removing the fuel boost pump control relays from the P33, P36, and P37 panels.

Boeing Alert Service Bulletin 767–28A0085 specifies that installing an automatic shutoff system for the auxiliary fuel tank pump specified in Boeing Service Bulletin 767–28A0083 should be done before or at the same time as installing the new P140 and P141 panel assemblies.

Boeing Service Bulletin 767–28A0085, Revision 1, dated June 25, 2009, adds Boeing Service Bulletin 767–28A0084 to the concurrent requirements described above, includes information derived from a service bulletin validation process, and corrects some part numbers and work-hour estimates provided in Boeing Alert Service Bulletin 767–28A0085, dated January 10, 2008.

We have also reviewed Section 9 ("AIRWORTHINESS LIMITATIONS (AWLs) AND CERTIFICATION MAINTENANCE REQUIREMENTS (CMRs)") of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision March 2009 (hereafter referred to as "the MPD"). Subsection E of the MPD contains fuel system AWL No. 28–AWL–27 that specifies, for certain airplanes, repetitive operational testing of the main fuel tank boost pumps and all ground fault indication (GFI) control relays for the center auxiliary tank override/jettison fuel pump. Subsection E of the MPD also contains fuel system AWL No. 28–AWL–28, that specifies, for certain airplanes, repetitive functional testing of the center auxiliary fuel tank override/jettison fuel pump uncommanded-on system.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require the following actions:

- Installing new P140 and P141 panel assemblies and all applicable parts and components in the main equipment center and removing certain relays.
- Installing an automatic shutoff system for the center wing tank override boost pumps before or concurrently with the installation of the new P140 and P141 panel assemblies.
- Revising the maintenance program to incorporate AWL No. 28–AWL–27

that specifies, for certain airplanes, repetitive operations testing of the main fuel tank boost pumps and all GFI control relays for the center auxiliary tank override/jettison fuel pump.

• Revising the maintenance program to incorporate AWL No. 28–AWL–28, that specifies, for certain airplanes, repetitive functional testing of the uncommanded-on system for the override/jettison fuel pump of the center auxiliary fuel tank.

Costs of Compliance

We estimate that this proposed AD would affect 416 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per work-hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per product	Fleet cost
Installing P140 and P141 panel assemblies and removing certain relays.	Between 230 and 258	Between $35,573 and $38,211.	Between $53,973 and $58,851.	Between $22,452,768 and $24,482,016.
Installing automatic shutoff system (prior/concurrent action).	Between 3 and 29	Between $421 and $9,374	Between $661 and $11,694.	Between $274,976 and $4,864,704.
Revising maintenance program.	1	None	$80	$33,280.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2009–1221; Directorate Identifier 2008–NM–097–AD.

Comments Due Date

(a) We must receive comments by February 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–28A0085, Revision 1, dated June 25, 2009.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible sources of ignition in a fuel tank caused by electrical fault or uncommanded dry operation of the main tank boost pumps and center auxiliary tank override and jettison pumps. An ignition source in the fuel tank could result in a fire or an explosion, and consequent loss of the airplane.

Compliance

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

Installation of Panel Assemblies and Removal of Relays

(f) Within 60 months after the effective date of this AD, install new P140 and P141 panel assemblies and all applicable parts and components in the main equipment center and removing the fuel boost pump control relays from the P33, P36, and P37 panels, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0085, dated January 10, 2008; or Boeing Service Bulletin 767–28A0085, Revision 1, dated June 25, 2009.

Before/Concurrent Installation

(g) For airplanes identified in paragraph 1.A.1. of Boeing Service Bulletin 767–28A0083, Revision 2, dated February 12, 2009; or Boeing Service Bulletin 767–28A0084, Revision 1, dated April 26, 2007: Before or concurrently with accomplishing

the action required by paragraph (f) of this AD, install an automatic shutoff system for the auxiliary fuel tank pump in accordance with the Accomplishment Instructions of the applicable service information identified in Table 1 of this AD. Accomplishing the requirements of AD 2009–16–06, amendment 39–15989, terminates the requirements of this paragraph.

TABLE 1—CONCURRENT SERVICE INFORMATION

Boeing Service Bulletin—	Revision—	Dated—
767–28A0083	1	April 26, 2007.
767-28A0083	2	February 12, 2009.
767–28A0084	1	April 26, 2007.

Maintenance Program Revision

(h) Concurrently with accomplishing the actions required by paragraph (f) of this AD, revise the maintenance program by incorporating airworthiness limitations (AWLs) No. 28–AWL–27 and No. 28–AWL–28 of Section 9 ("AIRWORTHINESS LIMITATIONS (AWLs) AND CERTIFICATION MAINTENANCE REQUIREMENTS (CMRs)") of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision March 2009.

Terminating Action for AWLs Revision

(i) Incorporating AWLs No. 28–AWL–27 and No. 28–AWL–28 into the maintenance program in accordance with paragraph (g)(2) of AD 2008–11–01, amendment 39–15523, terminates the action required by paragraph (h) of this AD.

No Alternative Inspections or Inspection Intervals

(j) After accomplishing the actions specified in paragraph (h) of this AD, no alterative inspections or inspection intervals may be used unless the inspections or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

AMOCs

(k)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Issued in Renton, Washington, on December 16, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30702 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1149; Airspace Docket No. 09–AGL–33]

Proposed Amendment of Class E Airspace; West Bend, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at West Bend, WI. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at West Bend Municipal Airport, West Bend, WI. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before February 12, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1149/Airspace Docket No. 09–AGL–33, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2009–1149/Airspace Docket No. 09–AGL–33." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking

Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at West Bend Municipal Airport, West Bend, WI. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at West Bend Municipal Airport, West Bend, WI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AGL WI E5 West Bend, WI [Amended]

West Bend Municipal Airport, WI
(Lat. 43°25′20″ N., long. 88°07′41″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of West Bend Municipal Airport, and within 2 miles each side of the 239° bearing from the airport extending from the 7.4-mile radius to 11.4 miles southwest of the airport, excluding that airspace within the Hartford, WI, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on December 17, 2009.

Richard Farrell,

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

[FR Doc. E9–30864 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1151; Airspace Docket No. 09–ASW–30]

Proposed Amendment of Class E Airspace; Dumas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Dumas, TX, to accommodate new Standard Instrument Approach Procedures (SIAPs) at Moore County Airport, Dumas, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Moore County Airport.

DATES: 0901 UTC. Comments must be received on or before February 12, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1151/Airspace Docket No. 09–ASW–30, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2009–1151/Airspace Docket No. 09–ASW–30." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the

Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Moore County Airport, Dumas, TX. Adjustment to the geographic coordinates would be made in accordance with the FAA's National Aeronautical Charting Office. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Moore County Airport, Dumas, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Dumas, TX [Amended]

Moore County Airport, TX
(Lat. 35°51′29″ N., long. 102°00′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Moore County Airport and within 1.9 miles each side of the 023° bearing from the airport extending from the 6.8-mile radius to 8.9 miles northeast of the airport, and within 4 miles each side of the 203° bearing from the airport extending from the 6.8-mile radius to 11.2 miles southwest of the airport.

* * * * *

Issued in Fort Worth, TX, on December 17, 2009.

Richard Farrell,

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

[FR Doc. E9–30866 Filed 12–28–09; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1009; Airspace Docket No. 09–AWP–11]

Proposed Modification of Class E Airspace; Oxnard, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Point Mugu NAWS, Oxnard, CA. Additional controlled airspace is necessary to accommodate aircraft flying in the Los Angeles Air Route Traffic Control Center's (ARTCC's) airspace area. The FAA is proposing this action to enhance the safety and management of aircraft operations in Los Angeles ARTCC's airspace.

DATES: Comments must be received on or before February 12, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1009; Airspace Docket No. 09–AWP–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2009–1009 and Airspace Docket No. 09–AWP–11) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2009–1009 and Airspace Docket No. 09–AWP–11". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Point Mugu NAWS, Oxnard, CA. Additional controlled airspace is necessary to accommodate the vectoring of aircraft flying en route, in and out of the Los Angeles ARTCC's airspace area. This action would enhance the safety and management of aircraft operations in Los Angeles ARTCC's airspace.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.

This regulation is within the scope of that authority as it establishes additional controlled airspace at Point Mugu NAWS, Oxnard, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E5 Oxnard, CA

Point Mugu NAWS, CA
(Lat. 34°07′13″ N., long. 119°07′15″ W.)

That airspace extending upward from 700 feet above the surface beginning at lat. 34°01′56″ N., long. 119°01′44″ W.; to lat. 34°02′30″ N., long. 118°53′33″ W.; to lat. 34°19′30″ N., long. 118°53′03″ W.; to lat. 34°19′30″ N., long. 119°29′53″ W.; thence 3 miles west of and parallel to the shoreline to lat. 34°14′50″ N., long. 119°22′03″ W.; to lat. 34°14′45″ N., long. 119°23′33″ W.; to lat. 34°06′55″ N., long. 119°22′33″ W.; to lat. 34°07′41″ N., long. 119°15′40″ W., thence via a 7-mile radius of Point Mugu NAWS to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°30′00″ N., long. 118°50′03″ W.; to lat. 34°00′00″ N., long. 118°50′03″ W.; to lat. 34°00′00″ N., long. 119°05′00″ W.; to lat. 33°52′03″ N., long. 119°06′59″ W.; to lat. 33°28′30″ N., long. 119°07′03″ W.; to lat. 33°28′30″ N., long. 118°47′00″ W.; to lat. 33°19′30″ N., long. 118°37′03″ W.; to lat. 32°53′00″ N., long. 119°13′00″ W.; to lat. 33°05′00″ N., long. 119°45′07″ W.; to lat. 33°53′00″ N., long. 120°38′00″ W.; to lat. 33°54′00″ N., long. 120°00′03″ W.; to lat. 34°20′00″ N., long. 120°00′04″ W.; to lat. 34°20′00″ N., long. 119°30′03″ W.; to lat. 34°30′00″ N., long. 119°30′03″ W., thence to the point of beginning. That airspace extending upward from 5,000 feet MSL bounded by a line beginning at lat. 34°08′00″ N., long. 120°00′03″ W.; to lat. 33°54′00″ N., long. 120°00′03″ W.; to lat. 33°53′00″ N., long. 120°38′00″ W.; to lat. 33°55′00″ N., long. 120°40′00″ W.; to lat. 34°00′00″ N., long. 120°43′00″ W.; to lat. 34°06′15″ N., long.

120°30′04″ W.; to lat. 34°08′00″ N., long. 120°26′04″ W., thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on December 16, 2009.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–30796 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 50

[Docket No. FDA–2009–N–0592]

RIN No. 0910–AG32

Informed Consent Elements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA or agency) is issuing a proposed rule that, if finalized, would amend the informed consent regulations to require that the informed consent documents and processes for applicable drug, biologic, and device clinical investigations include a statement that clinical trial information for such clinical investigations has been or will be submitted to the National Institutes of Health/National Library of Medicine (NIH/NLM) for inclusion in the clinical trial registry databank. The Food and Drug Administration Amendments Act of 2007 (FDAAA) requires that FDA update its informed consent regulations to require that the informed consent documents and processes for certain clinical investigations include a statement that clinical trial information for such investigations has been or will be submitted for inclusion in the clinical trial registry databank.

DATES: Submit written or electronic comments on the proposed rule by March 1, 2010.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0592 and/or RIN number 0910–AG32, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Office of Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 4305, Silver Spring, MD 20993–0002, 301–796–4830.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDAAA was enacted on September 27, 2007. Section 801 of FDAAA amends the Public Health Service (PHS) Act to require the Secretary of the Department of Health and Human Services (HHS), acting through the Director of NIH, to expand the clinical trial registry databank established under section 113 of the 1997 Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115, currently codified at 42 U.S.C. 282(i)) and to ensure that the databank is made publicly available through the Internet. Section 801 provides for the expansion of the registry databank through requiring investigators and sponsors to submit certain information about any applicable clinical trial to NIH/NLM for inclusion in the clinical trial registry databank. Section 801's requirements apply to applicable device clinical trials or applicable drug clinical trials, as defined in the statute. Under FDAAA, applicable drug clinical trials include clinical trials for biological products regulated under section 351 of the PHS Act (42 U.S.C. 262). Section 801 also requires the Secretary to ensure that the databank includes links to results information for those clinical investigations that form the primary basis of an efficacy claim or are conducted after the drug involved is approved or after the device involved is cleared or approved.

Section 801(b)(3)(A) of FDAAA also amends section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) to require that the Secretary update FDA's informed consent regulations to require that informed consent documents and processes for the clinical investigations in question include a statement that clinical trial information has been or will be submitted to this registry databank. The current informed consent regulations do not include provisions addressing the clinical trial registry databank. (*See* part 50 (21 CFR part 50); part 312 (21 CFR part 312); and 21 CFR 812.2(b)(1)(iii) and 812.25(g).) Specifically, section 801(b)(3)(A) of FDAAA states:

> NEW DRUGS AND DEVICES.—
> (A) INVESTIGATIONAL NEW DRUGS.—
> Section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) is amended in paragraph (4), by adding at the end the following: The Secretary shall update such regulations to require inclusion in the informed consent documents and process a statement that clinical trial information for such clinical investigation has been or will be submitted for inclusion in the registry data bank pursuant to subsection (j) of section 402 of the Public Health Service Act.

II. Background

FDA has various regulations that govern the conduct of clinical investigations. The informed consent regulations provide protection to subjects in clinical investigations conducted under FDA's jurisdiction. (*See* part 50.) These informed consent regulations are based on ethics codes such as the Nuremberg Code (Ref. 1), the Declaration of Helsinki (Ref. 2), the National Research Act (Ref. 3), and the Belmont Report (Ref. 4); these codes embody the basic ethical principles relevant to the protection of human research subjects. (*See* 60 FR 49086, September 21, 1995, and 44 FR 47713, August 14, 1979, for a detailed discussion of the ethical basis for the agency's regulations governing human subject protection.) These principles identify standards to protect participants from unethical practices, allow subjects to have equal access to, opportunity to participate in, and the ability to withdraw from clinical trials voluntarily, educate participants so they make autonomous decisions, and

require disclosure of the risks and benefits of participating in clinical research, with the goal of maximizing the benefit of clinical trial research and minimizing and protecting participants from harm.

Section 113 of FDAMA required the Secretary, acting through the Director of NIH, to establish, maintain, and operate a databank of information on clinical trials for experimental treatments for serious or life-threatening diseases or conditions conducted under FDA's investigational new drug (IND) regulations (42 U.S.C. 282(i)(1)(A)). This databank is known as *www.ClinicalTrials.gov*. Section 113 of FDAMA required that the clinical trials databank contain: (1) Information about Federally- and privately-funded clinical trials for experimental treatments (drug and biological products) for serious or life-threatening diseases and conditions, (2) a description of the purpose of each experimental drug, (3) participant eligibility criteria, (4) a description of the location of clinical trial sites, and (5) a point of contact for those wanting to enroll in the trial (42 U.S.C. 282(i)(3)(A)). FDAMA also required that information provided through the clinical trials databank be in a form that can be readily understood by the public. *Id.* FDAMA was a response to efforts by patient advocacy groups and others toward obtaining greater access to clinical trials.

After consulting with FDA and others, NIH, through NLM, developed the clinical trial registry databank. The first version of the registry databank was made available to the public on February 29, 2000, on the Internet. At that time, the registry databank included primarily NIH-sponsored trials. In 2002, FDA published a guidance to provide recommendations for industry on submitting protocol information to the registry databank. (*See* "Guidance for Industry: Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions," (March 18, 2002) available at *http://www.fda.gov/downloads/RegulatoryInformation/Guidances/ucm126838.pdf).*

In 2004, FDA published a revised draft guidance to update the earlier version to include recommendations for sponsors who would be submitting information required by the Best Pharmaceuticals for Children Act (BPCA, Public Law 107–109). (*See* "Guidance for Industry: Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions" (January 2004) available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm077229.pdf.*) Under the BPCA, manufacturers or sponsors of clinical investigations are required to submit to the clinical trials registry databank a description of whether and through what procedure the manufacturer or sponsor will respond to requests for protocol exception for single-patient and expanded access use of investigational drugs.

In September 2004, the members of the International Committee of Medical Journal Editors published a joint editorial aimed at promoting registration of all clinical trials. (Ref. 5) In that editorial, the members declared that they would consider an article related to a clinical trial for publication only if the clinical trial had been registered, before the enrollment of the first participant, in a publicly available database. (*Id.*; Ref. 6) This policy applies to trials that started recruiting on or after July 1, 2005. This was another step toward fostering a transparent, comprehensive, publicly available database of clinical trials.

Although Section 113 of FDAMA required that the clinical trials databank be established, it was silent on the enforcement of that requirement. Subsequent legislative proposals addressed the shortcomings of the existing clinical trial registry databank. Versions of proposed legislation required registration of *all* clinical trials conducted in the United States and reporting of such details as research outcomes, basic demographic information, sources of funding, significant adverse events, and FDA approval status, and provided for strong enforcement measures such as civil money penalties. Subsequently, Title VIII of FDAAA was enacted.

With the enactment of FDAAA, the registry requirements have been expanded and broadened to include not only trials in serious and life threatening diseases and conditions but to include any "applicable clinical trial" as defined in section 402(j)(1)(A) of the PHS Act (42 U.S.C. 282(j)(1)(A)). Although not all clinical trials meet this definition, a significant portion of clinical trials involving FDA-regulated drugs, biological products, or devices meet it. For this reason, revising the general informed consent provisions in part 50 provides the most straightforward direction for clinical investigators and the most information to clinical trial participants.

The basic elements of informed consent which also can be considered the "essential" elements, are set forth in § 50.25(a) of the human subject projection regulations. These elements are required for all clinical investigations that are regulated by FDA or that support applications for research or marketing permits for products regulated by the agency. The statement required by section 801(b)(3)(A) of FDAAA that the information about the clinical investigation has been or will be submitted for inclusion in the clinical trial registry databank should be considered a basic, or essential, element of informed consent and should apply to all applicable clinical trials as defined in FDAAA. This statement is mandated by law under section 505(i) of the act; adding the requirement as a basic element of informed consent makes it clear that this requirement to inform subjects of the clinical trials registry databank is not discretionary. Furthermore, the required inclusion of clinical trial information in the registry databank is not limited to a small subset of clinical investigations; as such, it makes little sense to inform only a small subset of participants of applicable clinical trials about the registry databank and that the clinical trial information has been or will be submitted for inclusion in the registry databank. FDA thus proposes that this requirement be added as new § 50.25(a)(9) since it is a basic, or essential, element of informed consent, which will apply to applicable clinical trials as defined in FDAAA.

III. Description of Proposal

The text of section 801(b)(3)(A) of FDAAA amends only section 505(i) of the act, which is the statutory provision concerning INDs. The provision does not amend or refer to section 520(g) of the act (21 U.S.C. 360j(g)), which is the statutory provision concerning investigational device exemptions. However, Title VIII of FDAAA generally applies to both drug and device clinical investigations. Human subject protection applies to all clinical trials, regardless of the type of treatment being studied, and FDA can find no justification for a scheme that would result in device trials having different or lesser requirements for human subject protection and informed consent. In addition, knowledge of existence of the clinical trial registry databank and of the fact that information about a particular clinical investigation may be included in the registry databank could affect an individual's decision to participate in a clinical trial; as such, knowledge of this information is equally important for potential participants in clinical device trials as it is for potential participants in clinical drug trials. Therefore, FDA proposes to amend the regulatory language in the general informed

consent regulations in § 50.25, which will apply to all applicable clinical trials as defined by FDAAA.

Requiring investigators to provide information regarding the possible inclusion of clinical trial information in the clinical trial registry databank in informed consent documents and processes for only clinical drug trials would create a disparity in FDA's policy on human subject protection and could result in confusion among those who conduct clinical trials over what is required in informed consent documents and processes. In addition, as stated previously, to the extent that knowledge of the fact that the clinical trial information could be included in the clinical trial registry databank could affect an individual's decision to participate in a clinical trial, this information is as important for potential participants in clinical device trials as it is for potential participants in clinical drug trials.

The existing informed consent basic, or essential, elements do not include a requirement to inform potential participants that a clinical trial they may be invited to participate in is registered, or will be registered, in the clinical trial registry databank. The proposed rule, if finalized, would require that investigators include a statement in their informed consent documents and processes that the clinical trial information has been or will be submitted for inclusion in the clinical trial registry databank. Under § 50.27(b)(1), the informed consent must be documented by the use of a written consent document that embodies the elements of informed consent required by § 50.25. A proposed specific statement required in informed consent documents is set forth in the codified language of this proposed rule. A specific statement will help ensure that consistent information about the clinical trial databank is provided to clinical trial participants. In addition to the required language regarding the inclusion of clinical trial information in the clinical trial registry databank, the specific statement includes a descriptive explanation of the clinical trials registry that will be useful for informing clinical trial participants of the nature and purpose of the clinical trial registry databank. Investigators and Institutional Review Boards may include other information about the clinical trial registry databank in addition to the required statement in informed consent documents. The required statement, however, must be used to satisfy the requirements of this rule, if finalized.

There are several benefits to requiring investigators to include in informed consent documents and processes for all applicable clinical trials a statement that clinical trial information has been or will be submitted for inclusion in the clinical trial registry databank. First, it would increase public awareness of the existence of the database and thereby increase transparency of clinical trials. In particular, it would enable individuals to access more detailed information about trials relevant to their medical conditions of interest. Furthermore, to the extent that information about the clinical trial registry databank would affect individuals' decisions to participate in clinical research, requiring investigators to provide such information to potential participants would foster individuals' ability to make a fully informed decision about participating in a clinical trial. Second, it would provide greater accountability and responsibility of investigators for outcomes and adverse events and improve transparency of all clinical trial outcomes information. Informing clinical trial participants and potential patients about the databank and directing them to *www.ClinicalTrials.gov* would become part of a system of checks and balances for the research community and a means of ensuring that researchers, investigators, and manufacturers or sponsors comply with their legal requirements under FDAAA. Third, it would increase public confidence in the validity of the research process. With the knowledge that the information generated by the clinical investigation is likely to be made public, and thus subject to additional scrutiny, participants can anticipate that the trial "results" could have more impact on other medical research and analysis. "Individuals voluntarily participate in trials expecting that the results will be used to improve medical knowledge in general, and not only to serve proprietary or commercial interests. These ethical obligations to the public good are in addition to the obligations to protect individual participants during a trial (e.g., informed consent), and they extend to all trials regardless of study design or trial population." (Ref. 7) Finally, it would give sponsors, physicians, and patients access to more information and thus enable them to make more educated treatment decisions. In these ways, amending the basic elements of the informed consent provision to require a statement regarding the inclusion of clinical trial information in the clinical trial registry databank would lead to better promotion and protection of public health, help foster innovation to further the scientific process, and reduce duplicative research efforts.

IV. What Clinical Trials Require a Revised Informed Consent Document and Process?

The statute defines an "applicable clinical trial" in section 402(j)(1)(A)(i) of the PHS Act (42 U.S.C. 282(j)(1)(A)(i)) as follows:

(j) EXPANDED CLINICAL TRIAL REGISTRY DATA BANK.—

(1) DEFINITIONS; REQUIREMENT.—

(A) DEFINITIONS.—In this subsection: "(i) APPLICABLE CLINICAL TRIAL.—The term 'applicable clinical trial' means an applicable device clinical trial or an applicable drug clinical trial.

(ii) APPLICABLE DEVICE CLINICAL TRIAL.—The term 'applicable device clinical trial' means—

(I) a prospective clinical study of health outcomes comparing an intervention with a device subject to section 510(k), 515, or 520(m) of the Federal Food, Drug, and Cosmetic Act against a control in human subjects (other than a small clinical trial to determine the feasibility of a device, or a clinical trial to test prototype devices where the primary outcome measure relates to feasibility and not to health outcomes); and

(II) a pediatric postmarket surveillance as required under section 522 of the Federal Food, Drug, and Cosmetic Act.

(iii) APPLICABLE DRUG CLINICAL TRIAL.—

(I) IN GENERAL.—The term 'applicable drug clinical trial' means a controlled clinical investigation, other than a phase I clinical investigation, of a drug subject to section 505 of the Federal Food, Drug, and Cosmetic Act or to section 351 of this Act.

(II) CLINICAL INVESTIGATION.—For purposes of subclause (I), the term 'clinical investigation' has the meaning given that term in section 312.3 of title 21, Code of Federal Regulations (or any successor regulation).

Additional information to improve understanding of the common terminology and the applicability of the requirements used in implementing the clinical trial databank can be found at *www.ClinicalTrials.gov* and the database registry Web site at *www.prsinfo.clinicaltrials.gov*.

V. Legal Authority

Section 505(i) of the act requires drug manufacturers or sponsors of investigations to ensure that experts using investigational drugs in clinical trials "inform any human beings to whom [investigational] drugs * * * are being administered * * * that such drugs are being used for investigational purposes" and obtain consent prior to administering such drugs (21 U.S.C. 355(i)). Similarly, section 520(g) of the act requires individuals applying for investigational device exemptions to ensure that informed consent will be obtained from each human subject of

proposed clinical testing involving the device (21 U.S.C. 360j(g)). Sections 505(i) and 520(g) of the act also require the Secretary to issue regulations for the protection of human subjects in clinical investigations (21 U.S.C. 355(i)(4) and 360j(g)(2)). Additionally, section 701(a) of the act (21 U.S.C. 371) confers general authority on the Secretary to issue regulations for the efficient enforcement of the act.

Section 801(b)(3)(A) of FDAAA amends section 505(i)(4) of the act by adding at the end the following:

> The Secretary shall update such regulations to require inclusion in the informed consent documents and process a statement that clinical trial information for such clinical investigation has been or will be submitted for inclusion in the registry data bank pursuant to subsection (j) of section 402 of the Public Health Service Act.

The regulations implementing section 505(i) of the act can be found at parts 312 and 50. Part 312 sets forth regulations governing drug and biological product IND applications; part 50 sets forth general requirements for human subject protection in all FDA-regulated clinical investigations and clinical investigations that support applications for research or marketing permits for products regulated by FDA, including trials for drugs, biological products, and medical devices. Section 801(b)(3)(A) of FDAAA does not amend section 520(g) of the act; however, in instances where the regulations are amended to address human subject protection, FDA has not in the past made distinctions among clinical investigations for drugs, biological products, and medical devices.

FDA created a uniform system of human subject protection when it initially amended its regulations governing human subject protection in 1981 (46 FR 8942, January 27, 1981). In revising part 50, FDA aimed to: (1) Address the informed consent provision included in the device amendments; (2) create a uniform set of agency-wide informed consent standards for more effective administration of the agency's bioresearch monitoring program; (3) implement recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research; and (4) harmonize FDA's rules with those of HHS (then the Department of Health, Education, and Welfare). Indeed, the preamble expressed the agency's intent to adopt a single standard that reflected the most current congressional thinking on informed consent and the important ethical principles and social policies underlying the doctrine of informed consent (46 FR 8942 at 8943).

Requiring a statement regarding the clinical trial registry databank in informed consent documents and process for only clinical investigations for drugs but not devices would create a disparity in FDA's policy on human subject protection and could result in confusion among those who conduct clinical trials over what is required in informed consent documents and processes, especially in the cases of trials involving both a drug and device or for investigators conducting trials of both types of regulated products. Furthermore, knowledge of the existence of the clinical trial registry databank and of the fact that information about a particular clinical investigation has been or will be submitted for inclusion in the registry databank could affect an individual's decision to participate in a clinical trial; as such, this knowledge is equally important for potential participants of clinical device trials as it is for potential participants of clinical drug trials.

Thus, although section 801(b)(3)(A) of FDAAA requires the statement regarding the clinical trial registry databank for informed consent documents and processes only for clinical investigations conducted under section 505(i) of the act, under its general authority, FDA proposes to require that all applicable clinical trials, including applicable medical device trials, include this new statement. This proposed rule requiring that a statement regarding the inclusion of clinical trial information in the clinical trial registry databank be included in the informed consent documents and processes for all applicable clinical trials is the most efficient method of implementing the statutory mandate. To prevent confusion that might result from different requirements for informed consent for drug and device research, FDA is proposing, by this rule, to apply the same standards regarding elements of informed consent to drug and device research. As such, FDA is proposing to amend § 50.25 to require a statement about the registry databank in informed consent documents and processes for all applicable clinical trials under section 801 of FDAAA.

VI. Environmental Analysis

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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 agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the rule is likely to impose costs of less than $1 per clinical trial participant, the agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

A. The Proposed Rule

This rule would require that the informed consent documents and processes for applicable clinical drug trials and applicable clinical device trials as defined by section 801 of FDAAA include a statement that clinical trial information has been or will be submitted to NIH/NLM for inclusion in the clinical trial registry databank. As it pertains to applicable clinical drug trials, the rule would implement a requirement of FDAAA. As discussed previously in this preamble, FDA is also proposing to require that the same statement be included in the informed consent documents for applicable clinical device trials.

B. Need for the Proposed Rule

FDAAA section 801(b)(3)(A) amends section 505(i) of the act to require that the Secretary update regulations for informed consent documents and process to require inclusion of a statement that clinical trial information has been or will be submitted to NIH/NLM for inclusion in the clinical trial registry databank. FDA has determined that revising the general informed consent provision is the most appropriate course by which to fulfill the requirements of the statute, in a way that will provide the pertinent information to and protection for clinical trial participants.

C. Benefits of the Proposed Rule

As discussed in this preamble, this proposed rule would provide several benefits to clinical trial participants. The rule would increase the transparency of clinical trials by increasing participant and patient awareness of the existence of the clinical trials databank and those trials that are registered in the databank. The rule would also provide greater accountability of clinical trial investigators for outcomes and adverse events by helping to create a system of checks and balances through which participants, patients and healthcare providers are encouraged to check whether information about a trial of interest is registered in the databank. Furthermore, the rule would increase public confidence in the validity of the research process. Last of all, it would encourage physicians and patients to obtain more information in order to make more educated treatment decisions. FDA has not attempted to quantify these benefits; however, the agency believes that the overall effect of the rule on public health will be positive.

D. Costs of the Proposed Rule

1. Labor Costs

The costs of the proposed rule derive from complying with the requirement to add another statement to the informed consent documents and the additional time that medical professionals and clinical trial participants spend reading and discussing this statement.

FDA estimates that it receives about 7,000 clinical trial protocol submissions annually for applicable clinical trials that would be subject to this proposed rule, with the vast majority of the submissions going to the FDA's Center for Drug Evaluation and Research. FDA estimates of average numbers of participants per clinical trial vary greatly across FDA Centers, from single-patient INDs to vaccine trials with over twenty-five thousand participants. Published data on average number of participants per trial, therapeutic area, suggests that the average number of participants in phase 1, 2, and 3 clinical trials of pharmaceuticals, biotechnology, and medical device products may range from about 200 to 360.[1] FDA uses this estimated range for the average number of participants per clinical trial, and invites public comment on the estimated average number of participants per clinical trial.

Compliance with the rule would require that investigators include in informed consent documents and processes the required statement concerning the submission of clinical trial information for inclusion in the clinical trial registry databank and provide for any additional discussion concerning this statement between participants and the medical professional administering the documents. FDA does not expect that this statement will provoke any controversy. It is expected that in most cases, after reading the proposed statement, the clinical trial participant will not choose to discuss it with the investigator. In some cases, however, it is possible that a short discussion will occur. FDA estimates that, on average, a clinical trial participant would require an additional 30 seconds to 1 minute to read and, if necessary, discuss the added statement with the medical professional administering the informed consent documents.

Registered nurses or other medical professionals with a similar level of training often administer and discuss the informed consent forms with trial participants. The average compensation for a registered nurse in 2008 was $40.54 per hour, including a 35 percent increase to account for benefits. The increased labor cost for administering the informed consent procedures for these medical professionals in applicable clinical trials for all participants ranges from $473,000 to $1,704,000 (see Table 1 of this document). This estimate is the result of $42.27 per hour, times 30 to 60 seconds per participant, times 200 to 360 participants per trial times 7,000 protocols per year. The cost to the sponsor per prospective participant would range from $0.34 to $0.68 and the cost per trial protocol would range from $68 to $243.

TABLE 1.—COSTS OF INFORMED CONSENT PROPOSED RULE

Cost Factor	Annual Cost
Labor Cost for Clinical Trial Administrator	$473,000 to $1,704,000
Labor Cost for Clinical Trial Participant	$182,000 to $654,000
Document Preparation Cost	$17,000
Paper Cost	$9,000 to $18,000
Total Costs	$688,000 to $2,398,000

Whether or not clinical trial participants receive compensation for their participation in clinical trials, the additional time spent by all participants to read and discuss the new informed consent statement represents a social cost of the rule. Using the median U.S. wage rate of $15.57 per hour, a clinical trial participant would be expected to incur a cost ranging from $0.13 to $0.26 to read and, if necessary, discuss the proposed informed consent statement concerning the inclusion of clinical trial information in the clinical trial registry databank. On an annual basis, this would amount to about $182,000 to $654,000 for 7,000 clinical trials.

The cost of writing the new statement into the informed consent documents is expected to be very small. The new statement would only need to be written once per protocol and is estimated to take about 5 minutes. Using the same wage rate as shown previously, $40.54 per hour, the additional annual costs to write the statement for the 7,000 annual protocols would total about $24,000.

The capital cost of adding the new informed consent statement would only consist of the additional paper. At a cost of about $0.02 per page and about one-third of a page per participant, the total paper costs for this rule are estimated to range from $9,000 to $17,000 annually.

The total costs of the proposed rule to both industry and the clinical trial participant population are estimated to range from $688,000 to $2,398,000 annually. This equates to $98 to $342 per trial protocol, or about $0.48 to $0.96 per clinical trial participant.

2. Costs to Government

The costs to government for oversight of this rule would be extremely low as

[1] *Parexel's Bio/Pharmaceutical R&D Statistical Sourcebook 2008/2009*, Parexel International Corp., copyright 2008, p. 160. The average number of participants (not weighted by therapeutic area) in phase 1, 2, and 3 clinical trials in 2006 was 27, 141, and 444, respectively. The unweighted average of these numbers is 204. As an upper bound, FDA uses the average of the numbers representing the therapeutic area with the largest average number of participants in each of the 3 clinical phases, which would tend to overstate the average size of participants. This upper bound is calculated at 360 participants per trial protocol.

a review of a sample of informed consent documents for each trial would only be increased, at most, by a few minutes per clinical trial due to the additional informed consent statement. FDA believes this cost would not be significant.

E. Alternatives to the Proposed Rule

FDAAA specifically requires that the regulations concerning informed consent documents include the statement that clinical trial information has been or will be submitted for inclusion in the clinical trial registry databank. It does not give FDA discretion concerning the inclusion of this language in informed consent documents and processes for applicable clinical drug trials. For the reasons stated previously in this preamble, FDA has decided to require the language be included in the informed consent documents and processes for applicable clinical medical device trials as well. If the proposed rule did not include the new informed consent statement for applicable medical device clinical trials, the annual costs of the rule would be reduced by $36,000 to $124,000 per year.

F. Regulatory Flexibility Act

Impacts on Small Entities

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because of the small costs that would be incurred by an individual sponsor of a product undergoing a clinical trial, the agency believes that the final rule is not likely to have a significant economic impact on a substantial number of small entities.

The companies that would be affected are classified in seven separate North American Industrial Classification System (NAICS) categories by the Census Bureau. The affected industries are NAICS 325412—Pharmaceutical Preparation; NAICS 325414—Biological Products (except diagnostic); NAICS 334510—Electromedical and Electrotherapeutic Apparatus; NAICS 339112—Surgical and Medical Instrument; NAICS 339113—Surgical Appliance and Supplies; NAICS 339114—Dental Equipment and Supplies; NAICS 339115—Opthalmic Goods. The Small Business Administration (SBA) size standards for all these industries define small entities as those companies with less than 500 employees, except for pharmaceutical preparation, for which it defines a small entity as one with less than 750 employees. The most recent Census of Manufacturers data that offers the level of detail for establishments at or near the employee size limits as defined by SBA is from 2002. In each of these establishment size categories, large majorities of the establishments meet the criteria as small entities. Even taking into account that many of these establishments are parts of multi-establishment corporations, significant numbers of companies would still qualify as small entities. Preliminary Census data from 2007, though less detailed, shows that significant numbers of establishments continue to have less than 100 employees across all of these categories. While FDA expects that most companies sponsoring applicable clinical trials would be larger than the average-sized company in their industry, FDA concludes that a substantial number of companies would still qualify as small entities.

The cost analysis concluded that the compliance cost of the proposed rule per trial protocol would range from $98 to $342. Some firms will direct multiple applicable clinical trials in the same year. For large firms that would administer the informed consent documents for 10 separate trials, the cost would range from $980 to $3,420 per year. Using 2002 Census data, the average value of shipments for establishments in these industries with one to four employees ranged from $244,000 to $824,000 according to the Census of Manufacturers. Assuming that such small operations had one applicable clinical trial administered each year, the costs of the proposed rule would represent, at most, 0.14% of the annual value of shipments. For establishments with 50 or more employees, the compliance costs would represent 0.04% or less of the value of shipments even with 10 applicable clinical trials administered annually. For establishments with 100 or more employees, the compliance costs would represent 0.08% or less of the value of shipments even with 50 applicable clinical trials administered annually. FDA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

FDA concludes that the informed consent requirement proposed in this document is not subject to review by the Office of Management and Budget because it does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the proposed requirement to include a statement in informed consent documents regarding submission of clinical trial information to the clinical trial registry databank is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

IX. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

X. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies 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. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after the document publishes in the **Federal Register**.)

1. "*Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*", Vol. 2, pp. 181–182. Washington, DC: U.S. Government Printing Office, 1949.

2. World Medical Association Declaration of Helsinki Ethical Principles for Medical Research Involving Human Subjects, available at *http://www.wma.net/e/policy/b3.htm*; accessed on July 30, 2009.

3. National Research Act, Title II (Public Law 93–348, July 12, 1974).

4. National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, "The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research."

April 18, 1979, available at *http://www.hhs.gov/ohrp/humansubjects/guidance/belmont.htm*, accessed July 30, 2009.

5. De Angelis C., J.M. Drazen , F.A. Frizelle, et al., "Clinical Trial Registration: A Statement From the International Committee of Medical Journal Editors, " *Annals of Internal Medicine*, 2004;141:477–8, electronically published on September 8, 2004.

6. De Angelis, C., J.M. Drazen, et al., "Is This Clinical Trial Fully Registered?: A Statement From the International Committee of Medical Journal Editors," International Committee of Medical Journal Editors, available at *http://www.icmje.org/clin_trialup.htm*, accessed on July 30, 2009.

7. Sim, I., A. Chan, A. Gülmezoglu, T. Evans, et al., "Clinical Trial Registration: Transparency Is the Watchword," *The Lancet*, Vol. 367, Issue 9523, pp. 1631–33, May 2006.

List of Subjects in 21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 50 be amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

2. Section 50.25 is amended by adding paragraph (a)(9) to read as follows:

§ 50.25 Elements of informed consent.

(a) * * *

* * * * *

(9) For applicable clinical trials, as defined in 42 U.S.C. 282(j)(1)(A), the following statement, notifying the subject that clinical trial information has been or will be submitted for inclusion in the clinical trial registry databank under paragraph (j) of section 402 of the Public Health Service Act: Information, that does not include personally identifiable information, concerning this clinical trial has been or will be submitted, at the appropriate and required time, to the government-operated clinical trial registry data bank, which contains registration, results, and other information about registered clinical trials. This data bank can be accessed by you and the general public at *www.ClinicalTrials.gov*. Federal law requires clinical trial information for certain clinical trials to be submitted to the data bank.

* * * * *

Dated: December 23, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–30751 Filed 12–28–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 6858]

Exchange Visitor Program—Secondary School Students

AGENCY: Department of State.

ACTION: Proposed rule; withdrawal.

SUMMARY: On December 23, 2009 the State Department published in the **Federal Register** a proposed rule titled Exchange Visitor Program—Secondary School Students. The Department revised existing regulations to provide greater specificity and clarity to sponsors of the Secondary School Student category with respect to the execution of sponsor oversight responsibilities under the exchange visitor program. This rule is being withdrawn because it was submitted prior to OMB completing review. The proposed rule is withdrawn in its entirety.

DATES: The proposed rule published at 74 FR, Number 245, December 23, 2009 is withdrawn effective December 28, 2009.

FOR FURTHER INFORMATION CONTACT: Michael Cheman, U.S. Department of State, Washington, DC 20547, (202) 312–9605.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2009 the State Department published a final rule at 74 FR, Number 245. The rule was intended to revise existing regulations to provide greater specificity and clarity to sponsors of the Secondary School Student category with respect to the execution of sponsor oversight responsibilities under the exchange visitor program.

Reason for Withdrawal

This rule is being withdrawn because it was submitted prior to OMB completing review. The proposed rule is withdrawn in its entirety. Accordingly, the Department withdraws the rule "Exchange Visitor Program—Secondary School Students", RIN 1400–AC56. This Proposed Rule was submitted on Friday, 18 December and was published Wednesday, 23 December, 2009 in Volume 74, Number 245 on pages 68200–68208.

Withdrawal of the rule does not preclude the Department from issuing another rule on the subject matter in the future or committing the agency to any future course of action.

Issued in Washington, DC, on December 23, 2009.

Dated: December 20, 2009.

Thelma Furlong,

Director, Office of Directives Management, Department of State.

[FR Doc. E9–30837 Filed 12–28–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA–H022K–2006–0062 (formerly OSHA Docket No. H022K)]

RIN 1218–AC20

Hazard Communication

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; notice of informal public hearings.

SUMMARY: OSHA is scheduling informal public hearings on its proposal to revise the Hazard Communication Standard. OSHA anticipates receiving several hearing requests, and this document describes the procedures the public must use to participate in the hearings.

DATES: *Informal public hearing.* The hearing will begin at 9:30 a.m., local time, on the following dates:

- March 2, 2010, in Washington, DC;
- March 31, 2010, in Pittsburgh, PA; and
- April 13, 2010, in Los Angeles, CA.

If necessary, the hearing will continue at the same time on subsequent days at each location.

Notice of intention to appear at the hearing. Interested persons who intend to present testimony or question witnesses at any of these locations must submit (transmit, send, postmark, deliver) a notice of their intention to do so by January 18, 2010.

Hearing testimony and documentary evidence. Interested persons who request more than 10 minutes to present testimony or who intend to submit documentary evidence at the hearing

must submit (transmit, send, postmark, deliver) the full text of their testimony and all documentary evidence by February 1, 2010.

ADDRESSES: *Informal public hearing.* The Washington, DC, hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA will announce the address of the Pittsburgh, PA, and Los Angeles, CA, hearings in a later **Federal Register** document.

Notice of intention to appear, hearing testimony and documentary evidence: You may submit (transmit, send, postmark, deliver) your notice of intention to appear, hearing testimony, and documentary evidence, identified by docket number OSHA–H022K–2006–0062, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions online for electronically submitting materials, including attachments;

Fax: If your written submission does not exceed 10 pages, including attachments, you may fax it to the OSHA Docket Office at (202) 693–1648; or

Regular mail, express delivery, hand delivery, and messenger and courier service: Submit your materials to the OSHA Docket Office, Docket No. OSHA–H022K–2006–0062, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Deliveries (express mail, hand delivery, and messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal hours of operation, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and docket number for this rulemaking (Docket No. OSHA–H022K–2006–0062). All submissions, including any personal information, are placed in the public docket without change and may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting certain personal information such as social security numbers and birthdates. Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of your submissions. For information about security-related procedures for submitting materials by express delivery, hand delivery, messenger, or courier service, please contact the OSHA Docket Office. For additional information on submitting notices of intention to appear, hearing testimony or documentary evidence, see the **SUPPLEMENTARY INFORMATION** section of this notice.

Docket: To read or download comments, notices of intention to appear, and other material in the docket, go to Docket No. OSHA–H022K–2006–0062 at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions and other material in the docket are available for public inspection and copying in the OSHA Docket Office. For information on reading or downloading materials in the docket and obtaining materials not available through the Web site, please contact the OSHA Docket Office.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice as well as news releases and other relevant information also are available at OSHA's Web page at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* Jennifer Ashley, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

Technical information: Maureen Ruskin, OSHA, Office of Chemical Hazards-Metals, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950.

Hearings: Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647; 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

SUPPLEMENTARY INFORMATION: On September 30, 2009, OSHA published a proposed rule to revise the Hazard Communication Standard (HCS) to conform with the United Nations' (UN) Globally Harmonized System of Classification and Labelling of Chemicals (GHS) (74 FR 50280). OSHA published a correction notice for the NPRM on November 5, 2009 (74 FR 57278). The deadline for submitting written comments and hearing requests is December 29, 2009. OSHA anticipates receiving several hearing requests and is scheduling hearings to begin on March 2, 2010, in Washington, DC; March 31, 2010, in Pittsburgh, PA; and April 13, 2010, in Los Angeles, CA. This document describes the procedures the public must use to participate in the hearings.

Informal public hearings—purpose, rules and procedures. OSHA invites interested persons to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing. In particular, OSHA invites interested persons who have knowledge of or experience with hazard communication and the issues the proposed rule raises to participate in the hearings. OSHA also welcomes presentation of data and documentary evidence that will provide the Agency with the best available evidence to use in developing the final rule.

Pursuant to section 6(b)(3) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 655(b)(3)), members of the public have an opportunity at the informal public hearing to provide oral testimony and evidence on issues raised by the proposal. An administrative law judge (ALJ) will preside over the hearing and will resolve any procedural matters relating to the hearing.

The legislative history of section 6 of the OSH Act, as well as OSHA's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ and questioning of witnesses is allowed on crucial issues, the proceeding is largely informal and essentially legislative in purpose. Therefore, the hearing provides interested persons with an opportunity to make oral presentations in the absence of procedural restraints or rigid procedures that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the technical rules of evidence. Instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. The regulations that govern the hearings and the prehearing guidelines issued for the hearing will ensure that participants are treated fairly and provided due process. This approach will facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedure, and participation generally will be resolved in favor of developing a clear, accurate, and complete record.

Conduct of the hearing will conform to 29 CFR 1911.15. In addition, the Assistant Secretary may, on reasonable notice, issue additional or alternative procedures to expedite the proceedings, to provide greater procedural protections to interested persons or to further any other good cause consistent with applicable law (29 CFR 1911.4).

Although the ALJ presiding over the hearing makes no decision or recommendation on the merits of the proposal, the ALJ has the responsibility and authority necessary to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure that interested persons receive a full and fair hearing, the ALJ has the power to regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine presentations to matters pertinent to the issues the proposed rule raises; use appropriate means to regulate the conduct of persons present at the hearing; question witnesses and permit others to do so; limit the time for such questioning; and leave the record open for a reasonable time after the hearing for the submission of additional data, evidence, comments and arguments (29 CFR 1911.16).

At the close of the hearing the ALJ will establish a post-hearing comment period for interested persons who filed a timely notice of intention to appear at the hearing. During the first part of the post-hearing period, those persons may submit additional data and information to OSHA. During the second part they may submit final briefs, arguments, and summations.

Notice of intention to appear at the hearing. Interested persons who intend to participate in and provide oral testimony or documentary evidence at the hearing must file a written notice of intention to appear prior to the hearing. To testify or question witnesses at one of the hearing locations, interested persons must submit (transmit, send, postmark, deliver) their notice by January 18, 2010. The notice must provide the following information:

- Name, address, e-mail address, and telephone number of each individual who will give oral testimony;
- Name of the establishment or organization each individual represents, if any;
- Occupational title and position of each individual testifying;
- Hearing location at which each individual wishes to appear and testify and/or question witnesses;
- Approximate amount of time required for each individual's testimony;
- A brief statement of the position each individual will take with respect to the issues raised by the proposed rule; and
- A brief summary of documentary evidence each individual intends to present.

Participants who need projectors and other special equipment for their testimony must contact Ms. Veneta Chatmon at OSHA's Office of Communications, telephone (202) 693–1999, no later than a week before the hearing begins.

OSHA emphasizes that the hearings are open to the public; however, only individuals who file a notice of intention to appear may question witnesses and participate fully at the hearing. If time permits, and at the discretion of the ALJ, an individual who did not file a notice of intention to appear may be allowed to testify at the hearing, but for no more than 10 minutes.

Hearing testimony and documentary evidence. Individuals who request more than 10 minutes to present their oral testimony at the hearing or who will submit documentary evidence at the hearing must submit (transmit, send, postmark, deliver) the full text of their testimony and all documentary evidence no later than February 1, 2010.

The Agency will review each submission and determine if the information it contains warrants the amount of time the individual requested for the presentation. If OSHA believes the requested time is excessive, the Agency will allocate an appropriate amount of time for the presentation. The Agency also may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements, and may request that the participant return for questioning at a later time. Before the hearing, OSHA will notify participants of the time the Agency will allow for their presentation and, if less than requested, the reasons for its decision. In addition, before the hearing OSHA will provide the pre-hearing guidelines and hearing schedule to each participant.

Certification of the hearing record and Agency final determination. Following the close of the hearing and the post-hearing comment periods, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The record will consist of all of the written comments, oral testimony and documentary evidence received during the proceeding. The ALJ, however, will not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review all the evidence received into the record and will issue the final rule based on the record as a whole.

Authority and Signature

David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on this 18th day of December 2009.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–30713 Filed 12–28–09; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2008–0787; FRL–9096–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the state of Missouri. This revision applies to Missouri's rule relating to restriction of emission of visible air contaminants and removes redundant definitions, removes an outdated exemption for incinerators used to burn refuse in the outstate area of Missouri, and clarifies that the test methods stated in the rule shall be used to determine the opacity of visible emissions. EPA is not taking action on the state submitted revisions relating to open burning, as these provisions revise a rule that has not been adopted into the SIP. This revision will ensure consistency between the state and the federally-approved rules.

DATES: Comments on this proposed action must be received in writing by January 28, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0787, by mail to Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp at (913) 551–7214, or by e-mail at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision with the exception of the reference in section (1)(I), to the open burning rule in 10 CSR 10–6.045, as a direct final rule without prior proposal because the Agency views this is a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: December 15, 2009.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E9–30773 Filed 12–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0754; FRL–9096–2]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from coatings operations associated with the coating of motor vehicles and mobile equipment. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 28, 2010.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2009–0754], by one of the following methods:

1. *Federal eRulemaking Portal: http://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.

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: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	1151	Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations	12/02/05	04/06/09
VCAPCD	74.18	Motor Vehicle and Mobile Equipment Coating Operations	11/11/08	03/17/09

On April 20, 2009, the submittal for VCAPCD Rule 74.18 was found to meet the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review. On May 13, 2009, the submittal for SCAQMD Rule 1151 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

We approved an earlier version of Rule 74.18 into the SIP on April 19,

2001 (66 FR 20086). The VCAPCD adopted revisions to the SIP-approved version on November 11, 2008 and CARB submitted it to us on March 17, 2009. We approved an earlier version of Rule 1151 into the SIP on May 26, 2000 (65 FR 34101). The SCAQMD adopted revisions to the SIP-approved version on December 2, 2005 and CARB submitted it to us on April 6, 2009.

C. What Is the Purpose of the Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. SCAQMD and VCAPCD revised their rules to comply with CARB's Suggested Control Measure for Automotive Coatings. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Guidance and policy documents that we use to evaluate enforceability and other requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Suggested Control Measure for Automotive Coatings," California Air Resources Board, October 2005.

B. Do the Rules Meet the Evaluation Criteria?

SCAQMD Rule 1151 and VCAPCD Rule 74.18 improve the SIP by establishing more stringent emission limits and by clarifying monitoring, reporting and recordkeeping provisions. The rules are largely consistent with the relevant policy and guidance regarding enforceability, rule stringency and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

SCAQMD Rule 1151(b)(51) and VCAPCD Rule 74.18(G)(16) exempt tertiary butyl acetate (TBAc) as a VOC. These exemptions do not fully comply with EPA's definition of a VOC which requires TBAc to be regarded as a VOC for the purposes of recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements.

D. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approach is limited because EPA is simultaneously proposing a limited disapproval of the rules under sections 110(k)(3) and 301(a), but is not proposing to impose sanctions or a FIP as a consequence of this limited disapproval as explained in the following paragraph.

As noted above, we are simultaneously proposing a limited disapproval of the submitted rules, because they do not comply with our requirement to retain TBAc as a VOC for the purposes of recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements. See 69 FR 69298 (November 29, 2004) and 40 CFR 51.100(s)(5). While we recognize the connection between these rule deficiencies and future ozone attainment plans in the South Coast and Ventura County, we are proposing not to impose sanctions or a FIP under CAA sections 179 and 110(c), because TBAc has negligible photochemical reactivity, and thus, the connection between the rule deficiencies and CAA nonattainment planning requirements is too remote to impose sanctions or a FIP. We note, however, that we may find approval of future ozone attainment demonstrations for these two areas problematic if they do not account for TBAc. We invite comment on this issue as well as all other aspects of our proposed action.

In the event that TBAc is exempted from the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements, and final action has not yet been taken on the submitted rules, EPA will finalize action on SCAQMD Rule 1151 and VCAPCD Rule 74.18 as a full approval as opposed to a limited approval/limited disapproval. Note that the submitted rules have been adopted by the SCAQMD and VCAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing them.

We will accept comment from the public on the proposed limited approval and limited disapproval for the next 30 days.

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 proposed 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 proposed 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 proposed action 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 2, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–30854 Filed 12–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0895; FRL–9096–5]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Iowa State Implementation Plan (SIP) and Iowa Operating Permits Program submitted by the State on November 18, 2008. The purpose of these revisions is to update existing air quality rules; make corrections, clarifications and improvements; add information with regard to control of fugitive dust; clarify the opacity limit for incinerators; update Prevention of Significant Deterioration (PSD) permitting requirements, and add rules for temporary operation of small generators during periods of disaster. EPA is approving the SIP provisions pursuant to section 110 of the CAA. EPA is approving the state operating permits revisions pursuant to section 502 of the CAA and implementing regulations.

DATES: Comments on this proposed action must be received in writing by January 28, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0895, by mail to Tracey Casburn, Environmental Protection

Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Tracey Casburn at (913) 551–7016, or by e-mail at *casburn.tracey@epa.gov.*

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

Dated: December 15, 2009.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E9–30776 Filed 12–28–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on March 1, 2010.

ADDRESSES: In commenting, please refer to file code OIG–114–N. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–114–N, Room 5541, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *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 Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1343.

For information on viewing public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patrice Drew, Department of Health & Human Services, Office of Inspector General, Office of External Affairs, (202) 619–1368.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG–114–N.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 401–2206.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), or exclusion from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, specifying various payment and business practices which, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. OIG safe harbor provisions have been developed "to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements" (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with

these provisions so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute or related administrative authorities.

Existing OIG safe harbors describing those practices that are sheltered from liability are codified in 42 CFR part 1001.

B. OIG Special Fraud Alerts

OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as to those charged with administering the Federal health care programs.

In developing these Special Fraud Alerts, OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry.

C. Section 205 of Public Law 104–191

Section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 17, 2008 (73 FR 76575). As required under section 205, a status report of the public comments received in response to that notice is set forth in Appendix D to the OIG's Semiannual Report covering the period April 1, 2009, through September 30, 2009.[1] OIG is not seeking additional public comment on the proposals listed in Appendix D at this time. Rather, this notice seeks additional recommendations regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix D to the OIG Semiannual Report referenced above.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in—

- Access to health care services,
- The quality of services,
- Patient freedom of choice among health care providers,
- Competition among health care providers,
- The cost to Federal health care programs,
- The potential overutilization of the health care services, and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may take into account their decisions whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

Dated: December 14, 2009.

Daniel R. Levinson,

Inspector General.

[FR Doc. E9–30560 Filed 12–28–09; 8:45 am]

BILLING CODE 4152–01–P

[1] The OIG Semiannual Report can be accessed through the OIG Web site at *http://aig.hhs.gov/publicatians/semiannual.asp.*

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 36 and 54

[WC Docket No. 05–337; CC Docket No. 96–45; FCC 09–112]

High-Cost Universal Service Support; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: In this document, the Commission responds to the decision of the United States Court of Appeals for the Tenth Circuit in *Qwest Communications International, Inc.* v. *FCC* and seeks comment on certain interim changes to address the court's concerns and changes in the marketplace.

DATES: Comments are due on or before January 28, 2010 and reply comments are due on or before February 12, 2010.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–337; CC Docket No. 96–45, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, 202–418–7400 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 05–337, CC Docket No. 96–45, FCC 09–112, adopted December 15, 2009, and released December 15, 2009.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 28, 2010 and reply comments on or before February 12, 2010. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

■ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

■ *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

■ Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. **Please Note:** Through December 24, 2009, the Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. This filing location will be permanently closed after December 24, 2009. The filing hours at both locations are 8 a.m. to 7 p.m.

■ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

■ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Initial Paperwork Reduction Act of 1995 Analysis

The FNPRM discusses potential new or revised information collection requirements. The reporting requirements, if any, that might be adopted pursuant to this FNPRM are too speculative at this time to request comment from the OMB or interested parties under section 3507(d) of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Therefore, if the Commission determines that reporting is required, it will seek comment from the OMB and interested parties prior to any such requirements taking effect. Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we will seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection.

Synopsis of the Further Notice of Proposed Rulemaking

Introduction

1. In this FNPRM, the Commission responds to the decision of the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in *Qwest Communications International, Inc.* v. *FCC,* in which the court remanded the Commission's rules for providing high-cost universal service support to non-rural carriers. As discussed below, while the Commission has long recognized the need for comprehensive reform, we are also cognizant that, under the American Recovery and Reinvestment Act of 2009 (the Recovery Act), the Commission must send a National Broadband Plan to Congress by February 17, 2010. We anticipate that changes to universal service policies are likely to be recommended as part of that plan, and that the Commission will undertake comprehensive universal service reform when it implements those recommendations. It will not be feasible for the Commission to consider, evaluate, and implement these universal service recommendations between February 17, 2010, and April 16, 2010, the date by which the Commission committed to respond to the Tenth Circuit's remand. We tentatively conclude, therefore, that the Commission should not attempt wholesale reform of the non-rural high-cost mechanism at this time, but we seek comment on certain interim changes to address the court's concerns and changes in the marketplace.

2. The interim changes on which we seek comment today are designed to respond to the court's concerns, while also taking into account the considerable changes in technology, the telecommunications marketplace, and consumer buying patterns that have occurred since we last modified our non-rural high-cost universal service support rules. We seek comment on what changes should be made to the Commission's rules regarding the rate comparability review and certification process. Specifically, we seek comment on whether the Commission should define "reasonably comparable" rural and urban rates in terms of rates for bundled local and long distance services. In addition, we seek comment on whether the Commission should require carriers to certify that they offer bundled local and long distance services at reasonably comparable rural and urban rates.

3. Finally, we tentatively conclude that while the Commission considers comprehensive universal service reform consistent with both the Communications Act of 1934, as amended (the Communications Act), and the Recovery Act, the current non-rural high-cost mechanism is an appropriate interim mechanism for determining high-cost support to non-rural carriers. We tentatively find that the mechanism as currently structured comports with the requirements of section 254 of the Communications Act,

and it is therefore appropriate to maintain this mechanism on an interim basis until the Commission enacts comprehensive reform.

Background

4. A major objective of high-cost universal service support always has been to help ensure that consumers have access to telecommunications services in areas where the cost of providing such services would otherwise be prohibitively high. In section 254 of the Communications Act, Congress directed the Commission to preserve and advance universal service by ensuring, among other things, that consumers in rural, insular, and high-cost areas have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas." In addition, section 254(e) provides that Federal universal service support "should be explicit and sufficient to achieve the purposes of this section."

5. Currently, the Commission's rules provide Federal high-cost support to non-rural and rural carriers under different support mechanisms. While rural carriers receive support based on their embedded costs, the current rules calculate support to non-rural carriers based on the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services in the areas served by non-rural carriers, as determined by the Commission's cost model. Non-rural carriers receive support based on the model's cost estimates only in States where the statewide average forward-looking cost per line for non-rural carriers exceeds a national cost benchmark, which currently is set at two standard deviations above the national average cost per line.

6. To induce States to achieve the reasonably comparable rates that are required by the statute, the Commission requires States to review annually their residential local rates in rural areas served by non-rural carriers and certify that those rural rates are reasonably comparable to urban rates nationwide, or explain why they are not. The Commission defined the statutory term "reasonably comparable" in terms of a national *rate* benchmark, which serves as a "safe harbor" in the rate review and certification process. States with rural rates below the benchmark may presume that their rural rates are reasonably comparable to urban rates nationwide without providing additional information; if the rural rates are above the benchmark, they can rebut the presumption by demonstrating that factors other than basic service rates affect the comparability of rates. The national rate benchmark currently is set at two standard deviations above the average urban rate as reported in the most recent annual rate survey published by the Wireline Competition Bureau.

7. In *Qwest II*, the court held that the Commission relied on an erroneous, or incomplete, construction of section 254 of the Communications Act in defining statutory terms and crafting the funding mechanism for non-rural high-cost support. The court directed the Commission on remand to articulate a definition of "sufficient" that appropriately considers the range of principles in section 254 of the Communications Act and to define "reasonably comparable" in a manner that comports with the requirement to preserve and advance universal service. The court found that, "[b]y designating a comparability benchmark at the national urban average plus two standard deviations, the FCC has ensured that significant variance between rural and urban rates will continue unabated." The court also found that the Commission ignored its obligation to "advance" universal service, "a concept that certainly could include a narrowing of the existing gap between urban and rural rates." Because the non-rural high-cost support mechanism rested on the application of the definition of "reasonably comparable" rates invalidated by the court, the court also deemed the support mechanism invalid. The court further noted that the Commission based the two standard deviations *cost* benchmark on a finding that *rates* were reasonably comparable, without empirically demonstrating in the record a relationship between costs and rates.

8. In December 2005, the Commission issued a notice of proposed rulemaking seeking comment on issues raised by section 254 and the Tenth Circuit in *Qwest II*. Since the Commission issued the *Remand NPRM*, it has sought comment on various proposals for comprehensive reform of the high-cost support mechanisms for both rural and non-rural carriers. In addition, the Commission issued a further notice of proposed rulemaking seeking comment on comprehensive universal service and intercarrier compensation reform on November 5, 2008.

9. On January 14, 2009, Qwest Corporation, the Maine Public Utilities Commission, the Vermont Public Service Board, and the Wyoming Public Service Commission filed a petition for writ of mandamus with the Tenth Circuit in the *Qwest II* proceeding. Shortly after that petition was filed, the Commission and the petitioners negotiated an agreement under which the Commission would release a notice of inquiry no later than April 8, 2009; issue a further notice of proposed rulemaking no later than December 15, 2009; and release a final order that responds to the court's remand no later than April 16, 2010. On April 8, 2009, the Commission issued a notice of inquiry to refresh the record regarding the issues raised by the court in this remand proceeding. The Commission sought comment on several specific proposals, and sought comment generally on how any changes to the Commission's non-rural high-cost support mechanism should relate to more comprehensive high-cost universal service reform and the Commission's initiatives regarding broadband deployment.

Discussion

Relationship to Comprehensive Reform and the National Broadband Plan

10. The Commission has previously recognized the need for comprehensive universal service reform, and has sought comment on various proposals for comprehensive reform of the high-cost support mechanisms, rural as well as non-rural. Since the Commission originally adopted the non-rural high-cost mechanism in 1999, the telecommunications marketplace has undergone significant changes. For example, while in 1996 the majority of consumers subscribed to separate local and long distance providers, today the majority of consumers subscribe to local/long distance bundles offered by a single provider. In addition, the vast majority of subscribers have wireless phones as well as wireline phones, and an increasing percentage of consumers are dropping their circuit-switched phones in favor of wireless or broadband-based (voice over Internet protocol) phone services. Finally, an increasing percentage of carriers are converting their networks from circuit-switched to Internet protocol (IP) technology.

11. In the *Remand NOI*, the Commission sought comment on the relationship between the Commission's resolution of the issues in this remand proceeding and more comprehensive reform of the high-cost universal service support system and the development of a comprehensive National Broadband Plan. Many commenters argued that the Commission should use this remand proceeding to begin transitioning high-cost funding from support for voice

services to support for broadband in light of the changes in technology and the marketplace.

12. On the same day that the Commission issued the *Remand NOI*, it began the process of developing a National Broadband Plan that will "seek to ensure that all people of the United States have access to broadband capability," as required by the Recovery Act. Since then, the Commission staff has undertaken an intensive and data-driven effort to develop a plan to ensure that our country has a broadband infrastructure appropriate to the challenges and opportunities of the 21st century. Work on the National Broadband Plan, which is due to Congress by February 17, 2010, is not complete. We anticipate that the National Broadband Plan will address the need to reform universal service funding to further the deployment and adoption of broadband throughout the nation. As a consequence, we tentatively conclude that fundamental reform limited to only the non-rural high-cost support mechanism should not be proposed at this time. After the National Broadband Plan is released in February, we will be in a better position to determine the modifications that would be consistent with our broadband policies. In response to the mandamus petition in the Tenth Circuit, the Commission has committed to issue an order responding to the court's remand by April 16, 2010. We believe that we will have insufficient time, between release of the National Broadband Plan in February and our deadline for responding to the court in April, to implement reforms to the high-cost universal service mechanisms consistent with the overall recommendations in the National Broadband Plan. While we are committed to addressing the remand by April 16, we anticipate that our efforts to revise and improve high cost support will be advanced further through proceedings that follow from the National Broadband Plan. Accordingly, we tentatively conclude that we should neither propose fundamental reform of the non-rural high-cost support mechanism in advance of the forthcoming National Broadband Plan, nor attempt to set the stage for implementation of (as yet unknown) plan recommendations in this further notice of proposed rulemaking. As discussed below, we also tentatively conclude that no fundamental reform is required since the program as currently structured is consistent with our statutory obligations under section 254 of the Communications Act. We seek comment on these tentative conclusions.

13. We also are reluctant at this time to propose adopting any changes to the non-rural support mechanism that would increase significantly the amount of support non-rural carriers would receive. We caution that any rules adopted in this proceeding are likely to be interim rules and in effect only until comprehensive universal service reform is adopted in the aftermath of the National Broadband Plan. Any substantial increases in non-rural high-cost support disbursements, moreover, would increase the contribution factor above its current high level. "Because universal service is funded by a general pool subsidized by all telecommunications providers—and thus indirectly by the customers—excess subsidization in some cases may undermine universal service by raising rates unnecessarily, thereby pricing some consumers out of the market." If carriers were to receive significant additional high-cost support on an interim basis as a result of this proceeding, it likely would be more difficult to transition that support to focus on areas unserved or underserved by broadband, if called for in future proceedings. Given these concerns, we tentatively conclude that any changes to the non-rural high-cost support mechanism adopted at this time should be interim in nature and should not increase the overall amount of non-rural high-cost support significantly above current levels, provided that goal can be accomplished consistent with our mandate under section 254. We seek comment on this tentative conclusion and, to the extent commenters advocate changes to the existing mechanism, we ask commenters to address how any such changes will constrain growth in the amount of support.

Rate Comparability Review and Certification Process

14. We tentatively conclude that we should continue requiring the States to review annually their residential local rates in rural areas served by non-rural carriers and certify that their rural rates are reasonably comparable to urban rates nationwide, or explain why they are not. We seek comment on this tentative conclusion.

15. We also seek comment, however, on whether we should change the rates we require the States to compare in light of the considerable changes in technology, the telecommunications marketplace, and consumer buying patterns that have occurred since we adopted a national average urban rate benchmark based on local rates. Specifically, we seek comment on whether the Commission should define "reasonably comparable" rural and urban rates in terms of rates for bundled telecommunications services. Given the changes in consumer buying patterns, the competitive marketplace, and the variety of pricing plans offered by carriers today, stand-alone local telephone rates may no longer be the most relevant measure of whether rural and urban consumers have access to reasonably comparable telecommunications services at reasonably comparable rates.

16. In particular, when the Commission adopted the non-rural high-cost support mechanism, none of the Bell Operating Companies, which served the majority of non-rural carrier customers, were permitted to offer combined local and interstate long distance services to their customers. At that time, most customers of non-rural carriers took local service from the incumbent local exchange carrier and subscribed to a separate interexchange carrier for long distance service. When the Commission originally adopted the non-rural high-cost support mechanism, it was "designed to achieve reasonable comparability of intrastate rates among States." Given the different combinations of carriers a customer could choose from, and differing amounts of usage based on per-minute charges, it would have been difficult at that time to identify a typical package of local and long distance services. In the *Order on Remand*, the Commission explicitly defined "reasonable comparability" in terms of the national average urban rate for *local telephone service*. The telecommunications marketplace has changed considerably since that time, however.

17. When the Commission issued the *Remand NPRM* in 2005, it noted that most consumers no longer purchase stand-alone local telephone service, but instead purchase bundles of telecommunications services from one or more providers, and it sought comment on whether the Commission should continue defining reasonably comparable rates in terms of local rates only. The Commission also sought comment on whether defining reasonably comparable rural and urban rates in terms of consumers' total telephone bills would be more consistent with its obligation to preserve and advance universal service than focusing only on local rates. In the *Remand NOI*, the Commission noted that consumers increasingly are purchasing packages of services that include not only unlimited nationwide calling, but also broadband Internet

access and video services, and it sought comment on whether the Commission should consider a broader range of rates in determining whether rates are affordable and reasonably comparable. We now seek additional comment on these issues.

18. As the Commission previously noted, most rural consumers typically have smaller calling areas for local telephone service than urban consumers and, therefore, may purchase more long distance services than urban consumers. We seek comment on whether a comparison of local rates only is appropriate if rural consumers incur substantial charges for long distance services and pay more for combined local and long distance telephone services than urban consumers. Although only local telephone service is supported by the high-cost universal service mechanism at this time, section 254(b)(3) of the Act provides that consumers in all regions of the nation should have access to telecommunications and information services, *including advanced services and interexchange services,* at reasonably comparable rural and urban rates. In light of the fact that most consumers subscribe to both local and long distance services from the same provider, would it be more consistent with the statute, and the Commission's obligation to advance universal service, to define reasonably comparable rates for purposes of the non-rural mechanism in terms of combined local and long distance rates?

19. If the Commission determines that a more meaningful measure of rural and urban rate comparability should include rates for long distance services as well as local rates, how should the Commission define a typical package of services on which to base the comparison? Several commenters point to the widespread availability of national calling plans from competing intermodal providers, including wireless, cable, and VoIP providers, and argue that rates should be considered reasonably comparable in rural areas where such service options are available. Currently, the Commission defines reasonably comparable rates in terms of incumbent local exchange carrier rates only. Given the increasing number of consumers subscribing to voice services from alternative providers, should the Commission look at the bundled rates of all types of providers? In addition, many providers offer "all distance" or unlimited nationwide calling plans. In determining whether rates and services are reasonably comparable in rural and urban areas, should the Commission consider service bundles that include unlimited long distance calling? These popular service bundles provide predictability and cost savings to high-volume users, but may not address the needs of consumers who make few long distance calls. Should the Commission also consider service bundles that include per minute rates or various "buckets" of minutes that may be popular with lower-volume users? We invite commenters to submit data on the rates and availability of bundled service offerings, identify sources of such data, and propose methods of analyzing such data.

20. We also seek comment on whether the Commission should require carriers to certify that they offer bundled local and long distance services at reasonably comparable rural and urban rates. We note in this regard that if we define reasonably comparable rates in terms of bundled local and long distance services some (or none) of the components of those bundles will be regulated by the States. Would requiring carriers to provide such data assist the Commission in monitoring these rates over time so that the Commission can adjust its definition of reasonably comparable rates as the marketplace changes?

Maintaining the Current Non-Rural Mechanism on an Interim Basis

Cost-Based Support Mechanism

21. Because we believe that any proposed reforms to the non-rural high-cost support mechanism should be interim in nature, pending adoption and implementation of the National Broadband Plan, we tentatively conclude that the current non-rural funding mechanism should remain in place at this time, and seek comment on this tentative conclusion. We tentatively conclude that it is appropriate to distribute universal service support in high-cost areas based on estimated forward-looking economic cost rather than on retail rates, primarily because costs necessarily are a major factor affecting retail rates.

22. As the Commission has previously discussed, there are numerous reasons to believe that cost represents a reasonable proxy for the ability of carriers and State regulators to ensure that rural rates remain reasonably comparable. In contrast, it makes little sense to base support on current retail rates, which are not independently determined but rather are the result of the interplay of underlying costs and other factors that are unrelated to whether an area is high-cost. Retail rates in many States remain regulated, and State regulators differ in their treatment of regulated carriers' recovery of their intrastate regulated costs. For example, some States still require carriers to charge business customers higher rates to create implicit subsidies for residential customers, while other regulators have eliminated such implicit subsidies in the face of increasing competition for business customers. Similarly, State regulators vary in the extent to which they have rebalanced rates by reducing intrastate access charges and increasing local rates. In addition, some States have ceased regulating local retail rates. Moreover, basing support on retail rates would create perverse incentives for State commissions and carriers to the extent that rate levels dictated the amount of Federal universal service support available in a State. State commissions or carriers would have an incentive to set local rates well above cost simply to increase their States' carriers' Federal universal service support. Similarly, where States have deregulated retail rates, carriers facing competition may have an incentive to raise certain local rates to increase their support rather than to cut rates to meet competition. We seek comment on the relative advantages and disadvantages of basing support on costs versus retail rates.

Forward-Looking Cost Model

23. In the *Remand NOI,* the Commission acknowledged that many of the inputs in the forward-looking economic cost model have not been updated since they were adopted a decade ago, and sought comment on the extent to which the Commission should continue to use its model in determining high-cost support without updating, changing, or replacing the model. Virtually all commenters that addressed this issue argued that the model should be updated. We agree that the model should be updated or replaced if a forward-looking cost model continues to be used to compute non-rural high-cost support for the long term. Not only are the model inputs out-of-date, but also the technology assumed by the model no longer reflects "the least-cost, most-efficient, and reasonable technology for providing the supported services that is currently being deployed." The Commission's cost model essentially estimates the costs of a narrowband, circuit-switched network that provides plain old telephone service (POTS), whereas today's most efficient providers are constructing fixed or mobile networks that are capable of providing broadband as well as voice services.

24. We acknowledge that much progress has been made in developing computer cost models that estimate the cost of constructing a broadband network, such as the CostQuest model, and we note that Commission staff has been working to develop an economic cost model to estimate the cost of providing broadband services for purposes of the National Broadband Plan. Nevertheless, we do not believe that we could adequately evaluate any existing cost model or develop a new cost model in time to meet our commitment to respond to the Tenth Circuit's remand decision by April 16, 2010. As the Commission noted in the *Remand NOI*, the Commission's current model was developed over a multi-year period involving dozens of public workshops, and we expect that it would take a similar period to evaluate or develop a new cost model and to establish new input values. Moreover, we do not believe that it would be a productive use of Commission resources to attempt to update a model that estimates the cost of a legacy, circuit-switched, voice-only network, if the Commission ultimately decides to use a forward-looking cost model to estimate the cost of providing broadband over a modern multiservice network. Accordingly, we tentatively conclude that we should continue to use the existing model to estimate non-rural support while these interim rules remain in place, pending the development of an updated and more advanced model or some other means of determining high-cost support for the long term. We seek comment on this tentative conclusion.

25. We also tentatively conclude that we should continue to determine non-rural support by comparing the statewide average cost of non-rural carriers to a nationwide cost benchmark set at two standard deviations above the national average cost per line on an interim basis. As discussed above, we tentatively conclude that any changes to the non-rural high-cost support mechanism should not result in substantial additional support. Following from this tentative conclusion, we further tentatively conclude that we should not adopt the proposal of Vermont and Maine that the Commission use a cost benchmark of no more than 125 percent of cost, because this would increase significantly the overall amount of high-cost support for non-rural carriers.

26. We also tentatively conclude that we should not modify our current mechanism to base support on average wire center costs per line. First, some of those proposing a shift to wire center costs, such as Qwest, would set thresholds in a manner that would result in a significant increase in the size of the fund. Second, as previously discussed, the Commission's existing model estimates the costs of a narrowband, circuit-switched network that essentially provides only POTS, rather than the costs of the multi-service networks that providers are deploying today. If the Commission were to decide to calculate support on the basis of the per-line costs for a narrower geographic area (such as wire centers), we tentatively find that the Commission should do so based on an updated model, similar to the one being developed for purposes of the National Broadband Plan, that incorporates the least-cost, most efficient technologies currently being deployed.

27. While we believe that there may be considerable merit in an approach that distributes high-cost support on a more disaggregated basis rather than on the basis of statewide average costs, we do not believe that the current version of the Commission's model is an appropriate tool to implement such an approach. Accordingly, we tentatively conclude that, until the Commission adopts an updated cost model, the non-rural high-cost support should continue to be based on statewide average costs. We seek comment on these tentative conclusions. Although we tentatively conclude that the proposals to change the non-rural mechanism should not be adopted in their entirety at this time, we seek comment on whether it might be feasible to adopt some elements of these or other proposals. We also seek comment on whether there are other interim adjustments that we should make to the non-rural mechanism that could be implemented quickly, through an order issued no later than April 16, 2010.

Current Non-Rural Mechanism Is Consistent With Section 254 Principles

"Sufficient"

28. As discussed above, we tentatively conclude that we should maintain the existing non-rural high-cost funding mechanism on an interim basis given the relationship between universal service support and the Commission's mandate under the Recovery Act to develop a plan for providing broadband throughout the nation. While the Commission is developing that plan and coordinating its requirements under both the Recovery and the Communications Act, we tentatively conclude that the program as currently constructed is consistent with the requirements in section 254 of the Communications Act. We seek comment on this tentative conclusion.

29. Section 254(e) of the Communications Act provides that Federal universal service support "should be explicit and *sufficient* to achieve the purposes of [section 254]." The Tenth Circuit held that the Commission did not adequately demonstrate how its non-rural universal service support mechanism was "sufficient" within the meaning of section 254(e). In the non-rural context, the Commission previously had defined "sufficient" as "enough Federal support to enable States to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers." In *Qwest II*, the court noted, however, that "reasonable comparability" was just one of several principles that Congress directed the Commission to consider when crafting policies to preserve and advance universal service. The court was "troubled by the Commission's seeming suggestion that other principles, including affordability, do not underlie Federal non-rural support mechanisms." "On remand," the court concluded, "the FCC must articulate a definition of 'sufficient' that appropriately considers the range of principles identified in the text of the statute."

30. Section 254(b) sets forth a number of principles upon which the Federal-State Joint Board on Universal Service (Joint Board) and the Commission should base universal service policies. These include: (1) "[Q]uality service should be available at just, reasonable, and affordable rates;" (2) "access to advanced telecommunications and information services should be provided in all regions of the Nation;" (3) "low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications services and information services * * * that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged * * * in urban areas;" (4) "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;" (5) "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service;" and (6) "[e]lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services." In addition, section 254(b) permits the

Joint Board and the Commission to adopt "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest * * *"

31. In implementing section 254, the Commission, consistent with the recommendations of the Joint Board, created a number of different universal service support mechanisms that were targeted to address specific principles enumerated in section 254(b). Thus, for example, the Commission created a separate E-rate program to provide support to schools and libraries, and a rural health care mechanism to provide support for health care providers, and it expanded and modified the existing Lifeline and Link-up programs to assist low-income consumers. The non-rural high-cost support mechanism, thus, is just one relatively small segment of the Commission's comprehensive scheme to preserve and advance universal service. In implementing section 254, the Commission did not attempt to address and advance each and every section 254(b) universal service principle in a single support mechanism, nor is there any indication that Congress intended the provisions to be implemented in this manner. Instead, the Commission crafted a variety of mechanisms that—collectively—address the section 254(b) principles. These mechanisms, taken together, advance all of the section 254(b) principles enumerated by Congress. For example, the Commission addressed the section 254(b)(6) principle that schools, libraries, and health care providers "should have access to advanced telecommunications services," by creating the E-rate program and the rural health care support mechanism. The Commission, therefore, did not need to address this principle in designing the various high-cost support mechanisms. In particular, the non-rural high-cost support mechanism was meant to ensure that consumers in rural, insular, and high-cost areas have access to telecommunications services at rates that are reasonably comparable to rates in urban areas. Thus, the Commission believes that a fair assessment of whether the Commission has reasonably implemented the section 254 principles, and whether support is "sufficient," must encompass the entirety of universal service support mechanisms; no single program is intended to accomplish the myriad of statutory purposes. Moreover, the competing purposes of section 254 impose practical limits on the fund as a whole: If the fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and requiring fair and equitable contributions from carriers. We seek comment on the foregoing analysis. We also seek comment on the principles the Commission should consider in designing the non-rural high-cost mechanism and in determining whether the level of support is "sufficient."

32. In *Qwest II*, the Tenth Circuit expressed specific concern that the Commission's non-rural mechanism may not be "sufficient" to advance the principle of *affordability*. We seek comment on how we should assess whether the current non-rural high-cost mechanism advances this principle, particularly when considered in conjunction with the other universal service mechanisms (*e.g.*, the low-income mechanism). We note that the Commission's most recent report on telephone subscribership (released in December 2009) found that, as of July 2009, the telephone subscribership penetration rate in the United States was 95.7 percent—the highest reported penetration rate since the Census Bureau began collecting such data in November 1983. Does the current high penetration rate demonstrate that our universal service programs are sufficient to ensure that rates are affordable? If not, what other data might the Commission consider in determining whether rates are affordable? Should it consider data on the percentage of income that consumers spend on local telephone service or other telecommunications services? Should it compare consumer expenditures on telephone or telecommunications services with consumer expenditures on other services, such as cable television service? Do such data confirm that rates are affordable?

33. As the Tenth Circuit has recognized, the Commission must sometimes "exercise its discretion to balance the principles" of section 254(b) "against one another when they conflict." If the high-cost fund for non-rural carriers were to increase substantially, there emerges a tension between the principles of reasonable comparability and affordability. If the Commission dramatically increased the size of the non-rural fund to reduce rural rates to make them more comparable to the lowest urban rates, carriers serving other areas of the country would likely increase their rates to pay for the spike in their non-rural support contributions, making rates in those service areas less affordable. The court recognized the need for the Commission to balance the competing principles of comparability and affordability in the non-rural high-cost context. The court held, however, that "the FCC has failed to demonstrate that its balancing calculus takes into account the full range of principles Congress dictated to guide the Commission in its actions." For the reasons discussed above, we tentatively conclude that in designing its non-rural high-cost mechanism the Commission should principally balance the statutory principles of reasonable comparability and affordability of rates in areas served by non-rural carriers on the one hand with affordability of rates in other areas where customers are net contributors to universal service funding on the other. As the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) recently found when it upheld the Commission's interim cap on competitive eligible telecommunications carriers' support, the concept of "sufficiency" can reasonably encompass "not just affordability for those benefited, but fairness for those burdened." We also tentatively conclude that a proper balancing inquiry must take into account our generally applicable responsibility to be a prudent guardian of the public's resources. We seek comment on these tentative conclusions.

34. The Tenth Circuit acknowledged that "excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in section 254(b)(1)." The Commission made a determination of necessary, but not excessive, support in crafting the interim universal service support rules that the Fifth Circuit upheld in *Alenco Communications, Inc.* v. *FCC*. More recently, in upholding an interim cap on certain universal service funding, the DC Circuit stated that the Commission, in assessing whether universal service subsidies are excessive, "must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service." Given the unprecedented level of telephone subscribership, we tentatively conclude that current subsidy levels are at least sufficient (and may be more than enough) to ensure reasonably comparable and affordable rates that permit widespread access to basic telephone service. We seek comment on this tentative conclusion.

35. We further tentatively conclude that the Commission's non-rural support mechanism is also consistent with the statutory principle that "[t]here should be specific, predictable and sufficient

Federal and State mechanisms to preserve and advance universal service." The Commission's cost-based formula provides a specific and predictable methodology for determining when non-rural carriers qualify for high-cost support. We seek comment on this tentative conclusion.

36. Finally, we note that the non-rural high-cost mechanism currently does not directly address the principle that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation." The Commission, however, is currently considering whether to extend universal service support to broadband services. Such an expansion of the universal service program would help advance the goal of widespread access to advanced services in accordance with section 254(b)(2). We tentatively conclude that it would be premature to expand existing universal service programs at this time, before the National Broadband Plan has been issued. We seek comment on this tentative conclusion.

"Reasonably Comparable"

37. Section 254(b)(3) provides: "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." In 2003, the Commission determined that rural rates were "reasonably comparable" if they fell within two standard deviations of the national average urban rate contained in the Wireline Competition Bureau's annual rate survey. In adopting this definition of "reasonably comparable," the Commission presumed that Congress believed that rural and urban rates were already "reasonably comparable" at the time the 1996 Telecommunications Act was passed, and that the Commission's task under section 254(b)(3) was to preserve existing levels of rate comparability.

38. In *Qwest II*, the Tenth Circuit rejected the Commission's definition of "reasonably comparable." The court noted that section 254(b) referred to "policies for the preservation *and advancement* of universal service." In the court's view, the statute's charge to "advance" universal service suggests that the Commission must do more than maintain existing rate differences. In particular, in the context of rate comparability, the court concluded that "the Commission erred in premising its consideration of the term 'preserve' on the disparity of rates existing in 1996 while ignoring its concurrent obligation to advance universal service, a concept that certainly could include a narrowing of the existing gap between urban and rural rates." The court seemed concerned that, unless the Commission took action to reduce the existing variance in rates between rural and urban areas, rural rates would be too high to ensure universal access to basic service. "Rates cannot be divorced from a consideration of universal service," the court said, "nor can the variance between rates paid in rural and urban areas. If rates are too high, the essential telecommunications services encompassed by universal service may indeed prove unavailable."

39. The Tenth Circuit noted that under the Commission's 2002 data, "rural rates falling just below the comparability benchmark may exceed the lowest urban rates by over 100%." We tentatively conclude, however, that the statute does not require the Commission to make rural rates comparable to the "lowest urban rate," particularly when urban rates themselves vary considerably. Indeed, as the Tenth Circuit recognized, the Commission set its previous comparability benchmark at the national urban *average* plus two standard deviations because that benchmark "approaches the outer perimeter of the variance in urban rates." Under the Commission's benchmark approach, rural rates receive "closer scrutiny" as they "approach the level of the highest urban rate." The Tenth Circuit acknowledged that "there is a certain logic to this approach"; but it ultimately concluded that "the benchmark is rendered untenable because of the impermissible statutory construction on which it rests."

40. We seek comment on how we should respond to the Tenth Circuit's concerns about reasonable comparability of rates. How should we evaluate whether the current non-rural high-cost mechanism is "advancing" universal service in satisfaction of section 254(b)(5)? Does the fact that telephone penetration rates have increased since we started our universal service programs demonstrate that "rates are" *not* "too high" under that program, since "essential telecommunications services encompassed by universal service" have *not* "prove[d] unavailable" but have in fact become more available? Section 254(b)(3) requires that rates in rural, insular, and high cost areas be "reasonably comparable to those . . . in urban areas." Given the variance in urban rates, does it make sense to interpret this statutory principle as requiring that *all* rural rates be no higher than the lowest urban rate? Would such an interpretation effectively result in the preemption of State rate-making authority? In addition, would such an interpretation of the statute result in a significant increase in the size of the fund that would unreasonably burden those contributing to the fund? In interpreting this statutory provision, should we instead compare the variance in rural rates to the variance in urban rates? Are there other ways to assess rate comparability?

41. The court's criticism of the Commission's statutory construction appeared to stem from a concern that the Commission's non-rural mechanism was not doing enough to satisfy the statutory mandate to "advance" universal service. Is it reasonable to interpret the statute's directive to "advance universal service" as satisfied if the Commission extends universal service to new services and new technologies, such as broadband Internet access service? As discussed above, section 6001(k) of the Recovery Act directs the Commission to submit to Congress a National Broadband Plan. The Recovery Act further requires that the plan "shall seek to ensure that all people of the United States have access to broadband capability," and that the plan include, *inter alia*, a "detailed strategy for achieving affordability of such [broadband] service and maximum utilization of broadband infrastructure and service by the public." Do these provisions of the Recovery Act support such an interpretation?

Procedural Matters

42. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission..

• Effective December 28, 2009, all hand-delivered or messenger delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. **Please Note:** Through December 24, 2009, the Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. This filing location will be permanently closed after December 24, 2009. The filing hours at both locations are 8 a.m. to 7 p.m.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ex Parte Requirements

43. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200–1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register.**

Need for, and Objectives of, the Proposed Rules

45. In section 254 of the Communications Act of 1934, as amended, Congress directed the Commission to preserve and advance universal service by ensuring, among other things, that consumers in rural, insular, and high-cost areas have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas." In addition, section 254(e) provides that Federal universal service support "should be explicit and sufficient to achieve the purposes of this section."

46. Currently, the Commission's rules provide Federal high-cost universal service support to non-rural and rural carriers under different support mechanisms. Non-rural carriers receive support in States where the statewide average forward-looking cost per line for non-rural carriers exceeds a national cost benchmark. To induce States to achieve the reasonably comparable rates that are required by the statute, the Commission requires States to review annually their residential local rates in rural areas served by non-rural carriers and certify that those rural rates are reasonably comparable to urban rates nationwide, or explain why they are not. The Commission defined the statutory term "reasonably comparable" in terms of a national *rate* benchmark, which serves as a "safe harbor" in the rate review and certification process. The national rate benchmark currently is set at two standard deviations above the average urban rate as reported in the most recent annual survey of local telephone rates published by the Wireline Competition Bureau.

47. In *Qwest II*, the court held that the Commission relied on an erroneous, or incomplete, construction of section 254 of the Communications Act in defining statutory terms and crafting the funding mechanism for non-rural high-cost support. The court directed the Commission on remand to articulate a definition of "sufficient" that appropriately considers the range of principles in section 254 of the Communications Act and to define "reasonably comparable" in a manner that comports with the requirement to preserve and advance universal service.

48. In the FNPRM, the Commission seeks comment on revising the non-rural high-cost universal service rules regarding the rate comparability review and certification process. Such action is necessary to respond to the decision of the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in *Qwest II*, in which the court remanded the Commission's rules for providing high-cost universal service support to non-rural carriers. Specifically, the Commission seeks comment on whether it should define "reasonably comparable" rural and urban rates in terms of rates for bundled local and long distance services, rather than in terms of local rates only. In addition, the Commission seeks comment on whether it should require carriers to certify that they offer bundled local and long distance services at reasonably comparable rural and urban rates.

Legal Basis

49. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 214, 254, 403 and section 1.411of the Commission's rules, 47 CFR 1.411.

Description and Estimate of the Number of Small Entities To Which Rules Will Apply

50. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning

as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Wired Telecommunications Carriers

51. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2002, there were 2,432 firms in this category, total, that operated for the entire year. Of this total, 2,395 firms had employment of 999 or fewer employees, and an additional 37 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

Local Exchange Carriers (LECs)

52. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers reported that they were incumbent local exchange service providers. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange services are small entities that may be affected by our action.

53. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers

54. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,005 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are Shared-Tenant Service Providers, and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are Other Local Service Providers. Of the 89, all 89 have 1,500 or fewer employees and none has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by our action.

Wireless Telecommunications Carriers (Except Satellite)

55. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small. Also, according to Commission data, 434 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 222 of these are small, under the SBA small business size standard. Thus, under this category and size standard, approximately half of firms can be considered small.

Broadband Personal Communications Service

56. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

Narrowband Personal Communications Services

57. To date, two auctions of narrowband PCS licenses have been

conducted. For purposes of the two auctions that have been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

Wireless Telephony

58. Wireless telephony includes cellular, PCS, and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for wireless services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 434 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 222 of these are small under the SBA small business size standard.

800 MHz and 900 MHz Specialized Mobile Radio Licenses

59. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

Rural Radiotelephone Service

60. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). As noted, the SBA has determined a small business size standard applicable to wireless entities, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

61. As discussed above, the FNPRM seeks comment on whether it should define "reasonably comparable" rural and urban rates in terms of rates for bundled local and long distance services, and on whether the Commission should require carriers to certify that they offer bundled local and long distance services at reasonably comparable rural and urban rates. Under the Commission's current rules, States are required to review annually their residential local rates in rural areas served by non-rural carriers and certify that those rural rates are reasonably comparable to urban rates nationwide, or explain why they are not. If the Commission were to define reasonably comparable rates in terms of bundled local and long distance services, the States would not have jurisdiction over some (or all) of the components of those bundles. Accordingly, the FNPRM seeks comment on whether the Commission's rate review and certification rules also should apply to non-rural carriers, and whether such data would assist the Commission in monitoring these rates over time so that the Commission can adjust its definition of reasonably comparable rates over time. We do not have an estimate of potential compliance burdens, but anticipate that commenters will provide the Commission with reliable information on any costs and burdens on small entities.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

62. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

63. As discussed above, the FNPRM seeks comment on whether the Commission should amend its rate review and certification rules to require non-rural carriers to certify that they offer bundled local and long distance services at reasonably comparable rural and urban rates, which, if adopted, may impose a reporting, record keeping, or other compliance burden on some small entities. We anticipate that the record will reflect whether the overall benefits of such a requirement would outweigh

the burdens on small entities, and if so, suggest alternative ways in which the Commission could lessen the overall burdens on small entities. We encourage small entity comment.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

64. None.

Ordering Clauses

65. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 214, 254, and 403, and section 1.411 of the Commission's rules, 47 CFR 1.411, this further notice of proposed rulemaking *is adopted.*

66. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Marlene H. Dortch,

Secretary,

Federal Communications Commission.

[FR Doc. E9–30692 Filed 12–28–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1520 and 1554

[Docket No. TSA–2004–17131]

RIN 1652–AA38

Aircraft Repair Station Security

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Transportation Security Administration (TSA) is extending the comment period on the notice of proposed rulemaking (NPRM) regarding the Aircraft Repair Station Security Program published on November 18, 2009. TSA has decided to grant, in part, two requests for an extension of the comment period and will extend the comment period for thirty (30) days. The comment period will now end on February 19, 2010, instead of January 19, 2010.

DATES: The comment period for the proposed rule at 74 FR 59874, November 18, 2009, is extended until February 19, 2010.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; fax (202) 493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Celio Young, Office of Security Operations, TSA–29, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6029; telephone (571) 227–3580; facsimile (571) 227–1905; e-mail *celio.young@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this action by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the document, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or by fax as provided under **ADDRESSES,** but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments to our docket address, as well as items sent to the address or e-mail under **FOR FURTHER INFORMATION CONTACT,** in the public docket, except for comments containing confidential information and sensitive security information (SSI) [1]. Should you wish your personally identifiable information be redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the action. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenter's have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland

[1] "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) and modified on January 17, 2008 (73 FR 3316).

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov*. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue, SE., Washington, DC 20590.

Availability of the Notice of Proposed Rulemaking and Comments Received

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for "Research Center" at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Comment Period Extension

On November 18, 2009 (74 FR 59874), TSA published an NPRM on the Aircraft Repair Station Security Program. The NPRM has a 60-day comment period that would have ended on January 19, 2010. In two separate requests, one dated November 20, 2009, from the Professional Aviation Maintenance Association (PAMA) and the other dated November 23, 2009, from the International Air Transport Association (IATA), both organizations requested that the deadline for filing comments on the Aircraft Repair Station Security NPRM be extended for an additional 60 days from January 19, 2010, to March 19, 2010. See Docket Item Nos. TSA–2004–17131–0034 (PAMA); TSA–2004–17131–0043 and TSA–2004–17131–0066 (IATA). PAMA and IATA believe that the original 60-day comment period is insufficient time to provide TSA with substantive comments. PAMA requests additional time for its membership to read and respond to the NPRM due to the holiday season being the airlines busiest time of the year. IATA believes that due to the complexity and scope of the rule, there is insufficient time for careful consideration by stakeholders. IATA also believes that further time is required for translation and review of the NPRM by foreign repair station operators abroad.

TSA has decided to grant, in part, PAMA and IATA's requests for an extension and will extend the comment period for thirty (30) days. TSA believes that public awareness of the proposed Aircraft Repair Station Security rulemaking, which began in February 2004 with a public meeting and comment period, has allowed sufficient time for industry consideration. The comment period will now be a total of 90 days and will end on February 19, 2010. This extension will allow the aviation industry and other interested entities and individuals additional time to complete their comments on the NPRM and will enable TSA to continue its efforts to implement final regulations as mandated by 49 U.S.C. 44924.

Issued in Arlington, Virginia, on December 22, 2009.

Gale D. Rossides,

Acting Administrator.

[FR Doc. E9–30721 Filed 12–28–09; 8:45 am]

BILLING CODE 9110–05–P

Notices

Federal Register
Vol. 74, No. 248
Tuesday, December 29, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Plan Revision for Apache-Sitgreaves National Forests, Apache, Coconino, Greenlee, and Navajo Counties, Arizona

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the forest plan.

SUMMARY: As directed by the National Forest Management Act, the USDA Forest Service is preparing the Apache-Sitgreaves National Forests' revised land management plan (forest plan) and will also prepare an Environmental Impact Statement (EIS) for this revised forest plan. This notice briefly describes the nature of the decision to be made, the need for change and proposed action, and information concerning public participation. It also provides estimated dates for filing the EIS and the names and addresses of the responsible agency official and the individuals who can provide additional information. Finally, this notice briefly describes the applicable planning rule and how plan revision work completed under the 2008 planning rule will be used or modified for completing this plan revision.

The revised forest plan will supersede the current forest plan that was approved by the Regional Forester in August 1987. The current forest plan has been amended 14 times since its approval, including 6 significant amendments that clarified riparian, fire, timber, and recreation issues, adjusted the monitoring program, and added direction for the Mexican spotted owl, the northern goshawk, and old growth. This current forest plan will remain in effect until the revised forest plan takes effect.

DATES: Comments concerning the need for change provided in this notice will be most useful in the development of the draft revised forest plan and EIS if received by February 1, 2010. The agency expects to release a draft revised forest plan and draft EIS for formal comment by fall, 2010 and a final revised forest plan and final EIS by summer, 2011. Public meetings to gather input on potential alternatives to the proposed action are scheduled for spring, 2010. The dates, times, and locations of these meetings will be posted on the forests' Web site: *http://www.fs.fed.us/r3/asnf/plan-revision/.*

ADDRESSES: Send written comments to: Apache-Sitgreaves National Forests, Attention: Forest Plan Revision Team, P.O. Box 640, Springerville, Arizona 85938. Comments may also be sent via e-mail: *asnf.planning@fs.fed.us,* or via facsimile to 928–333–5966.

FOR FURTHER INFORMATION CONTACT: Michelle Davalos, Forest Planner, Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, Arizona 85938, (928) 333–6334. Information regarding this revision is also available at the Apache-Sitgreaves National Forests' revision Web site: *http://www.fs.fed.us/r3/asnf/plan-revision/.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 AM and 8 PM, Eastern Time Monday through Friday.

SUPPLEMENTARY INFORMATION:

Name and Address of the Responsible Official

Corbin Newman, Regional Forester, Southwestern Region, 333 Broadway SE., Albuquerque, NM 87102..

Nature of the Decision To Be Made

The Apache-Sitgreaves National Forests are preparing an EIS to revise the current forest plan. The EIS process is meant to inform the Regional Forester so that he can decide which alternative best meets the need to achieve quality land management under the sustainable multiple-use management concept to meet the diverse needs of people while protecting the forests' resources, as required by the National Forest Management Act and the Multiple Use Sustained Yield Act.

The revised forest plan will describe the strategic intent of managing the Apache-Sitgreaves National Forests into the next 10 to 15 years and will address the need for change described below. The revised forest plan will provide management direction in the form of goals (desired conditions), objectives, suitability determinations, standards, guidelines, and a monitoring plan. It may also make new special area recommendations for wilderness, research natural areas, and other special areas.

As important as the decisions to be made is the identification of the types of decisions that will not be made within the revised forest plan. The authorization of project-level activities on the forests is not a decision made in the forest plan but occurs through subsequent project specific decision-making. The designation of routes, trails, and areas for motorized vehicle travel are not considered during plan revision, but are addressed in the concurrent, but separate, EIS for public motorized travel planning on the Apache-Sitgreaves National Forests. Some issues (*e.g.,* hunting regulations), although important, are beyond the authority or control of the Apache-Sitgreaves National Forests and will not be considered. In addition, some issues, such as wild and scenic river suitability determinations, may not be undertaken at this time, but addressed later as a future forest plan amendment.

Need for Change and Proposed Action

According to the National Forest Management Act, forest plans are to be revised on a 10 to 15 year cycle. The purpose and need for revising the current forest plan are (1) the forest plan is over 20 years old, and (2) since the forest plan was approved in 1987, there have been changes in economic, social, and ecological conditions, new policies and priorities, and new information based on monitoring and scientific research. Extensive public and employee collaboration, along with science-based evaluations, identified the need for change in the current forest plan. This need for change has been organized into three revision topics that focus on the sustainability of ecological, social, and economic systems: (1) Maintenance and Improvement of Ecosystem Health, (2) Managed Recreation, and (3) Community-Forest Interaction. The need for change is described fully in the Comprehensive Evaluation Report and the Analysis of the Management Situation supplement document, both of which are available on the forests' Web site: *http://*

www.fs.fed.us/r3/asnf/plan-revision/documents.shtml. The proposed action is to revise the current forest plan to address the three revision topics.

Revision Topic 1—Maintenance and Improvement of Ecosystem Health

Conditions have changed since the current forest plan was issued in 1987 including the recognition that vegetation conditions (structure, composition, and function) are divergent from historic conditions; forest conditions indicate a substantial departure from the natural fire regime; and there are plant and animal species which need further consideration in the planning process. There are also emerging issues not addressed by the current forest plan (*e.g.*, non-native invasive plants and animals, climate change).

Proposed Action

- Better describe desired conditions for the vegetative communities of the forests. The vegetative communities include ponderosa pine, wet mixed conifer, dry mixed conifer, spruce-fir, and aspen forests, piñon-juniper and Madrean pine-oak woodlands, Great Basin, semi-desert, and montane/subalpine grasslands, interior chaparral, mixed broadleaf deciduous, montane willow, and cottonwood-willow riparian forests, and wetland/cienega riparian areas. The revised forest plan will describe the desired composition, structure, and cover of these vegetation types that will result in resilient, functioning ecosystems.
- Identify the desired fire regime that will help to restore fire to a more natural role as one of the forests' primary disturbance agents.
- Provide direction to guide future vegetation management activities, including burning and mechanical treatments, to move towards or maintain desired conditions.
- Incorporate management direction to guide future projects to provide habitat to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.
- Include appropriate standards and guidelines to provide direction to maintain species diversity and viability across the planning area.
- Reevaluate and update the Management Indicator Species (MIS). MIS are species whose population changes are believed to indicate the effects of management activities. MIS are selected to allow evaluation of the differences between alternatives in the EIS.
- Add plan components to provide future project direction to control, treat, and eradicate non-native plant and animal invasive species.
- Address the emerging issue of climate change by incorporating adaptive management strategies and describing ecological conditions that are resilient to change.

Revision Topic 2—Managed Recreation

There are several concerns related to unmanaged recreation that are not adequately addressed in the current forest plan. These include increasing recreational use of the forests and changing demographics of forest users. There are also special areas that were not mentioned in the current forest plan (*e.g.*, scenic byways), as well as rivers that are eligible for the National Wild and Scenic Rivers System. There may be National Forest System lands that could be recommended to Congress for designation into the National Wilderness Preservation System.

Proposed Action

- Update the spectrum of recreation opportunities to reflect current and projected recreation needs, natural resource impacts, and public input. This includes identification of areas that are developed for high use and areas that resemble more natural landscapes.
- Identify the suitability of areas on the forests for motorized vehicle use and other recreational activities, in conformance with travel planning concurrently being addressed on the forests.
- Incorporate direction for special areas that were not included in the current forest plan, including recommended research natural areas, the Heber Wild Horse Territory, scenic byways, and national recreation trails.
- Recommend additional special areas (*i.e.*, research natural areas) where needed. The intent is to recommend these areas in the revised forest plan; subsequent analyses would determine whether they should become official designated areas.
- Recognize the management requirements for rivers that are eligible for the National Wild and Scenic Rivers System. The Eligibility Report for the National Wild and Scenic River System was completed in May 2009 and found approximately 358 miles of 23 rivers that are eligible for inclusion into the National Wild and Scenic River System. This report is available on the forests' Web site: *http://www.fs.fed.us/r3/asnf/plan-revision/documents.shtml*.
- Evaluate lands for wilderness potential and, if determined to be appropriate by the responsible official, recommend designation by Congress and provide interim management guidance. Note: the draft potential wilderness evaluation was published in June 2009 and is available on the forests' Web site: *http://www.fs.fed.us/r3/asnf/plan-revision/documents.shtml*.

Revision Topic 3—Community-Forest Interaction

There are several social concerns that cause a need to change the current forest plan. Communities are at risk from uncharacteristic wildfire. There are increasing demands for goods, services, and forest access from growing populations and urban developments that border the forests. Many communities are surrounded by the forests and can be affected by adjustment to the forests' land ownership. Commodity use and production have shown declines from the past. However, these forest uses contribute to sustaining the lifestyles and traditions of local communities. Energy resource demands also continue to grow.

Proposed Action

- Provide direction to address communities at risk from uncharacteristic wildfire. This includes describing the appropriate vegetation desired conditions and fire regime, and treatment of the wildland-urban interface.
- Provide guidelines and suitability determinations for addressing urban interface demands (access, trailheads, special use permits).
- Update guidelines regarding land ownership adjustments that better reflects community expansion needs and preservation of open space.
- Continue to provide a sustainable supply of forest and rangeland resources that is consistent with achieving desired conditions and that supports local communities. Determine the suitability of lands for timber production and the allowable sale quantity of timber.
- Identify major existing energy (utility) corridors and provide management direction for these areas. Update the criteria for establishing new energy corridors.

Public Involvement

Extensive public involvement and collaboration has already occurred. Informal discussions with the public regarding needed changes to the current forest plan began with a series of public meetings during the summer of 2006. This input, along with science-based evaluations, was used to determine the need for change identified above. Additional meetings, correspondence,

news releases, comment periods, and other tools have been utilized to gather feedback from the public, forest employees, tribal governments, federal and state agencies, and local governments.

More recent public involvement focused on the development, review, and comment of the Working Draft Land Management Plan which was released in June 2009 (*http://www.fs.fed.us/r3/asnf/plan-revision/draftLMP/ASNF-Working-Draft-Plan-2009-06-15.pdf*). This document was developed based upon public and employee collaboration. A modified version of this draft will be analyzed as one alternative in the EIS process.

The forests will continue regular and meaningful consultation and collaboration with tribal nations on a government-to-government basis. The agency will work with tribal governments to address issues concerning Indian tribal self-government and sovereignty, natural and cultural resources held in trust, Indian tribal treaty and Executive order rights, and any issues that significantly or uniquely affect their communities.

The forests desire to continue collaborative efforts with members of the public who are interested in forest management, as well as federal and state agencies, local governments, and private organizations.

Public meetings to gather input on potential alternatives to the proposed action are scheduled for spring, 2010. The dates, times, and locations of these meetings will be posted on the forests' Web site: *http://www.fs.fed.us/r3/asnf/plan-revision/*. The information gathered at these meetings, as well as other feedback, will be used to prepare the draft EIS.

At this time, the Apache-Sitgreaves National Forests are seeking input on the need for change and proposed action: did we miss any substantive issues or concerns? It is important that reviewers provide their comments at such times and in such a way that they are useful to the agency's preparation of the revised forest plan and the EIS. Therefore, comments on the proposed action and need for change will be most valuable if received by February 1, 2010 and should clearly articulate the reviewer's concerns. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative or judicial review. At this time, we anticipate using the 2000 planning rule pre-decisional objection process (36 CFR 219.32) for administrative review.

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

Applicable Planning Rule

Preparation of the revised forest plan was underway when the 2008 National Forest System land and resource management planning rule (planning rule) was enjoined on June 30, 2009, by the United States District Court for the Northern District of California (*Citizens for Better Forestry* v. *United States Department of Agriculture,* No. C 08–1927 CW (N.D. Cal. June 30, 2009). The Department of Agriculture has determined that the 2000 planning rule is once again in effect. The 2000 planning rule's transition provisions (36 CFR 219.35), amended in 2002 and 2003 and clarified by interpretative rules issued in 2001 and 2004, allow use of the provisions of the planning rule in effect prior to the effective date of the 2000 Rule (November 9, 2000), commonly called the 1982 planning rule, to amend or revise forest plans. The Apache-Sitgreaves National Forests has elected to use the provisions of the 1982 planning rule, including the requirement to prepare an EIS, to complete its plan revision.

Prior to the enjoinment of the 2008 planning rule, the Apache-Sitgreaves National Forests had been working to revise the current forest plan. Informal revision efforts began in the summer of 2006, with collaborative discussions regarding the need to change the forest plan and forest.

A formal Notice of Initiation to revise the forest plan was published on December 16, 2008, in the **Federal Register**, Vol. 65, No. 212, p. 65290. That notice also requested review on the Comprehensive Evaluation Report, the Ecological Sustainability Report, and the Economic and Social Assessment (documents that provide evaluations of social, economic, and ecological conditions and trends in and around the forests).

The forests had begun collaborative development of forest plan components during summer, 2008. The latest set of plan components, the Working Draft Land Management Plan, was made available for review and comment in June 2009. A draft potential wilderness evaluation of the Apache-Sitgreaves National Forests was also made available for review and comment in June 2009. The Comprehensive Evaluation Report was further supplemented in December 2009 to conform to the Analysis of the Management Situation need for change requirements of the 1982 rule provisions. These documents are available on the forests' Web site: *http://www.fs.fed.us/r3/asnf/plan-revision/documents.shtml.*

Although the 2008 planning rule is no longer in effect, information and data gathered prior to the court's injunction is still useful for completing the plan revision using the provisions of the 1982 planning rule. For example, the following material developed during the plan revision process to date is appropriate for continued use in the revision process:

- The Comprehensive Evaluation Report that was completed in December 2008 forms the basis for need to change the current forest plan and the proposed action for the plan revision.
- The Comprehensive Evaluation Report was supplemented in December 2009 with additional information to conform to the Analysis of Management Situation need for change provisions of the 1982 planning rule. The need for change previously identified in the Comprehensive Evaluation Report has been verified by this supplementary information; no new need for change was identified.
- The Ecological Sustainability Report that was completed in December 2008 will continue to be used as a reference in the planning process as appropriate to those items in conformance with the 2000 planning rule transition language and 1982 planning rule procedures. This is scientific information and is not affected by the change of planning rule. This information will be updated with any new available information.
- The Economic and Social Assessment that was completed in June 2008 and updated in January 2009 is not affected by the change in planning rule and will continue to be used as a reference in the planning process. This information will be updated with any new available information.
- The draft evaluation of potential wilderness areas that was made available for public review and comment in June 2009 is consistent with appropriate provisions of the 1982 planning rule and will be brought forward into this plan revision process.
- There are additional background reports, assessments, datasets, and public comment that will be used, some of which can be found on the forests' Web site: *http://www.fs.fed.us/r3/asnf/plan-revision/documents.shtml.*

As necessary or appropriate, this material will be further adjusted as part of the planning process using the provisions of the 1982 planning rule.

(Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35)

Dated: December 18, 2009.

Chris Knopp,

Forest Supervisor.

[FR Doc. E9–30665 Filed 12–28–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0096]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The meeting will be held on January 27, 2010, from 1:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Georgia World Congress Center, 285 Andrew Young International Boulevard NW, Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1498 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922-3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, the Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meeting are:

1. NPIP diamond anniversary conference;
2. Salmonella isolation and identification laboratory protocol;
3. Notifiable avian influenza;
4. Salmonella and baby poultry contact;
5. Experimental use of a live Mycoplasma synoviae vaccine in broiler breeders; and
6. NPIP database.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT.** Written statements may also be filed at the meeting. Please refer to Docket No. APHIS-2009-0096 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 16th day of December 2009.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–30666 Filed 12–28–09; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products from India: Notice of Court Decision Not In Harmony with Final Determination of Sales at Less than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 10, 2009, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department's") redetermination on remand of the final results of the antidumping duty investigation on certain lined paper products from India. *See Association of American School Paper Suppliers v. United States*, Court No. 06–00395, Slip Op. 09–136 (CIT December 10, 2009) ("*AASPS*, Slip. Op. 09–136").[1] The Department is now issuing this notice of court decision not in harmony with the Department's determination.

EFFECTIVE DATE: December 20, 2009.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett or Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2006, the Department published the final determination of sales at less than fair value ("LTFV") in the antidumping duty investigation of certain lined paper products ("CLPP") from India for the period of investigation, July 1, 2004, through June 30, 2005 ("POI"). *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) ("*CLPP Final Determination*"). The Association of American School Paper Suppliers[2] ("AASPS") and Kejriwal Paper Limited ("Kejriwal") filed lawsuits challenging the *CLPP Final Determination*.

In its November 17, 2008 opinion,[3] the CIT partially remanded the *CLPP Final Determination*. Specifically, the CIT ordered the Department to further explain 1) how the general and administrative ("G&A") expense ratio reasonably identifies and fairly allocates G&A expenses in light of the evidence on the record; and 2) how its G&A expense ratio is consistent with its treatment of Kejriwal's financial expense ratio.

In accordance with the CIT's remand order in *AASPS*, Slip Op. 08–122, the Department filed its redetermination on remand of the *CLPP Final Determination* ("Remand Final Determination") on March 16, 2009. In its redetermination, the Department provided further explanation on its calculation methodology, and also determined that certain additional expenses should be attributed directly to Kejriwal's newsprint operations.

Decision Not in Harmony

On December 10, 2009, the CIT sustained the Department's redetermination on remand of the final results of the antidumping duty investigation on CLPP from India. By sustaining the remand results, the CIT affirmed all of the issues in which the Department was challenged, including the Department's explanation of how the G&A expense ratio it calculated 1) reasonably identifies and fairly allocates G&A expenses in light of the evidence on the record, and 2) is consistent with the Department's treatment of Kejriwal's financial expense ratio.

Pursuant to the Department's redetermination, Kejriwal's G&A

[1] The CIT's action referenced in *AASPS*. Slip. Op. 09-136 includes court number 06-00395 and 06-00399. *See Association of American School Paper Suppliers v. United States*, Consol. Ct. No. 06-00395 (Feb. 26, 2007) (order granting consent motion to consolidate cases).

[2] The Association consists of MeadWestvaco Corporation, Norcom, Inc., and Top Flight, Inc.

[3] *See Association of American School Paper Suppliers v. United States*, Consol. Court No. 06-00395, Slip Op. 08-122 (CIT November 17, 2008) ("*AASPS*, Slip Op. 08-122")

expense ratio changed.[4] As a result of the change to Kejriwal's G&A expense ratio, Kejriwal's calculated margin for the the POI has changed from 3.91 percent in the *CLPP Final Determination* to 3.06 percent in the redetermination issued on March 16, 2009. Accordingly, absent an appeal or, if appealed, upon a final and conclusive court decision in this action, we will amend our final determination of this investigation to reflect the recalculation of the margin for Kejriwal.

Suspension of Liquidation

The United States Court of Appeals for Federal Circuit ("CAFC") held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's determination. *See The Timken Company v. United States*, 893 F.2d 337, 341 (CAFC 1990). Publication of this notice fulfills that obligation. The CAFC also held that, in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. *Id.* Therefore, the Department must suspend liquidation pending the expiration of the period to appeal the CIT's December 10, 2009, decision or, if appealed, pending a final and conclusive court decision. Because entries of certain lined paper products from India produced and exported to the United States by Kejriwal Paper Limited are currently being suspended pursuant to the court's injunction order in effect, the Department does not need to order U.S. Customs and Border Protection ("CBP") to suspend liquidation of affected entries. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

This notice is issued and published in accordance with section 516A(c)(1) of the Tariff Act of 1930, as amended.

Dated: December 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–30847 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–DS–S

[4] Due to the proprietary nature of Kejriwal's G&A expenses, *see* the Department's proprietary calculation memorandum, titled "Remand for the Antidumping Investigation of Certain Lined Paper Products from India," dated March 13, 2009, for further discussion.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is currently conducting an administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC). The period of review (POR) is December 1, 2007 through November 30, 2008. We have preliminarily determined that Trust Chem Co., Ltd. (Trust Chem) made sales of subject merchandise to the United States below normal value (NV). The preliminary results are listed below in the section entitled "Preliminary Results of the Review." If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties against the entered value of each entry of the subject merchandise made during the POR, where applicable.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* December 29, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2004, the Department published in the **Federal Register** an antidumping duty order on CVP 23 from the PRC. *See Antidumping Duty Order: Carbazole Violet Pigment 23 From the People's Republic of China*, 69 FR 77987 (December 29, 2004). On December 1, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CVP 23 from the PRC for the POR December 1, 2007 through November 30, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 72764 (December 1, 2008). On December 30, 2008, in accordance with 19 CFR 351.213(b), Trust Chem requested that the Department conduct an administrative review of its sales of subject merchandise. In response to this request, the Department initiated an administrative review of Trust Chem on February 2, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009).

On February 5, 2009, the Department issued its standard non-market economy (NME) antidumping duty questionnaire, including the separate rates section of that questionnaire, to Trust Chem. On March 17, 2009, Trust Chem submitted its questionnaire response for sections A, C, and D, as well as its sales and cost reconciliations. On July 2, 2009, the Department issued a supplemental questionnaire to Trust Chem, to which Trust Chem responded on July 31, 2009. The Department issued additional supplemental questionnaires to Trust Chem on September 9, 2009, October 15, 2009, and November 18, 2009 [1]; Trust Chem filed its responses to these supplemental questionnaires on September 25, 2009, October 30, 2009, and December 1, 2009, respectively.

On August 7, 2009, the Department extended the deadline for the preliminary results to December 22, 2009. *See Carbazole Violet Pigment 23 from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 39622 (August 7, 2009).

Period of Review

The POR covers December 1, 2007 through November 30, 2008.

Scope of the Order

The merchandise covered by this order is carbazole violet pigment 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2-b:3',2'-m] triphenodioxazine, 8,18-dichloro-5, 15-diethy-5,15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[2] The subject merchandise includes the crude pigment in any form (*e.g.*, dry

[1] The Department issued an addendum to its November 18, 2009 supplemental questionnaire on November 20, 2009.

[2] The bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information, but is part of the chemical nomenclature.

powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of this order. The merchandise subject to this order is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009). In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15932 (April 8, 2009) (*Glycine Preliminary Results*), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009) (*Glycine Final Results*). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered by the Department to be appropriate. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

On July 29, 2009, the Department issued a memorandum listing India, the Philippines, Indonesia, Colombia, Thailand, and Peru as economically-comparable surrogate countries for this review. *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Richard Weible, Director, Office 7, AD/CVD Operations, Import Administration, dated July 29, 2009 (Surrogate Country Memorandum). On August 4, 2009, we issued a letter to interested parties inviting them to comment on the Department's surrogate country selection and to submit publicly-available information to value the FOPs, and attached the Surrogate Country Memorandum to the letter. On September 8, 2009, Nation Ford Chemical Company and Sun Chemical Corporation (collectively, petitioners) and Trust Chem submitted information for the Department to consider in valuing the FOPs. All proposed surrogate value data submitted by both parties were from Indian sources. In addition, petitioners specifically stated that India was the best choice for the surrogate country based on the reasons outlined in the original investigation of CVP 23 from the PRC.

In this case, we find that India is the most appropriate surrogate country for purposes of valuing the FOPs for the merchandise under consideration. India meets the requirements for surrogate country selection provided under section 773(c)(4) of the Act. First, the Department has already determined that India is at a level of economic development comparable to that of the PRC in terms of per capita gross national income. *See* the Surrogate Country Memorandum. Second, in light of the companion antidumping duty order on CVP 23 from India and concurrent administrative review, we know that India is a significant producer of the subject merchandise. Furthermore, the Department selected India as the surrogate country in past segments of this case, and both Trust Chem and petitioners submitted surrogate values based solely on Indian data.

Given that (1) India meets the criteria listed in sections 773(c)(4)(A) and (B) of the Act, (2) we have used India as the surrogate country in past reviews of CVP 23 from China, and (3) interested parties placed only Indian surrogate value information on the record of this review, we have selected India as the surrogate country for purposes of these preliminary results. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office 7, from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office 7, "2007–2008 Administrative Review of Carbazole Violet Pigment 23 from the People's Republic of China: Surrogate Values for the Preliminary Results," dated December 22, 2009 (Surrogate Values Memorandum).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an antidumping administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of the preliminary results. The Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information previously placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Separate Rate

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

In this review, Trust Chem submitted a complete response to the separate rates section of the Department's NME questionnaire. *See* Trust Chem's March 17, 2009 section A questionnaire response (AQR). The evidence Trust Chem submitted in the instant review includes PRC government laws and regulations on corporate ownership and control (*i.e.*, the Company Law of the People's Republic of China and the Foreign Trade Law of the People's Republic of China), its business license, and narrative information regarding the company's operations and selection of management. *See* Trust Chem's AQR at 2–6 and Appendices A–1 and A–2. The information provided by Trust Chem supports a finding of a *de jure* absence of governmental control over its export activities for the following reasons. First, other than limiting Trust Chem to activities referenced in its business license, we found no restrictive stipulations associated with Trust Chem's business license. Second, there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States. Third, the PRC laws placed on the record of this review demonstrate the government of the PRC has passed legislation decentralizing control of companies. No party submitted information to the contrary. Accordingly, we preliminarily find an absence of *de jure* control.

B. Absence of De Facto Control

The absence of *de facto* governmental control over exports generally is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In the instant review, Trust Chem submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates: (1) Trust Chem independently set prices for sales to the United States and these prices are not subject to review by any government organization; (2) there is no restriction on the company's use of export revenues; (3) Trust Chem's shareholders decide how the company's profits are used; (4) the company has a general manager with the authority to bind the company contractually to sell subject merchandise and set the price; (5) the general manager is selected by Trust Chem's shareholders, and the general manager appoints the department managers; and (6) Trust Chem did not coordinate with other exporters or producers to set prices or to determine the markets to which the companies will sell subject merchandise. *See* Trust Chem's AQR at 6–8 and Appendix A–3.

Therefore, in the absence of either *de jure* or *de facto* government control over Trust Chem's export activities, the Department preliminarily finds that Trust Chem has established *prima facie* evidence that it qualifies for a separate rate under the criteria established in *Silicon Carbide* and *Sparklers*.

Fair Value Comparisons

To determine whether Trust Chem's sales of the subject merchandise to the United States were made at a price below NV, we compared its U.S. prices to NV, as described in the "United States Price" and "Normal Value" sections of this notice below.

United States Price

In accordance with section 772(a) of the Act, we based U.S. prices on the export price (EP) of Trust Chem's sales to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price was not otherwise warranted. We calculated EP based on free-on-board (FOB) Shanghai prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions for movement expenses, which consisted of foreign inland freight from the plant to the port of exportation. Foreign inland freight was provided by an NME vendor and, thus, we based the deduction for this movement expense on values from a surrogate country. To value truck freight expenses, we used a per-unit average rate calculated from data obtained from the Web site *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since the truck rate value is based on an annual per-unit rate which includes four months of transactions falling in the POR, we are treating the derived average rate as contemporaneous. *See* Surrogate Values Memorandum at Exhibit 12.

Normal Value

A. Methodology

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

B. Factor Valuations

In accordance with section 773(c)(1) of the Act, we calculated NV based on FOPs reported by Trust Chem for the POR. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly-available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the production factory or the distance from the nearest seaport to the production factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Indian import data, we calculated freight based on the reported distance from the supplier to the factory.

With regard to surrogate values from import statistics, we disregard prices that we have reason to believe or suspect may be subsidized, such as the prices of inputs from Indonesia, South Korea and Thailand. We have found in other proceedings that these countries

maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7 (*CTVs from the PRC*). The legislative history provides guidance that in making its determination as to whether input values may be subsidized, the Department is not required to conduct a formal investigation. *See* H.R. Rep. 100–576 at 590–91 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623. Instead, the Department is to base its decision on information that is available to it at the time it makes its determination. Therefore, based on the information currently available, we have not used prices from these countries in calculating the surrogate values based on Indian import data. We have also disregarded Indian import data from countries that the Department has previously determined to be NME countries, as well as imports from unspecified countries. *See CTVs from the PRC.*

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index (WPI) for the subject country. *See, e.g., Glycine Preliminary Results*, 74 FR 15936, unchanged in *Glycine Final Results*. Therefore, where we could not obtain publicly-available information contemporaneous with the POR with which to calculate surrogate values, we adjusted the surrogate values using the WPI for India. Surrogate values denominated in foreign currencies were converted into U.S. dollars (USD) using the applicable average exchange rate based on exchange-rate data from the Department's Web site. *See* Surrogate Values Memorandum.

Except where discussed below, the Department valued the raw material and packing inputs with which Trust Chem produced the merchandise under review during the POR using weighted-average unit import values for the period December 1, 2007 through November 30, 2008 derived from the *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India and compiled by the World Trade Atlas (WTA), available at *http://www.gtis.com/wta.htm*. For a detailed description of all the surrogate values used for Trust Chem, *see* Surrogate Values Memorandum.

Raw Materials

Trust Chem reported that it sourced one raw material input, carbazole, from a supplier in a ME country and paid for this input in a ME currency. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a ME supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by the respondent for those inputs, except when prices may have been distorted by findings of dumping and/or subsidies by the PRC. Trust Chem's reported information demonstrates that the company purchased a significant quantity (*i.e.*, 33 percent or more) of carbazole from ME suppliers. Thus, in accordance with the policy outlined in *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–19 (October 19, 2006), we have used the actual ME purchases of this input to value carbazole for these preliminary results. We added an amount for freight based on Indian surrogate values to account for delivery from the Chinese port to the production factory. For information regarding the ME price used to value carbazole, *see* Surrogate Values Memorandum.

To value hydrochloric acid for these preliminary results, the Department used prices from the Indian periodical *Chemical Weekly* based on the reasoning laid out in *First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) (*Activated Carbon*) and accompanying Issues and Decision Memorandum at Comment 3d. In the instant case, as in *Activated Carbon*, the respondent reported the specific concentration levels (*i.e.*, 15 and 30 percent) of the hydrochloric acid used to produce CVP 23. Furthermore, the WTA data do not include information about the purity level of hydrochloric acid, while we know the prices reported in *Chemical Weekly* for hydrochloric acid in liquid form reflect a 30 to 33 percent purity level. *See Activated Carbon* and accompanying Issues and Decision Memorandum at Comment 3d; *see also Certain Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 57653, 57656 (November 9, 2009) (*Helical Spring Lock Washers Preliminary Results*) (stating the Department was recently "informed by representatives of Chemical Weekly that the reported price for hydrochloric acid in liquid form reflects a 30–33 percent purity level.") For hydrochloric acid 15 percent, we made an adjustment to account for the difference between Trust Chem's reported concentration level and the known concentration level reflected in the *Chemical Weekly* data. It was not necessary to make an adjustment for hydrochloric acid 30 percent because the reported purity level is equivalent to that represented in the *Chemical Weekly* data.

Similarly, the Department used *Chemical Weekly* prices to value calcium chloride for these preliminary results. We have determined *Chemical Weekly* represents the best data source to value calcium chloride because *Chemical Weekly* specifies the concentration level of this chemical input, Trust Chem reported the purity level of this input, and the WTA data do not include information about its purity level. We made an adjustment to account for the difference between the concentration level the respondent reported for calcium chloride and the concentration level reflected in the *Chemical Weekly* data.

Finally, for these preliminary results, we used *Chemical Weekly* to value polyethylene glycol and dimethylformamide because we have determined the HTS numbers for these inputs are basket categories, and product-specific prices were available from *Chemical Weekly*. Although Trust Chem reported the purity levels of these two inputs, we have not made an adjustment to account for differences in concentration levels because the Department has recently determined that where *Chemical Weekly* does not specify the purity level for a particular chemical, the purity level is unknown. *See Helical Spring Lock Washers Preliminary Results*, 74 FR at 57656 (stating that based on recent statements by representatives of *Chemical Weekly*, "unless the price quotes from Chemical Weekly indicate the purity level, the Department will treat the purity level of chemicals sold in either liquid or solid form as unknown.").

For each input valued using *Chemical Weekly* data, we made an adjustment to remove taxes, in accordance with the Department's practice. *See Activated Carbon* and accompanying Issues and Decision Memorandum at Comment 3d. For more information regarding the surrogate values used for hydrochloric acid, calcium chloride, polyethylene

glycol, and dimethylformamide, *see* Surrogate Values Memorandum at Exhibits 3 through 6.

Energy

Trust Chem reported the consumption of water, electricity, steam coal, and steam as energy inputs consumed in the production of CVP 23. To value electricity, we used price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India (CEA) in its publication entitled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. As the CEA publication is contemporaneous with the POR, we are not adjusting for inflation. *See* Surrogate Values Memorandum at Exhibit 8.

To value water, the Department used the revised Maharashtra Industrial Development Corporation water rates, which are available at *http://www.midcindia.com/MIDC* Web site. The Department found this source to be the best available information since it includes a wide range of industrial water rates. Since the water rates were for a period that occurred after the POR, the Department deflated the surrogate value for water to be contemporaneous with the POR. *See* Surrogate Values Memorandum at Exhibit 9.

To value steam coal, we used data from Coal India Limited (CIL), available at *http://www.coalindia.nic.in*. The Department has recently determined that CIL data are superior values for steam coal as compared to Indian import statistics (*i.e.*, WTA data). *See Glycine Final Results* and accompanying Issues and Decision Memorandum at Comment 5. Because the average coal price was for December 2007, which is the first month of the POR, we treated the value for steam coal as contemporaneous with the POR. *See* Surrogate Values Memorandum at Exhibit 10.

We calculated the surrogate value for steam based upon the April 2007–March 2008 financial statement of Hindalco Industries Limited. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 10545 (March 11, 2009), and accompanying Issues and Decision Memorandum at Comment 4. Since the value for steam is based on an annual period which overlaps with four months of the POR, we are treating the steam rate as contemporaneous. *See* Surrogate Values Memorandum at Exhibit 11.

Financial Ratios

To value the surrogate financial ratios for factory overhead, selling, general and administrative expenses, and profit, the Department relied on publicly-available information contained in the financial statements for Pidilite Industries Limited (Pidilite), an Indian producer of CVP 23. Petitioners submitted Pidilite's annual reports for fiscal years 2007–2008 and 2008–2009 in Exhibit 1 of their September 8, 2009 surrogate value submission. Trust Chem proposed the Department use financial ratios based on Pidilite's 2007–2008 annual report and provided this annual report in its September 8, 2009 surrogate value submission. The 2008–2009 annual report is for the period April 1, 2008 to March 31, 2009, which covers 8 of the 12 months of the POR. *See* Surrogate Values Memorandum at Exhibit 13. Pidilite's financial statements reference certain "export incentives." In addition, there is a countervailing duty cash deposit rate in effect for Pidilite. *See Carbazole Violet Pigment 23 from India: Notice of Countervailing Duty Order*, 69 FR 77995 (December 29, 2004). The Department prefers to base its financial ratio calculations on contemporaneous, publicly available, and subsidy-free financial statements of companies producing comparable merchandise from the surrogate country. For these preliminary results, however, we are using Pidilite's 2008–2009 financial statements as the basis for the financial ratios employed in our analysis because they are the only financial statements provided on the record. For the final results, we invite interested parties to submit additional financial statements to the record for consideration. We will then examine again whether it is appropriate to use Pidilite's financial statements to calculate the surrogate financial ratios.

Wage Rate

Section 773(c)(1) of the Act provides that where the subject merchandise is exported from an NME country, "the valuation of factors of production shall be based on the best available information regarding the values of such factors in a ME country or countries considered to be appropriate by the administering authority." While the Act does not define "best available information," it provides that the Department, "in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." *See* section 773(c)(4) of the Act. In accordance with the guidance provided, and discretion afforded pursuant to section 773(c) of the Act, the Department calculates the labor wage rate using a regression analysis. This is in contrast to the Department's valuation of other FOPs primarily because wage rates are less a function of economic comparability, and more a function of other social and political factors. 19 CFR 351.408(c)(3) provides that the Department will use regression-based wage rates reflective of the observed relationship between wages and national income in ME countries. In addition, 19 CFR 351.408(c)(3) provides that the calculated wage rate will be applied in NME proceedings each year, will be based on current data, and will be made available to the public. Therefore, consistent with our practice, we have used our regression-based methodology to calculate the surrogate value for labor in the preliminary results of this review. *See, e.g., Activated Carbon* and accompanying Issues and Decision Memorandum at Comment 3a. For these preliminary results, we used the PRC's regression-based wage rate published on Import Administration's Web site. *See* "Expected Wages of Selected Non-Market Economy Countries" (available at *http://ia.ita.doc.gov/wages/07wages/2009-2007-wages.html*). Consistent with our practice, we have not adjusted the wage rate for inflation. Since this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor. *See also* Surrogate Values Memorandum.

Movement Expenses

To value truck freight, we used a per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since the truck rate value represents an annual per-unit rate which includes four months of transactions falling in the POR, we are treating the derived average rate as contemporaneous. *See* Surrogate Values Memorandum at Exhibit 12.

Currency Conversion

We made currency conversions into USD, in accordance with section

773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margin exists for the period December 1, 2007 through November 30, 2008:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Trust Chem Co., Ltd.	29.57

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d).

Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. *See* 19 CFR 351.309(c)(2). Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we intend to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales, where appropriate. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Trust Chem, the cash deposit rate will be that established in the final results of this review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate the cash deposit rate will be the PRC-wide rate of 241.32 percent; and (4) for all non-PRC exporters of subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–30849 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 60–2009]

Proposed Foreign–Trade Zone – Western Maricopa County, Arizona

Application and Public Hearing

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Greater Maricopa FTZ, Inc., to establish a general–purpose foreign–trade zone at four sites in Western Maricopa County, within the Phoenix CBP port of entry. 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 December 18, 2009. The applicant is authorized to make the proposal under Arizona Statute 44–6501.

The proposed zone would be the third general–purpose zone in the Phoenix CBP port of entry. The existing zones are as follows: FTZ 75, Phoenix, Arizona (Grantee: City of Phoenix, Board Order 185, 3/25/82); and, FTZ 221, Mesa, Arizona (Grantee: City of Mesa, Board Order 883, 4/25/97).

The proposed zone would consist of 4 sites covering 918 acres in Western Maricopa County, Arizona: Proposed Site 1 (230 acres) – within the 416–acre Airport Gateway at Goodyear industrial complex, adjacent to the Phoenix

Goodyear Airport located at the intersection of Bullard Avenue and Van Buren Street, Goodyear; Proposed Site 2 (133 acres) – within the 286–acre Surprise Pointe Business Park, located at the southeast corner of Waddell Road and Litchfield Road, Surprise; Proposed Site 3 (235 acres) – within the 1,600–acre Palm Valley 303 Industrial Park, located south of Camelback Road at State Road 303, Goodyear; and, Proposed Site 4 (320 acres) – within the 1,314–acre 10 West Logistics Center, located between Van Buren Street and Interstate 10 at 339th Avenue in Maricopa County west of Buckeye. The sites are owned by EJM Development Co., Surprise Holdings, LLC, SunCor Development Company, and 339th & I–10, LLC, respectively.

The application indicates a need for zone services in the Western Maricopa County, Arizona area. One firm has indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Christopher Kemp 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.

As part of the investigation, the Commerce examiner will hold a public hearing on February 3, 2010, at 1:00p.m., at the Goodyear Justice Center, 185 N. 145th Avenue, Goodyear, Arizona.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 1, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period to March 15, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Christopher Kemp at Christopher.Kemp@trade.gov or (202) 482–0862.

Dated: December 18, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–30844 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Jointly Owned Invention Available for Licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and the University of Southern Florida. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 222, Room A242, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–2649, fax 301–975–3482, or e- mail: *nathalie.rioux@nist.gov*. Any request for information should include the NIST Docket number or Patent number and title for the invention as indicated below. The invention available for licensing is:

[NIST Docket Number: 09–035]

Title: Indexing Face Templates Using Linear Models.

Abstract: We present a theory for constructing linear subspace approximations to face-recognition algorithms and empirically demonstrate that a surprisingly diverse set of face-recognition approaches can be approximated well by using a linear model. A linear model, built using a training set of face images, is specified in terms of a linear subspace spanned by possible non-orthogonal vectors.

Dated: December 22, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–30682 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT48

New England 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 New England Fishery Management Council (Council) is scheduling a joint public meeting of its Red Crab Plan Development Team and Advisory Panel in January, 2010 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this joint group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 20, 2010 at 10 a.m.

ADDRESSES: This meeting will be held at the Starboard Galley, 55 Water Street, Newburyport, MA 01952; telephone: (978) 462–1326; fax: (978) 465–1205.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion include:

1. Receive an update on PDT re-evaluation of MSY proxy for red crab and review of progress on outstanding issues;

2. Identification of further analysis or refinement needed for MSY re-evaluation and preparation for peer review of MSY re-evaluation;

3. Further consideration of measures for inclusion in Amendment 3;

4. Response to issues raised in the 2010 specifications document, if necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 22, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–30715 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT49

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will convene a web based meeting of the Socioeconomic Panel.

DATES: The webinar meeting will convene at 10 a.m. eastern time on Thursday, January 21, 2010 and is expected to end at 12 p.m.

ADDRESSES: The webinar will be accessible via internet. Please go to the Gulf of Mexico Fishery Management Council's website at *www.gulfcouncil.org* for instructions.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council will convene its Socioeconomic Panel to discuss economic analyses included in a regulatory amendment considering adjustments to the red snapper total allowable catch.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the Socioeconomic Panel 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 of the Working Group will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This webinar is accessible to people with disabilities. For assistance with any of our webinars contact Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the webinar.

Dated: December 23, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–30763 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT54

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will have public workshops to discuss fishery management issues, including catch shares and annual catch limits.

DATES: The workshops will be held January 16, 2010, in Kona; January 23, 2010, on Molokai; February 6, 2010, on Maui; February 13, 2010, in Honolulu; February 20, 2010, on Kauai; and February 27, 2010 in Hilo. For the specific times and the agenda for the workshops see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The workshops will be held at the King Kamehameha Hotel, 75–5660 Palani Road, Kailua-Kona, HI 96740; Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Molokai, HI 96748; Maui Beach Hotel, 170 Kaahumanu Road, Kahului, HI 96732; Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI 96814; Kauai Beach Resort, 4331 Kauai Beach Drive, Lihue, HI 96766; Naniloa Hotel, 93 Banyan Drive, Hilo, 96720.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The times and agenda for all meetings are as follows:

9 a.m. - 4 p.m.

Fisher's Forum: Fishery monitoring and Community Opportunities, with booths pertaining to Aha Moku, tagging, monitoring, grant opportunities, and Council programs.

10 a.m. - 12 noon

Workshop 1: Federal Fishery Initiatives

1. Welcome and Introductions
2. Presentation on monitoring stocks
3. Overview of new Magnuson-Stevens Act provisions
   a. Annual Catch Limits
   b. Non-commercial data / information initiatives and alternatives
   c. Limited Access Privilege Programs / Catch Shares
   d. Marine Spatial Zoning
   e. Round-table discussion of presented topics

1:30 p.m. - 3:30 p.m.

Workshop 2: Community-based monitoring, management, and programs

1. Report on local issues raised at previous moku meetings
2. Community opportunities
   a. CDPP
   b. Marine education and training
   c. Hawaii seafood promotion
   d. Community monitoring
3. Other issues

Times and agenda are the same for each location. The order in which agenda items are addressed may change. Public comment will be accepted during the workshops.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: December 23, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–30766 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT51

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene joint meetings of the Standing, Special Shrimp, Special Spiny Lobster and Special Reef Fish Scientific and Statistical Committees.

DATES: The meetings of the Standing, Special Shrimp and Special Spiny Lobster Scientific and Statistical Committees will convene at 1:30 p.m. on Wednesday, January 20, 2010 and conclude no later than 5:30 p.m. The meeting of the Standing and Special Reef Fish Scientific Statistical Committees will convene at 8:30 a.m. on Thursday, January 21, 2010 and conclude no later than 12 p.m. on Friday, January 22, 2010. The meetings will be webcast over the internet. •A link to the webcast will be available on the Council's web site, *http://www.gulfcouncil.org.*

ADDRESSES: The meetings will be held at the Crowne Plaza, 2829 Williams Blvd, Kenner, LA 70062.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Standing and Special Shrimp Scientific Statistical Committees will meet to review new approaches for assessing the stock of pink shrimp and possibly other shrimp species in the Gulf, and possibly make recommendations to the Council. The Standing and Special Spiny Lobster Scientific Statistical Committees will review the terms of reference for an upcoming update assessment and make recommendations for the Gulf and South Atlantic Fishery Management Councils to consider. The Standing and Special Reef Fish Scientific Statistical Committees will review potential species groupings for the Generic Annual Catch Limits and Accountability Measures Amendment. They will also review progress on development of an Acceptable Biological Catch Control Rule for data-poor species that will be included in the Generic Amendment.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 23, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–30765 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT50

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel.

DATES: The Shrimp Advisory Panel meeting is scheduled to begin at 8:30 a.m. on Wednesday, January 20, 2010 and end by 12 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza, 2829 Williams Blvd, Kenner, LA 70062.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Shrimp Advisory Panel will receive a presentation of the Biological Review of the 2009 Texas Closure and a change in yield report. The Shrimp Advisory Panel will then consider recommendations for a 2010 closure. The Shrimp Advisory Panel will also receive presentations of the Status and Health of Shrimp Stocks in 2008 a Stock Assessment Report for 2008. Finally, the Shrimp Advisory Panel will review preliminary effort estimates for 2009 and possibly make recommendations for the Council.

Although other non-emergency issues not on the agenda may come before the Shrimp Advisory Panel 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 these meetings. Actions of the Shrimp Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 23, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–30764 Filed 12–28–09; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Notice of Funds Available (NOFA) for Social Innovation Fund Awards; Request for Feedback

AGENCY: Corporation for National and Community Service (the Corporation).

ACTION: Request for Feedback on the Corporation's Fiscal Year (FY) 2010 Notice of Funds Available (NOFA) for Social Innovation Fund Awards.

SUMMARY: This draft Notice of Funds Available (NOFA) announces the availability of funding for the newly created Social Innovation Fund (SIF), authorized by the Edward M. Kennedy Serve America Act of 2009. The Social Innovation Fund is a vehicle to invest in promising, innovative nonprofit organizations to help them strengthen their evidence-base and develop the infrastructure to address our national challenges in communities of need.

In FY 2010, SIF awards will be made to a select number of grantmaking intermediaries (or eligible partnerships) focused on improving measurable outcomes in the following priority areas:

- Increased economic opportunity;
- Preparing America's youth for success in school, active citizenship, productive work, and healthy and safe lives.
- Promoting healthy lifestyles and reducing the risk factors that can lead to illness.

The SIF will stimulate and support a national network of intermediary grantmaking institutions to identify and invest in promising organizations to help them build their evidence-base and support their growth. Social Innovation Fund grantees will match the Federal funds received (dollar-for-dollar, in cash) in order to make subgrants to nonprofit community organizations so that they, in turn, can: (1) Produce measurable and transformational outcomes within specific issue areas or geographic regions; (2) Add to the store of evidence of effective approaches to achieving impact; and (3) Replicate and/or expand their proven initiatives to reach more Americans.

Successful applicants in this competition will demonstrate:

- An ability to conduct a robust process for identifying and selecting innovative organizations with considerable potential to produce significant results and broaden their impact; and
- A strong track record of using rigorous evidence to select, invest in, and monitor the growth and progression of their grantees.

For FY 2010, SIF applicants must demonstrate the ability to meet 50 percent of their cash match requirement at the time of the application. This *Notice* provides full details on how applicants must address these and other factors in submitting their applications.

The Corporation is soliciting public input on the proposed structure of the Social Innovation Fund, as outlined in this draft *Notice* of Federal Funding Opportunity (NOFA). As appropriate, the feedback received will be taken into account in the final NOFA. (The Corporation will not provide individual responses to feedback received.)

DATES: *Feedback Due Date:* January 15, 2010.

ADDRESSES: You may submit feedback, identified by Section xx of this draft *Notice*, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, *Attention:* Stephanie Soper, Room 10708A; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) *By hand delivery or by courier to:* The Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3466, Attention: Stephanie Soper, SIF Docket Manager.

(4) *Electronically through the Corporation's e-mail address system: SIFinput@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific SIF program requirements should be directed to Stephanie Soper by e-mail at *SIFinput@cns.gov*. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Overview Information

A. *Federal Agency Name:* Corporation for National and Community Service.

B. *Funding Opportunity Title:* Social Innovation Fund.

C. *Announcement Type:* Initial announcement.

D. *Funding Opportunity Number:* OMB Approval Numbers applicable to this NOFA are _____ and _____.

E. *Catalog of Federal Domestic Assistance (CFDA) Number(s):* 94:019.

F. *Dates:*

1. *Application Receipt Requirements and Date:* CNCS is not currently accepting applications for this assistance.

2. *Estimated Award Date.* The estimated award date will be included in the final NOFA published by CNCS.

G. *Additional Important Overview Information:*

1. We are specifically seeking feedback on the Social Innovation Fund, and not the Corporation's overall grant making processes/policies.

- The Corporation is specifically inviting feedback on whether or not its treatment of low-income, rural, and "significantly philanthropically underserved" communities (as described in Section IV of the *Notice*) is appropriate, and, if not, what other appropriate treatments might be. Specifically, the Corporation is interested in viewpoints on how specific geographic areas can be identified as "low-income communities," including an appropriate threshold to include in the approach the Corporation has initially adopted in this *Notice*.
- As described in Section IV of the *Notice*, the Corporation expects that the use of rigorous evidence will be part of the culture of any intermediary that will receive SIF funding; and that, consequently, the intermediary will assess the impact of its own activities. The Corporation is specifically inviting feedback on how the intermediaries should assess the impact of their work and how the Corporation should hold intermediaries accountable for their performance.
- As described in Section VI of the *Notice*, the Corporation expects intermediaries to hold subgrantees accountable for their progress against agreed-upon indicators of success. Therefore, the Corporation will ask SIF intermediaries to report subgrantee performance information to the Corporation. The Corporation is interested in determining the right structure of accountability for both Intermediaries and subgrantees, and invites public feedback on the appropriate accountability framework.

2. Application materials. The NOFA and application materials will be available for download via the Corporation's Web site at *http://www.nationalservice.gov/pdf/09_1218_sif_nofadraft.pdf.*

Full Text of Announcement

I. Funding Opportunity Description

What is the purpose of the Social Innovation Fund?

The Edward M. Kennedy Serve America Act of 2009 established the Social Innovation Fund within the Corporation for National and Community Service (the Corporation). The Social Innovation Fund, also referred to as the SIF throughout this draft NOFA, is intended to support a

national network of funds, led by community experts, that identify and invest in promising organizations that demonstrate impact in low-income communities. The Corporation defines "social innovation" as the development of a potentially transformative practice or approach to meeting critical social needs. By investing in social innovation as a driver of results and accountability, the Federal government will play a central role in accelerating the spread of promising solutions to address our most pressing national and local challenges. In FY 2010, SIF awards will be focused on improving measurable outcomes in the following priority areas:

- Economic Opportunity—Increasing the economic opportunities for economically disadvantaged individuals;
- Youth Development and School Support—Preparing America's youth for success in school, active citizenship, productive work, and healthy and safe lives; and
- Healthy Futures—Promoting healthy lifestyles, and reducing the risk factors that can lead to illness.

The SIF funds will be awarded to existing intermediary organizations, which are either grantmaking institutions or grantmaking partnerships as defined in this *Notice*. These intermediary organizations will award subgrants to nonprofit community organizations working to address priority issues. To be awarded funding, intermediaries will need to demonstrate:

- The ability to identify innovative solutions and successfully invest in growth and replication;
- A track record of using rigorous evidence to select, invest in, and monitor the growth and progression of their grantees;
- Expertise and demonstrated impact in the proposed issue area(s) of focus; and
- Depth and breadth of relationships with stakeholders in the issue area or region of focus.

The SIF will also attract and leverage private donors to match Federal dollars, bringing new resources to support promising organizations. The statute requires both the SIF intermediaries *and* their subgrantees to match their grants dollar-for-dollar, in cash, with non-Federal funding. In FY 2010, the SIF will focus on dramatically accelerating a select number of community innovations that are supported by rigorous evidence, have the capacity to expand or replicate, and have the potential to be transformational.

Emphasis on Evidence

The Corporation is committed to using the limited resources available to the SIF to invest in the programs likeliest to produce transformative change. Wherever possible, this means acting on evidence from well-designed and well-implemented experimental or quasi-experimental studies that demonstrate the program has a sizeable impact. However, the Corporation recognizes that in many fields and in many parts of the country, such evidence is not available. In those cases, the Corporation is committed to funding promising efforts in order to build the base of evidence about what works, improve programs, and inform future investments.

The SIF will support the use of evidence in several ways. First, the SIF will prioritize intermediaries that use rigorous evidence (see Section V) to select and invest in their grantees. Second, the SIF will encourage the use of data and evaluation tools by both intermediaries and grantees to monitor the growth and progression of their grantees. Third, the SIF will evaluate the efforts of these intermediaries and their grantees to achieve measurable outcomes. Finally, the SIF seeks to connect the efforts of government and foundations to use evidence and evaluation in systematic ways. Taken together, these efforts aim to help both SIF grantees and the nonprofit and philanthropic communities as a whole.

Subgranting as Part of the SIF Award Competition

As discussed above, this *Notice* seeks applications for organizations to act as SIF intermediaries. By statute, SIF intermediaries must select subgrantees on a competitive basis. The primary functions of the recipients of these awards will be to conduct subgrant competitions and administer those subgrants as required by the National and Community Service Act of 1990 ("the Act"), this *Notice*, and the terms and conditions of the final awards. Subgrants are to be made in annual amounts of $100,000 or more per year. However, for the FY 2010 SIF competition, the Corporation anticipates SIF intermediaries awarding subgrants that reflect more substantial investment in programs that show the highest levels of effectiveness, as defined in Section V.

The criteria applicable to the subgrant competitions are specified in Section V of this *Notice*. Applicants should note that their subgrantees will be required to provide dollar-for-dollar matching funds, in cash, for each year that they receive a SIF subgrant. Applicants may either: (1) Conduct a subgrant competition before applying to the Corporation (thereby applying with an identified set of local community organizations that would receive funding upon a SIF intermediary grant award); or (2) conduct a subgrant competition after receiving a SIF intermediary grant award. In either case, the Corporation will assess the completed or proposed subgrant competition against the criteria specified in Section V.

For applicants in the first category, the Corporation may request additional information regarding any pre-selected subgrantees for compliance against the criteria as described in this *Notice*. For applicants in the second category, the Corporation may: (1) Require that the intermediary select its subgrantees within six months of the grant award; and (2) review the results of the subgrant process for compliance and appropriate outcomes.

In evaluating two applications of otherwise equal merit, the Corporation may give preference to the applicant that identifies its subgrantees in its application. An applicant that identifies subgrantees is more likely to have an impact in communities sooner than an applicant that plans to select subgrantees post-award. Moreover, an application that identifies subgrantees provides the Corporation with more information about the strengths and weaknesses of a proposed program.

Illustrations of Potentially Successful SIF Applicants

The following examples are intended to provide illustrations of hypothetical SIF awardees.

Scenario #1: A rural, nonprofit grantmaking organization with deep roots in the local community and a strong focus on community needs, including education, health and poverty.

- You have a track record of engaging a broad array of stakeholders across sectors and convening them to develop integrated and coordinated responses to critical social problems. Your investment in local organizations is substantive and multi-year, and includes both financial capital and intellectual resources. Directly, and through contracted services, you provide support for management assistance and evaluation. You have identified a select number of local innovations with evidence of impact, and you are committed to growing and testing these models.

Scenario #2: A high-engagement philanthropy organization working with a handful of innovative community

organizations in two areas: workforce development and poverty alleviation.

• You invest in select organizations around the country identified through your own due-diligence process. Your emphasis is on identifying promising innovations ripe for larger-scale investment, and your organization provides multi-year funding for support of growth capacity, management assistance and evaluation. A subset of your portfolio has gathered rigorous evidence of impact, and you want to work with them as a group to deepen their models and extract lessons that could potentially inform public policy in the identified key issue areas.

Scenario #3: A local government office with a commitment to spurring, investing in, and supporting new solutions to local problems.

• You provide multi-year investment and support to both pilot and evaluate local innovations led by your agencies in partnership with high-capacity nonprofit groups. You conduct evaluation of your grantees through outside organizations, while also relying on some in-house capacity. Two other municipalities have approached you about partnering, and you are considering partnering with them to spread the most promising solutions within your current portfolio.

II. Award Information

How much funding is available?

The Corporation anticipates that up to $50 million will be available to award new cooperative agreements in the approximate amounts of $5 million to $10 million to approximately five to seven intermediary organizations.

Within this range, the amount of the individual awards may vary. The Corporation expects to make larger grants to those intermediary organizations whose subgrantees have higher levels of evidence (as described in Section V) of strong impact and the capacity to expand or replicate quickly.

What Is the Project Award Period?

The SIF award periods are up to five years, with funding provided in annual increments. Grantees will be eligible for continuation funding in the second through fifth year contingent on the availability of appropriations, compliance with grant conditions, and satisfactory performance, including having secured cash matching funds.

What Is the Award Amount?

For the FY 2010 SIF award competition, the Corporation expects to make annual awards in the range of $5 million to $10 million, with an average of approximately $7 million. As noted earlier, the Corporation expects to make larger grants to those intermediary organizations whose subgrantees have higher levels of evidence (as described in Section V) of strong impact and the capacity to expand or replicate.

What Is the type of Funding Instrument used for these grants?

The funding instrument for the SIF is a cooperative agreement. As a partner in this cooperative agreement, the Corporation expects to have substantial involvement with the intermediary organizations as they carry out approved activities. In particular, the Corporation anticipates having substantial involvement in: Reviewing the results of the subgrant process for compliance and appropriate outcomes;

• The development of final, detailed plans for evaluation of major subgrantees that would include:

○ The specific questions the evaluation(s) intends to answer;

○ The type of research design (including rigorous impact evaluations of the largest subgrantees);

○ The timeline and estimated budget for the evaluation;

○ Description of who will conduct the evaluations and the process to be employed to maintain independence, objectivity, and high-quality reports;

• The development of a final, detailed plan for expansion or replication of subgrantees;

• The development of best practices deliverables in collaboration with Corporation staff; and

• Other appropriate activities as specified in the final award.

III. Eligibility Information

This competition is open to all entities that meet the eligibility criteria as specified in this *Notice*. Receipt of prior Corporation or other Federal grant funding is not a prerequisite to applying under this *Notice*.

To be eligible for a SIF intermediary award, you must:

• Be an existing grantmaking institution or an eligible partnership;

• Properly propose to be either a geographically- or issue area-based SIF that will focus on improving measurable outcomes;

• Have a strong track record of using rigorous evidence to select, invest in, and monitor the growth and progression of your grantees.

• Have a well-articulated plan to either:

○ Replicate and expand research-proven initiatives that have been shown to produce sizable, sustained benefits to participants or society, or

○ Partner with a research organization to carryout rigorous evaluations to assess the effectiveness of such initiatives;

• Have appropriate policies on conflicts of interest, self dealing and other improper practices; and

• Demonstrate either cash-on-hand or commitments (or a combination thereof) toward meeting 50 percent of your first year matching funds, based on the amount of grant funds requested. For example, a request of $1 million needs to be accompanied by documentation of $500,000 dollars on-hand at the time of application.

Some of these eligibility requirements are specifically addressed as eligibility factors in the selection criteria in Section V of this *Notice*. The Corporation will conduct initial reviews of applications to determine whether they meet those specific eligibility criteria. Any application that does not meet all of the eligibility criteria identified in Section V will not be further reviewed.

Applications that meet all the eligibility criteria discussed in Section V will be reviewed in full. In its full evaluations, the Corporation will consider and weigh how the applications address all the stated criteria (both Eligibility Criteria and Application Review Criteria).

The Corporation will make an award only after determining that an organization meets all the eligibility criteria. As necessary, the Corporation will further evaluate an applicant during clarifying discussions (and possible site visits) with applicants. The Corporation also anticipates conducting due diligence reviews to assess or confirm information or assurances provided by applicants. As part of these further discussions and reviews, the Corporation may conclude that applicants do not meet one or more of the eligibility requirements. In that case, the Corporation will not further consider the application.

In order to maximize the impact of the of the SIF and ensure a diverse array of innovative grantees across the Federal government, preference will be given to intermediary applicants that agree to direct SIF funds toward innovations that are not likely to be receiving large amounts from other Federal innovation funds (e.g., "Investing in Innovation" at the Department of Education). Final SIF award decisions also may be weighed based on the outcome of other large Federal grant competitions.

IV. Application and Submission Information

A. Online Submission of Applications via eGrants

The Corporation requires that all applicants make every effort to submit their applications electronically through the Corporation's web-based application system, eGrants. The Corporation will provide detailed instructions on how to apply for this funding through eGrants.

If your organization is considering applying for funding through this *Notice,* please submit a notice of intent to apply by e-mail to __@cns.gov by TBD. The e-mail should include your organization's name and the name(s) of any partner organization(s), if applicable. This is not a required deadline, but submitting your request by that time helps us plan for the review of the applications.

In the event of prolonged unavailability of the eGrants system on the date of submission, the Corporation reserves the right to extend the eGrants submission deadline. Any notice of an extended submission deadline will be posted in eGrants and on *www.nationalservice.gov.*

If extenuating circumstances make the use of eGrants impossible, applicants may send a hard copy of the application to the following address, via overnight carrier (non-U.S. Postal Service because of security-related delays in receiving mail from the U.S. Postal Service). All deadlines and requirements in this *Notice* apply to hard copy applications.

Corporation for National and Community Service, ATT: Office of Grants Policy and Operations/SIF Application, 1201 New York Avenue, NW., Washington, DC 20525.

Applications submitted by fax will not be accepted.

B. Content and Form of Application Submission

Your application in eGrants will consist of the following components. Please make sure to complete each one.

I. Applicant Info
II. Application Info
III. Executive Summary
IV. Narratives
V. Documents
VI. Budget
VII. Review, Authorize, and Submit
VIII. Survey on Ensuring Equal Opportunity for Applicants (Optional)

Applicants should note that the narrative portion of their application (which will include Part I: Program Design, Part II: Organizational Capability, and Part III: Cost-Effectiveness and Budget Adequacy) may not exceed X characters, or 20 pages. The character count includes spaces and punctuation.

See Appendix X for eGrants instructions. (TBD)

C. Technical Assistance

The Corporation will host technical assistance calls and/or workshops to answer questions from potential applicants about this funding opportunity, including submitting the application through eGrants. Applicants are strongly encouraged to participate in these sessions. Details TBD.

D. Submission Dates and Times

The Corporation anticipates posting a final NOFA following this feedback period in early February 2010 with a deadline for applications at TBD. Applications must arrive at the Corporation by the deadline in order to be considered.

E. Intergovernmental Review

Applicants under this program are not subject to Executive Order 12372 "Intergovernmental Review of Federal Programs."

F. Funding Restrictions

Matching Funds

Applicants must provide matching funds in an amount equal to and not less than $1 for every $1 of funds provided under the grant. Matching funds may come from State, local, or private sources, which may include State or local agencies, businesses, private philanthropic organizations, or individuals. Federal funds may not be counted towards the match requirement.

Additionally:

- Matching funds must be provided in cash.
- The matching funds must be expended on the approved program.
- If the applicant is a partnership that includes a State Commission or a local government office, the state or local government involved must provide not less than 30 percent and not more than 50 percent of the matching funds.
- The Corporation is particularly interested in applicants that demonstrate that Federal funds are generating additional or new private sector funds.
- The Corporation is also particularly interested in applicants that present both a strong capacity to raise additional dollars to be provided to subgrantees, and a serious commitment to share the fundraising burden for their subgrantees.

Administrative and Direct Cost Limitations

For the FY 2010 SIF award competition, the Corporation has adopted the following limitations on applicant program costs:

- No more than 5 percent of the Federal funds awarded by the Corporation may be used to pay for administrative costs.
- No more than 15 percent of the Federal funds awarded by the Corporation may be used to pay direct program costs (other than subgrants awarded) of the SIF Intermediary in carrying out its approved program.

The limitation on administrative costs will be implemented in the same manner as the limitation on administrative costs for the Corporation's AmeriCorps programs. These requirements are found in the Corporation's regulations at 45 CFR 2510.20 and 2521.95.

The limitation on direct program expenditures will be applied as a cap on the Federal funds that may be used to reimburse a SIF award recipient for its approved direct program costs, other than subgrants made to local community organizations. This limitation will be applied to direct program costs as defined in the applicable cost principles for the award recipient—

- 2 CFR Part 220—Cost Principles for Educational Institutions (OMB Circular A–21)
- 2 CFR Part 225—Cost Principles for State, Local and Tribal Governments (OMB Circular A–87)
- 2 CFR Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

The Corporation's review of applicants' budgets will include an assessment of compliance with these limitations.

F. Other Submission Requirements

Low-income, Rural and Significantly Philanthropically Underserved Communities

As specified in section 198K of the Act, SIF intermediary grantees must make subgrants and otherwise support programs that serve low-income communities. For purposes of this *Notice,* "low-income community" means either:

- A population of individuals or households being served by a subgrantee on the basis of having a household income that is 150 percent or less of the applicable Federal poverty guideline, or
- A defined geographic area where, within the past twelve months, ____

percent or more of the area's population had household incomes at or below 150 percent of the applicable Federal poverty guideline (based on the most recent American Community Survey data issued by the U.S. Census Bureau).

In making its final award determinations under this *Notice*, section 198K(h)(2) of the Act requires the Corporation to include among award recipients eligible applicants that propose to provide subgrants to community organizations that will serve significantly philanthropically underserved communities. For purposes of this FY 2010 *Notice*, the Corporation will consider applicants proposing to serve significantly philanthropically underserved communities if they carryout activities in low-income communities (as defined above), which are also in a rural geographic area.

For purposes of this *Notice*, a rural geographic area is one with a 2003 Rural-Urban Continuum Code of 6 or higher (as issued by the U.S. Department of Agriculture, Economic Research Service). The full list of Rural-Urban Continuum Codes is listed here: *http://www.ers.usda.gov/briefing/rurality/ruralurbcon/*.

In the FY 2010 SIF award competition, the Corporation does not anticipate reducing the match requirement for applicants that will be serving significantly philanthropically underserved communities.

Use of Evidence

The SIF is one of several new Federal grant programs that place a significant emphasis on using evidence of program impact as a critical factor in funding decisions, with the goal of directing limited federal resources toward more effective programs and to increase our knowledge about what works.

Intermediaries will need to demonstrate in their applications how they use evidence of program impact to select, invest in, and monitor the growth and progression of their subgrantees. Across programs, issue areas, and regions, the available evidence of program effectiveness will necessarily vary, sometimes significantly. However, the best evidence will come from independent, well-designed studies using experimental and quasi-experimental designs, ideally from more than one site or with more than one population, that demonstrate the program has had a strong impact. Where these types of evidence are not available, the intermediaries will be expected to identify the existing levels of evidence (as defined in Section V) of the subgrantees and use SIF resources to help build the evidence-base of these programs.

In addition, the Corporation expects that the use of rigorous evidence will be part of the culture of the intermediary and that, consequently, the intermediary will assess the impact of its own activities.

Participation in Learning Community

Grantees will be required to participate in, organize, or facilitate, as appropriate, learning communities for the Social Innovation Fund. A learning community, or "community of practice," is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of learning communities under the SIF will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects.

V. Application Review Information

Corporation staff and outside reviewers with expertise in innovation, evaluation and replication will rate each eligible application using the following criteria.

Category	Percentage	Sub-Categories
Part I. Program Design	45%	Goals and Objectives.
		Use of Evidence.
		Community Resources.
		Description of Activities.
Part II. Organizational Capacity	35%	Ability to Provide Program Oversight.
		Ability to Provide Fiscal Oversight.
Part III. Cost-Effectiveness and Budget Adequacy	20%	Budget and Program Design.
		Match Sources.

The specific selection criteria for the various parts and subcategories are listed below. The selection criteria are categorized as either eligibility criteria or application review criteria. Reviewers will first assess your application against the eligibility criteria. If this review shows that an application does not meet any one of the eligibility criteria specified below, the application will not be further reviewed. All eligible applications will be fully reviewed and assessed based on both the eligibility and application review criteria.

To best respond to the criteria, we suggest that you address each question, suggestion, or bullet if it pertains to your application. However, these recommendations on addressing the criteria are not exhaustive. Applicants should be careful to specifically address the eligibility and application review criteria to the maximum extent practical.

In reviewing applications submitted in response to this Notice, the Corporation may consider, with respect to any particular proposal, the factors and information identified in 45 CFR 2522.470.

In selecting applicants to receive awards under this *Notice*, the Corporation will endeavor to include:

- Applicants who propose to serve areas that are significantly philanthropically underserved, and
- A diverse set of applicants, in terms of issue area and geography.

Part I. Program Design (45%)

A. Goals and Objectives

Eligibility Criteria

The Corporation asks applicants to use a thematic approach in describing their proposed investments in community organizations. As established in the Act, there are two basic operational models of SIF intermediaries. The first is a SIF that will operate in a single geographic location, and address one or more issues within that location. This model is referred to as a "geographically-based SIF." The second model is a SIF that will address a single issue area in multiple geographic locations. This model is referred to as an "issue-area based SIF." The Corporation will assess whether the application properly proposes goals and objectives as either a geographically-based or an issue area-based SIF.

Geographically-Based SIF

To apply as a geographically-based SIF, the applicant must propose to focus on serving low-income communities within a specific local geographic area,

and propose to focus on improving measurable outcomes related to *one or more* of the following issue areas:

- Economic Opportunity—Increasing the economic opportunities for economically disadvantaged individuals;
- Youth Development and School Support—Preparing America's youth for success in school, active citizenship, productive work, and healthy and safe lives–; and
- Healthy Futures—Promoting healthy lifestyles and reducing the risk factors that can lead to illness.

The application must provide statistics on the needs related to the issue areas within the specific local geographic area, and information on the specific measurable outcomes related to those issue areas that the applicant will seek to improve.

Issue Area-Based SIF

To apply as an issue area-based SIF, the application must propose to focus on addressing one of the following specific issue areas within multiple low-income communities:

- Economic Opportunity—Increasing the economic opportunities for economically disadvantaged individuals;
- Youth Development and School Support—Preparing America's youth for success in school, active citizenship, productive work, and healthy and safe lives.; and
- Healthy Futures —Promoting healthy lifestyles and reducing the risk factors that can lead to illness.

The application must provide statistics on the needs related to the issue area within the local geographic areas likely to be served, including statistics demonstrating that those geographic areas have a high need in the specific issue area. The application must also include information on the specific measurable outcomes related to the specific issue area that the applicant will seek to address.

Addressing the Eligibility Criteria

- Geographically-Based SIF
  - Describe the target community or region that you propose to serve.
  - Describe the specific issue areas on which you propose to focus and the statistical information that supports the need to address those issue areas.
  - Describe your organization's qualifications to support the proposed goals and objectives.
- Issue Area-Based SIF
  - Describe specifically the issue area on which you propose to focus.
  - Describe the specific statistical information showing that the areas likely to be served have a high need in this specific issue area.
  - Describe your organization's qualifications to support the proposed goals and objectives.
- Achieving Measurable Outcomes
  - For each issue area, describe the measurable outcomes you propose to achieve.
  - Describe the data that could be used to assess how your program caused progress toward those outcomes.
  - Indicate whether or not you could get relevant data or would aim to contract with others to do so.
  - If you are applying with a portfolio of selected subgrantees, describe their track records of achieving specific outcomes related to the measurable outcomes you have proposed to improve, and how, collectively, your proposed portfolio of SIF subgrantees will achieve measurable results for the target communities.

B. Use of Rigorous Evidence

Eligibility Criteria

Applicants must include in their application information describing their track record of:

Using rigorous evidence to select and invest in their subgrantees.

- Utilizing data and evaluation tools to monitor the growth and progression of their grantees.
- Achieving measurable outcomes.

Addressing the Eligibility Criteria

The Corporation expects grantees, to the extent practicable, to fund subgrantees with rigorous evidence of their impact. The Corporation will prioritize intermediaries whose subgrantees have strong evidence of strong impact (as described below). The Corporation recognizes, however, that in many parts of the country, and in many fields, such evidence will not yet be available. In these areas, the Corporation will prioritize intermediaries that are prepared to build portfolios that, over time, are most likely to demonstrate strong evidence of strong impact. Such intermediaries could have portfolios of programs supported by moderate evidence (as described below), or that they are planning to run a competition that will prioritize such entities. In areas where such evidence also is not available, the Corporation has provided examples of preliminary evidence that might be considered for funding in order to build the base of evidence about what works, make program improvements, and inform future investments.

In order to achieve the goal of increasing our knowledge of what works, the Corporation expects that all intermediary applicants will have a clear and detailed plan for evaluating the impact of their investments and that one of the goals of these evaluation plans will be to increase the number of programs over time that have moderate or strong evidence of program effectiveness.

The Corporation will use the following definitions of impact and evidence (these definitions are consistent with those used in the Investing in Innovation fund at the Department of Education):

- *Strong impact* means an impact with a substantial likelihood of yielding a major change in life outcomes for individuals or improvements in community standards of living. This definition will vary with context. To give examples, a mentoring program that cut youth crime by 2 percent over a given period would not have a strong impact, but a program that cut such crime by 20 percent could. A program that increases earnings by $50 per week for one month, and then fades out, would not have a strong impact. A program that increased earnings by this amount for a period of years would.
- *Strong evidence* means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (i.e., studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented experimental study (as defined in this *Notice*) or well-designed and well-implemented quasi-experimental study (as defined in this *Notice*) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.
- *Moderate evidence* means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity) but have limited generalizability (i.e., moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented experimental or quasi-experimental study supporting the effectiveness of the practice strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at

least one well-designed and well-implemented experimental or quasi-experimental study that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

• *Preliminary evidence* means evidence that is based on a reasonable hypothesis supported by research findings. Thus, research that has yielded promising results for either the program, or a similar program, will constitute preliminary evidence, and will meet the Corporation's criteria. Examples of research that meet the standards include: (1) Outcome studies that track program participants through a service 'pipeline' and measure participants' responses at the end of the program; and (2) pre- and post-test research that determines whether participants have improved on an outcome of interest. In future years, the Corporation may expand its standard for preliminary evidence to include reasonable hypotheses that are based on theories of change.

Assessment of Subgrantee Evidence

Applicants should gauge whether each proposed subgrantee has preliminary, moderate, or strong evidence of program effectiveness. This determination should be fully substantiated, as appropriate, with:

• A summary of recently completed evaluation(s) of the subgrantees' programs. For subgrantees presenting preliminary evidence, the evaluation(s) may be from a similar program, but must include a justification for why the evaluation(s) are appropriate for the subgrantees' program and demonstrate an understanding of the research literature in this area(s).

• Weblinks to recent reports (both published and unpublished) from these studies. Links should be to full reports and appendices; i.e., not executive summaries or journal articles. Preferably, the reports will include design documentation.

Applicant's Track Record of Using Rigorous Evidence To Select, Invest in, and Monitor the Grantees

Describe situations in which your organization has applied evidence produced by rigorous evaluations in decision-making with respect to specific programs at either the preliminary, moderate, or strong levels.

• Describe the process your organization uses to incorporate evidence into the selection, investment, and monitoring of your grantees.

• Describe a specific example of how your organization has used rigorous evidence to drive program improvement and/or increase the base of evidence of what works.

• Describe the study or studies that generated the evidence (e.g., methodology), and the evidence that was derived from the evaluation(s). Provide weblinks to recent report(s) (both published and unpublished) from these studies. Links should be to full reports and appendices; i.e., not executive summaries or journal articles. Preferably, the reports will include design documentation.

C. Community Resources

The applicant's community resources will be assessed as described in Part III. B. Match Sources.

D. Description of Activities

1. Subgranting

Application Review Criteria

Applicants must describe the process by which they have competitively selected (or will competitively select) their community organization subgrantees. Specifically, applicants must describe how their competitive subgrantee selection process ensured (or will ensure) that their subgrantees:

• Is a nonprofit community organization with proven/promising evidence and a demonstrated track record of achieving specific outcomes related to the measurable outcomes for the SIF intermediary;

• Has articulated measurable outcomes for the use of the subgrant funds that are connected to the measurable outcomes for the intermediary;

• Has a well-defined plan for replicating, expanding, or supporting the initiatives funded, and will use the grant funds to carry out that plan;

• Has strong leadership and financial and management systems;

• Will meet the requirements for subgrantees providing dollar-for-dollar matching funds and can sustain the initiatives after the subgrant period concludes; and

• Is committed to the use of data collection and evaluation for improvement of the initiatives.

Either as part of its review of the application, or in clarification reviews prior to award, the Corporation may request additional information regarding pre-selected subgrantees for compliance and appropriate outcomes.

For those applicants who propose to carryout a subgrant process after they are selected for award, the Corporation will review the results of the subgrant process for compliance and appropriate outcomes.

Addressing the Review Criteria

• Describe how your proposed subgrantees meet the stated requirements.

• Describe your approach to identifying and selecting innovations with impact potential, and provide examples of the effectiveness and transparency of that approach.

• Describe your use of a rigorous selection process based on evidence of impact.

• Describe your relationships with and engagement of experts and leaders in relevant domains to ensure quality identification and selection of subgrantees.

2. Technical Assistance and Support

Application Review Criteria

Applicants must include in their application information describing how they will provide technical assistance and support (other than financial support) that will increase the ability of subgrantees to achieve their measurable outcomes, including expansion or replication of the identified solution. Expansion or replication may happen in various ways (including, for example, creating new sites or affiliating with another program to replicate an intervention) and in multiple contexts, including serving more people in a current geography or, growing to new geographies.

Addressing the Review Criteria

• Describe your commitment to long-term relationships with subgrantees; and your goal to take them "from A to B."

• How will you help your subgrantees invest in program effectiveness (appropriate to their respective organizational lifestages)?

• How will you provide resources and support to build subgrantee capacity in key areas?

• Describe your willingness to support your subgrantees in achieving match requirements.

• Describe your track record of using data to measure your grantees' performance and holding grantees accountable for progress.

Part II. Organizational Capacity (35%)

A. Ability To Provide Program Oversight

Application Review Criteria

In evaluating your organization's ability to provide program oversight, the Corporation will consider:

- The extent to which your organization has a sound structure including:
  - The ability to provide sound programmatic oversight, including:
    - ☐ Experience with and capacity for evaluation, and
    - ☐ Experience with and capacity for supporting expansion or replication;
  - Well-defined roles for your board of directors, administrators, and staff;
  - A well-designed plan or systems for organizational (as opposed to subgrantee) self-assessment and continuous improvement; and
  - The ability to provide and/or secure effective technical assistance.
- Whether your organization has a sound record of accomplishment, including the extent to which you:
  - Have a track record of supporting organizations that demonstrate evidence of impact;
  - Demonstrate leadership within the organization and strong relationships within the communities served; and,
  - Have a track-record of raising substantial resources, and, if, you are an existing Federal grantee, you have secured the matching resources as required in your prior grant awards.
- The extent to which your community support recurs, increases in scope or amount, and is more diverse, as evidenced by:
  - Collaborations that include a diverse spectrum of community stakeholders;
  - A broad base of financial support, including local financial and in-kind contributions; and
  - Supporters who represent a wide range of community stakeholders.

Addressing the Review Criteria

Sound Organizational Structure

- Ability to Provide Sound Programmatic Oversight:
  - Provide a brief history of your organization. What year was your organization established? Describe your organization's experience in the proposed areas of activity and your experience operating and overseeing programs comparable to the ones proposed. Include specific examples of your prior accomplishments and outcomes. Describe your capacity to manage a Federal grant and to provide on site monitoring of the financial and other systems required to administer a Federal grant.
  - Describe the types of evaluations the applicant has conducted or sponsored, including the quality and selection of evaluators, the study methodologies (including data collection and analysis), and the reporting and release of the findings. Please provide weblinks to recent reports (both published and unpublished) from these evaluations. Links should be to full reports and appendices; i.e., not executive summaries or journal articles. Preferably the reports will include design documentation.
  - What are the procedures that you have in place to ensure that the evaluations meet the optimum standards of technical quality and independence?
  - How have you used and shared the results of evaluations (both positive and negative findings) for program improvement?
  - Describe the range of replications that you have overseen or sponsored.
  - Describe the kinds of resources (e.g., data systems; staff) you have for expansion or replication.
  - Explain how you are able to support and oversee multiple programs at different locations.
  - What are your current or previous programmatic relationships with the programs?
  - Describe your plans for monitoring site compliance programmatic requirements.
- Board of Directors, Administrators, and Staff:
  - Describe your organization's management and staff structure and how the board of directors, administrators, and staff members will be used to support your program.
  - Identify the key program positions responsible for your organization. Describe the relevant background and experience of all staff members working on the project and their respective roles, or your plans to recruit, select, train, and support additional staff, and their roles.
- Plan for Self-Assessment or Improvement:
  - How does your organization conduct ongoing internal assessment and improvement of its overall—not program-specific—systems, structure, staffing, and other capacities to ensure that it remains sound and well managed?

B. Ability To Provide Fiscal Oversight

Eligibility Criteria

Entities eligible to apply for SIF grants include:

- Existing grant-making institutions, or
- Partnerships between an existing grant-making institution and another grant-making institution, a State Commission, or the chief executive officer of a unit of general local government.

Existing grantmaking institutions are organizations in existence at the time of the application that have the following as part of their core operating functions:

- Conducting open or otherwise competitive programs to award grants to a diverse portfolio of local community organizations,
- Negotiating specific grant requirements with local community organizations, and
- Overseeing and monitoring the performance of its grantees.

Addressing the Eligibility Criteria

Describe your qualifications (as either a qualifying grantmaking institution or partnership including at least one grantmaking institution), as well as any strategic associations with other organizations.

Application Review Criteria

In evaluating your organization's ability to provide fiscal oversight, the Corporation will take into account its review of your organization's organizational capacity. The Corporation will further consider:

- The extent to which your organization has key personnel with the knowledge, skills, abilities and experience to provide fiscal oversight of subgrantees; and
- Whether your organization, or proposed strategic partnership, has specific experience in providing fiscal oversight of subgrantees of Federal funds.

Addressing the Review Criteria

Describe the experience and infrastructure your organization has in managing grants.

- What is your current organizational budget?
- What percentage of the budget would this grant represent?
- How will you ensure compliance with Federal requirements?

Part III. Cost Effectiveness and Budget Adequacy (20%)

A. Budget and Program Design

Application Review Criteria

In evaluating the cost-effectiveness and budget adequacy of your proposed program, the Corporation will consider:

- Whether your program is cost-effective based on:
  - The extent to which your program demonstrates diverse, non-Federal resources for program implementation and sustainability;
  - The extent to which you are proposing to provide more than the minimum required share of the costs of your program; and

○ Whether the reasonable and necessary costs of your program or project are higher because you are proposing to serve areas that are significantly philanthropically underserved.

• Whether your budget is adequate to support your program design.

Addressing the Application Review Criteria

• Demonstrate how your program has or will obtain diverse non-Federal resources for program implementation and sustainability.

• Discuss the adequacy of your budget to support your program design including how it is sufficient to support your program activities and is linked to your desired outputs and outcomes.

B. Match Sources

Eligibility Criteria

At the time of submission of the application, applicants must demonstrate either cash-on-hand or commitments (or a combination thereof) toward meeting 50 percent of their first year matching funds, based on the amount of Federal grant funds applied for.

Addressing the Eligibility Criteria

Applicants may demonstrate cash-on-hand by a statement from the Chief Financial Officer or other officer that the organization has established a reserve of otherwise uncommitted funds for the purposes of performing a SIF grant. Applicants may demonstrate commitments by a dated and signed letter from each donor/foundation, indicating the amount of funds committed for the specific use of supporting the Social Innovation Fund grant. Such a letter must contain a firm commitment to provide the applicant the stated funding upon award of a SIF grant by the Corporation. The Corporation's instructions on submitting applications through eGrants will provide further guidance on how to submit this documentation.

Application Review Criteria

In addition to the match eligibility criteria, the Corporation will evaluate the extent to which you have a combination of cash-on-hand or commitments to meet the full match requirements, and whether your organization will be able to provide financial resources for your SIF program beyond the minimum required match.

Addressing the Application Review Criteria

• Include a discussion of the additional commitments you plan to secure, and how you will secure them. In the budget, you must list the sources of your match funds.

• Describe the extent to which you propose to provide matching funds in excess of the minimum requirement.

VI. Award Administration Information

A. Award Notices

The Corporation will award cooperative agreements following the grant selection announcement. We anticipate announcing the results of this competition in Summer 2010. The government is not obligated to make any award as a result of this Notice.

B. Administrative and National Policy Requirements

The Notice of Grant Award (NGA) will be subject to and incorporate the requirements of section 198k of the National and Community Service Act of 1990, as well as other applicable sections of the Act. The NGA will also incorporate the approved application and budget as part of the binding commitments under any award.

Awardees will be subject to the following (as applicable):

2 CFR Part 175—Award term for trafficking in persons

2 CFR Parts 180 and 2200—Nonprocurement Debarment and Suspension

2 CFR Part 215 and 45 CFR Part 2543—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110)

2 CFR Part 220—Cost Principles for Educational Institutions (OMB Circular A–21)

2 CFR Part 225—Cost Principles for State, Local and Tribal Governments (OMB Circular A–87)

2 CFR Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122)

45 CFR Part 2541—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

45 CFR Part 2545—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)

45 CFR Part 2555—Nondiscrimination on The Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

The Single Audit Act (31 U.S.C. Chapter 75) and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations (Available at: http://www.whitehouse.gov/omb/assets/omb/circulars/a133/a133.pdf.)

The award recipient must comply with the following requirements:

Use of Materials

To ensure that materials generated with Corporation funding are available to the public and readily accessible to grantees and sub-grantees, the Corporation reserves a royalty-free, nonexclusive, and irrevocable right to obtain, use, modify, reproduce, publish, or disseminate publications and materials produced under the award, including data, and to authorize others to do so.

Limitation on Consultant Fees

Funds may not be used to pay or to provide reimbursements for payment of the salary of a consultant at more than the daily equivalent rate of $540.00.

C. Reporting Requirements

What are the reporting requirements for these grants?

The award recipient for this competition must identify the critical outcomes of the work, indicators of success in this work, and how progress can be judged or measured. The recipient will be required to report semi-annually on agreed upon performance measures. Specific guidance on the collection of data against these standardized measures will be provided upon award. The Corporation may also require an independent assessment of grantee performance. In addition, the Corporation expects intermediaries to hold subgrantees accountable for their progress against agreed-upon indicators of success. The intermediaries will be asked to report subgrantee performance information to the Corporation.

Performance Progress Reports (PPR)

A semi-annual narrative progress report is submitted using the Corporation's web-based grants management system, eGrants, no later than 30 days after the close of each reporting period. The report will include:

• Budget report for the completed budget period.

• Narrative analysis of the budget report, explaining differences between budgeted and actual activities and costs by funding source.

• Progress towards performance goals and any supporting data and methodology.

• Analysis of sub-application progress and performance measures.

• Discussion of any problems observed or experienced and recommended solutions.

Federal Financial Reports

Federal Financial Reports (FFRs) must be submitted semi-annually. The reports are cumulative and must be submitted on the Corporation's Web-based grants management system, eGrants, no later than 30 days after the close of each reporting period.

Final Reports

In addition to submission of required semi-annual reports, the award recipient completing an agreement period will be required to submit a final report that is cumulative over the entire award period and consistent with the close-out requirements of the Corporation's Office of Grants Management. The final report is due 90 days after the end of the agreement.

In lieu of the last semi-annual FFR, a final FFR must also be submitted. The final FFR is due 90 days after the end of the agreement.

Other Data-collection Requirements

The Corporation will require SIF grantees to develop final, detailed plans for evaluation of subgrantees that address key questions, such as the following:

- What are the specific questions the evaluation(s) intends to answer?
- For grantees proposing an impact study, what type of research design (e.g., randomized control trial, quasi-experimental) do you hope to conduct? Why is this evaluation design appropriate for the subgrantees' stage of development, and what useful information do you hope to gain?
- What is the timeline and estimated budget for the evaluation?
- Please describe who will conduct the evaluations, and the process you will employ to maintain independence, objectivity, and high quality reports.

The award recipient must:

- Identify and document effective practices.
- Meet as necessary with the cognizant program officer, or other staff or consultants.

VII. Agency Contacts

This Notice is available at http://www.nationalservice.gov/pdf/09_1218_sif_nofadraft.pdf. The TTY number is 202–606–3472. For further information or for a printed copy of this Notice, call (202) 606–6745. Or send an e-mail to SIFinput@cns.gov.

VIII. Other Information

A. For additional information on the Edward M. Kennedy Serve America Act. go to: http://www.nationalservice.gov/pdf/09_0331_recovery_summary.pdf.

B. Public Burden Statement: The Paperwork Reduction Act of 1995 requires the Corporation to inform all potential persons who are to respond to this collection of information that such persons are not required to respond unless it displays a currently valid OMB control number. (See 5 CFR 1320.5(b)(2)(i)). This collection is approved under OMB Control #: 3045–0129 (CNCS Universal Application, Expiration Date: 11/30/2011).

Dated: December 22, 2009.

Kristin McSwain,

Chief of Program Operations.

[FR Doc. E9–30807 Filed 12–28–09; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–HA–0185]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency'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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 1, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: TRICARE Management Activity, TRICARE Overseas Program Branch, ATTN: Ms. Kimberly Stakes, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206, or call 703–681–0039.

Title; Associated Form; and OMB Number: Women, Infants, and Children Overseas Program (WIC Overseas) Eligibility Application; OMB Control Number 0720–0030.

Needs and Uses: The proposed information collection requirement is necessary for individuals to apply for certification and periodic recertification to receive WIC Overseas benefits.

Affected Public: Individuals or Households.

Annual Burden Hours: 187.5.

Number of Respondents: 375.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Initially and Every Six Months.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of the program is to provide supplemental foods and nutrition education to serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other substance abuse, and to improve the health status of program participants. The benefit is similar to the benefit provided under the domestic WIC program.

Respondents are individuals who are members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by, or accompanying the armed forces at these locations who desire to receive supplemental food and nutrition education services. To be eligible for the DoD special supplemental food program, a person must be a member of the armed forces on duty at stations outside the U.S. (and

its territories and possessions) or an eligible civilian serving with, employed by, or accompanying the armed forces outside the U.S. (and its territories and possessions). Additionally, the person must be found to be at nutritional risk. Specifically, to be certified as eligible to receive benefits under the program, a person must:

- Meet specific program income guidelines published by the Secretary of Health and Human Services, and
- Meet one of the criteria listed determined to be indicative of nutritional risk.

Determinations of income eligibility and nutritional risk will be made to the extent practicable using applicable standards used by the USDA in determining eligibility for the domestic WIC program. In determining income eligibility, the Department will use the Department of Health and Human Services income poverty table for the State of Alaska.

Dated: December 22, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30711 Filed 12–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–HA–0186]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs proposes a new public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency'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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 1, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: TRICARE Management Activity, TRICARE Overseas Program Branch, ATTN: Ms. Kimberly Stakes, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206, or call 703-681–0039.

Title; Associated Form; and OMB Number: Women, Infants and Children Overseas Participant Satisfaction Survey.

Needs and Uses: The information collection requirement is necessary to obtain the participants satisfaction levels with the services provided by the WIC overseas staff and the overall program. The findings from these surveys will be used to determine the success of the WIC overseas program and if improvements are necessary.

Affected Public: Individuals or Households.

Annual Burden Hours: 37.5.

Number of Respondents: 150.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals who are currently receiving WIC overseas services. These respondents include military members and their dependents, and DoD civilians and contractors. The purpose of the WIC overseas survey is to assess the participant's satisfaction level with the services provided by the WIC overseas staff and the overall program. The survey includes questions regarding site access, customer service, quality of health information and overall program satisfaction. The findings of these surveys will be used to determine the success of the WIC overseas program and if improvements are necessary. The WIC overseas program is a legislatively mandated program and it is anticipated that the program will continue indefinitely. As such, DoD is publishing this formal notice.

Dated: December 23, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30760 Filed 12–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0187]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency proposes to delete a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 28, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for

systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

DoD proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 22, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion Notice:

S360.10 DLA–KI

SYSTEM NAME:

HQ DLA Automated Civilian Personnel Data Bank System (February 22, 1993, 58 FR 10854).

REASON:

System notice is no longer needed. Records are covered under the existing government-wide notices of the Office of Personnel Management OPM/Govt-1 through OPM/Govt-10.

[FR Doc. E9–30710 Filed 12–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0189]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DOD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to delete a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 28, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 23, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

WUSU 05.

SYSTEM NAME:

USUHS Graduate and Continuing Medical Student Records (February 22, 1993, 58 FR 10920).

REASON:

Based on a recent review of WUSU 05, it was determined that this system of records can be covered by WUSU 03. WUSU 05 is duplicative and can therefore be deleted.

[FR Doc. E9–30758 Filed 12–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0188]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to delete a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 28, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Office of the Secretary of Defense proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 22, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

WUSU 01.

SYSTEM NAME:

Uniformed Services University of the Health Sciences (USUHS) Personnel Files (February 22, 1993, 58 FR 10920).

Reason:

Based on a recent review of WUSU 01, it was determined that this system

of records is covered under the Government-wide SORNs, OPM Govt-1 (General Personnel Records). WUSU 01 is duplicative and can therefore be deleted.

[FR Doc. E9–30712 Filed 12–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning an Anti-Relapse Treatment and Prophylaxis for Malaria

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/261,872 entitled "* * * as an Anti-Relapse Treatment and Prophylaxis for Malaria," filed November 17, 2009. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to the use of an approved anticoccidial drug that is currently used in veterinary medicine in feed stocks, as an anti-relapse treatment and prophylaxis for malaria.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–30754 Filed 12–28–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Chief of Engineers Environmental Advisory Board (EAB).

Topic: The EAB will discuss national considerations related to ecosystem restoration through integrated water resources management with emphasis on building collaborative partnerships, coastal issues and climate change.

Date of Meeting: January 22, 2010.

Place: The Battle House Hotel, 26 North Royal Street, Mobile, AL 36602.

Time: 9 a.m. to 12 p.m.

Thirty minutes will be set aside for public comment. Members of the public who wish to speak are asked to register prior to the start of the meeting. Registration will begin at 8:30 a.m. Statements are limited to 3 minutes.

FOR FURTHER INFORMATION CONTACT: Ms. Rennie Sherman, Executive Secretary, *rennie.h.sherman@usace.army.mil,* 202–761–7771.

SUPPLEMENTARY INFORMATION: The EAB advises the Chief of Engineers by providing expert and independent advice on environmental issues facing the Corps of Engineers. The public meeting will include discussion between the EAB and the Chief of Engineers as well as presentations by the EAB and Corps staff. The meeting is open to the public, and public comment is tentatively scheduled for 30 minutes beginning at 11:15 a.m.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–30755 Filed 12–28–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Plenary Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA) of 1972 (5 U. S. C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U. S. C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 26 Jan 2010–Tuesday.

Time(s) of Meeting: 0830–1000.

Location: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington VA, 22202.

Purpose: The Army Science Board will receive a report and vote on the findings and recommendations for the *Institutionalization of Innovation in the Army* study.

Proposed Agenda:

Tuesday

0830–1000 Findings and Recommendations of the Institutionalization of Innovation in the Army study.

The board will conduct internal business before and after the public session.

FOR FURTHER INFORMATION CONTACT: For information please contact Mr. Justin Bringhurst at *justin.bringhurst@us.army.mil* or (703) 604–7468 or Carolyn German at *carolyn.t.german@us.army.mil* or (703) 604–7490.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–30753 Filed 12–28–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0062]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on January 28, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for

comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the point of contact cited under **FOR FURTHER INFORMATION CONTACT.**

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on December 22, 2009 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996; 61 FR 6427).

Dated: December 23, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AFRC A

SYSTEM NAME:

Automated Line of Duty (ALOD) Records.

SYSTEM LOCATION:

Headquarters, United States Air Force Reserve Command, 155 Richard Ray Blvd., Robins AFB, GA 31098–1635.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Active Duty, Reserve (to include Traditional Reservists (TR), Individual Mobilization Augmentees (IMA), and enlisted and commissioned Reservists), and National Guard service members who are injured while on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN); address; telephone number, case files including requests submitted by the applicant; intra-agency correspondence concerning cases; correspondence from/to the applicant; and military personnel data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Department of Air Force; 10 U.S.C. 10204, Personnel Records and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To provide an electronic Web-based means of submission, receipt, storage, processing, and tracking of Line of Duty cases for Active Duty personnel, or Reserve and National Guard service members who are injured while on active duty. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by medical personnel, personnel specialist, legal officers, and commanders responsible for the Automated Line of Duty data. All person(s) are properly screened and cleared for need-to-know. Records are protected by the Department of Air Force access authentication procedures and by network system security software. They are stored in office buildings protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access.

SYSTEM MANAGER(S) AND ADDRESS:

HQ, Air Force Reserve Command, AFRC/SG, 135 Page Rd, Robins AFB, GA 31098–1635.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander or supervisor of organization to which individual is/was assigned or employed. Official mailing addresses are published as an appendix to the Department of Air Force compilation of systems of records notices.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the commander or supervisor of organization to which individual is/was assigned or employed. Official mailing addresses are published as an appendix to the Department of Air Force compilation of systems of records notices.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system.

RECORD SOURCE CATEGORIES:

Intra-agency correspondence concerning cases; correspondence from/to the applicant; and military personnel data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–30761 Filed 12–28–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act) 5 United States Code (U.S.C.) 552a, the Chief Operating Officer for Federal Student Aid (FSA) of the U.S. Department of Education (Department) publishes this notice proposing to revise the system of records for the Federal Student Financial Aid Application File (18–11–01), 64 FR 30159–30161 (June 4, 1999), as corrected by, 64 FR 72407 (December 27, 1999), as corrected by, 65 FR 11294 (March 2, 2000), as corrected by 66 FR 18758 (April 11, 2001). This system of

records contains information provided by applicants for Title IV, HEA Program assistance, on the Free Application for Federal Student Aid (FAFSA). Among other purposes described in this notice, the information is maintained in order to determine an applicant's eligibility for the Federal student financial assistance programs authorized by Title IV of the HEA; make a loan, grant or scholarship, and verify the identity of the individual. This notice proposes to update the categories of records maintained in this system, to clarify the system's purposes, and to expand the routine uses to reflect needed programmatic disclosures.

DATES: We must receive your comments on or before January 28, 2010.

The Department filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 22, 2009. This altered system of records will become effective at the later date of— (1) The expiration of the 40-day period for OMB review on February 1, 2010, or the expiration of a 30 day OMB review period on January 21, 2010 if OMB grants the Department's request for a 10 day waiver of the review period; or (2) January 28, 2010, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this altered system of records to: Director, Application Processing Division, Program Management Systems, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Room 63C4, Union Center Plaza (UCP), Washington, DC 20202. If you prefer to send your comments by e-mail, use the following address: *comments@ed.gov*.

You must include the term "Federal Student Aid Application File" in the subject line of your electronic message.

During and after the comment period, you may inspect all public comments about this notice in Room 63C5, Union Center Plaza, 6th floor, 830 First Street, NE., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., local time, Monday through Friday except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will supply an appropriate accommodation or auxiliary aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Director, Application Processing Division, Program Management Systems, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Room 63C4, Union Center Plaza (UCP), Washington, DC 20202. Telephone: (202) 377–3205. If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Preamble

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of an altered system of records. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that is maintained in a system of records from which information is retrieved by a unique identifier associated with the individual, such as a name or Social Security Number (SSN). The information about each individual is called a "record," and the system, whether manual or computer-based, is called a "system of records".

The Privacy Act requires each agency to publish notices of altered systems of records in the **Federal Register** and to prepare reports to Chair of the Committee on Oversight and Government Reform of the House of Representatives, and the Chair of the Committee on Homeland Security and Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, OMB whenever the agency publishes a new system of records or significantly alters an established system of records.

A system of records is considered "altered" whenever an agency expands the types or categories of information maintained, significantly expands the types or categories of individuals about whom records are maintained, changes the purpose for which the information is used, changes the equipment configuration in a way that creates substantially greater access to the records, or adds a routine use disclosure to the system. Since the last correction to this system of records, which was published in the **Federal Register** on April 11, 2001 (66 FR 18758), a number of changes are needed to update the current system of records. This notice proposes to update the categories of records maintained in the system, to clarify the system's purposes, and to expand the programmatic routine use disclosures needed to carry out responsibilities under the Higher Education Act of 1965, as amended, (HEA).

This system of records would facilitate the Secretary of Education's performance of statutory duties to verify information submitted by applicants and parents of dependent applicants. The Secretary of Education, in cooperation with the Commissioner of the Social Security Administration, is required under the HEA, to verify Social Security Numbers (SSNs) submitted by applicants. In addition, the Secretary of Education is required to verify the immigration status of applicants through the use of computer matching. The Secretary also collects information on parent(s) of dependent applicants, including SSNs, dates of birth, first initials and last names. The Secretary verifies the SSN of a parent of a dependent applicant in the same manner that the SSN of an applicant is verified.

The changes proposed in the attached altered notice are intended to expand the information maintained in the system, to clarify the system's purposes, and to add routine uses to make disclosures needed to carry out statutory responsibilities contained in the system. Collectively, these revisions will enhance the ability of the Secretary to combat fraud, waste, and abuse in the Department's programs and operations and perform the statutorily required verification of data submitted by student aid applicants and the parent(s) of dependent applicants.

This system of records includes records on individuals who are applying for Title IV, HEA program assistance. The records contain individually identifying information about an applicant, including, but not limited to: an applicant's name, address, SSN, date of birth, citizenship status, status as a veteran, driver's license number, marital status, and income and asset information. This system also contains information provided by the parent(s) of a dependent applicant, including, but not limited to: Name, date of birth, marital status, SSN, highest level of schooling completed, e-mail address, and income and asset information. This

system of records also contains information about the spousal income and asset information of a married applicant.

Accessible Format: 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 under **FOR FURTHER INFORMATION CONTACT.**

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/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 22, 2009.

William J. Taggart,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid, of the U.S. Department of Education (Education), publishes a notice of an altered system of records to read as follows:

SYSTEM NUMBER:

18–11–01

SYSTEM NAME:

Federal Student Aid Application File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Virtual Data Center (VDC), 2300 W. Plano Parkway, Plano, TX, 75075 (Electronic records).

Vangent, 901 South 42nd Street, Mt Vernon, IL 62864 (Paper, Free Application for Federal Student Aid (FAFSA) Applications Storage Facility).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on students who apply for Federal student financial assistance under the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965 (HEA), as amended (Title IV, HEA Programs). This system also contains information on the parent(s) of a dependent applicant and the spouse of a married applicant.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information provided by applicants for Title IV, HEA Program assistance, on the Free Application for Federal Student Aid (FAFSA) including, but not limited to, the applicant's name, address, Social Security Number (SSN), date of birth, telephone number, driver's license number, e-mail address, citizenship status, marital status, legal residence, status as a veteran, educational status, and financial data. This system also contains information provided about the parent(s) of a dependent applicant, including, but not limited to, the parent's highest level of schooling completed, marital status, SSN, last name and first initial, date of birth, e-mail address, number in household supported by the parent, and income and asset information. For an applicant who is married, this system of records also contains spousal income and asset information.

While using this system to analyze its student population data for verification selection via the Institutional Student Information Record (ISIR) Analysis (IA) Tools product, postsecondary institution(s) attended by the applicant may create user defined fields with institutional data that is saved to the system. These data elements may consist of information that is privacy protected. Examples include, but are not limited to: the student's grade point average or information about a student's employment with the postsecondary institution.

Individually identifying information that is generated and maintained in the Federal Student Aid's Federal Student Aid Application File (18–11–01) within the Central Processing System (CPS) is covered by this system of records. The CPS determines an applicant's expected family contribution, which is used by the school to determine the student's eligibility for a Federal Pell Grant, and notifies an applicant via the Student Aid Report (SAR) and the schools identified on the applicant's FAFSA via the ISIR of discrepant or insufficient data, school adjustments, CPS assumptions, comment codes, and reject reasons. Other information that the CPS includes, but is not limited to: expected family contribution (EFC), Secondary EFC, dependency status, Federal Pell Grant Eligibility, Duplicate SSN, selection for verification, SAR C Flag, Simplified Needs Test (SNT) or Automatic Zero EFC (used for extremely low family income), CPS processing comments, reject codes (that explain why a record did not complete processing), assumptions made to the student's data due to incomplete or inconsistent FAFSA data, financial aid administrator's (FAA) adjustments including dependency status overrides, and CPS record processing information (application receipt date, transaction number, transaction process date, SAR Serial Number, Compute Number, Data Release Number (DRN), National Student Loan Database System (NSLDS) match results, bar code and transaction source).

Information from other Department systems, such as NSLDS, the Common Origination and Disbursement System (COD), the Student Aid Internet Gateway (SAIG), Participation Management System, is added to this system of records. The Appendix contains a more detailed description of the data added to this system of records as a result of the exchanges of data with other Department systems and the Department's computer matching programs with other Federal agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Higher Education Act, as amended (20 U.S.C. 1001 *et seq.*).

PURPOSE(S):

The information contained in this system is maintained for the purposes of: (1) Assisting with the determination, correction, processing, tracking and reporting of program eligibility and benefits for the Federal student financial assistance programs authorized by Title IV of the HEA; (2) making a loan, grant or scholarship; (3) verifying the identity of the applicant, the spouse if applicable, and the parent(s) of a dependent applicant, and the accuracy of the information in this system; (4) reporting the results of the need analysis, Federal Pell Grant eligibility determination, and the results of duly authorized computer matching programs between the Department and other Federal agencies to applicants, postsecondary institutions, third-party servicers, State agencies designated by the applicant and other Departmental and investigative components for use in operating and evaluating the Title IV, HEA programs and in the imposition of criminal, civil, or administrative sanctions; (5) enforcing the terms and conditions of a Title IV loan or grant; (6) servicing and collecting a delinquent Title IV loan or grant; (7) initiating enforcement action against an individual involved in program fraud, abuse, or noncompliance; (8) locating a debtor; (9) maintaining a record of the data supplied by those requesting assistance; (10) ensuring compliance with and enforcing Title IV, HEA programmatic requirements; (11) acting

as a repository and source for information necessary to fulfill the requirements of Title IV of the HEA; (12) evaluating Title IV program effectiveness; (13) enabling institutions of higher education designated by the applicant to review and analyze the financial aid data of their applicant population; and (14) assisting students with the completion of the application for the Federal student financial assistance programs authorized by Title IV of the HEA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program Disclosures.*

(a) To verify the identity of the applicant and the applicant's spouse, if applicable, and the parent(s) of a dependent applicant; to determine the accuracy of the information contained in the record; to support compliance with Title IV, HEA statutory and regulatory requirements; and to assist with the determination, correction, processing, tracking, and reporting of program eligibility and benefits, the Department may disclose records to guaranty agencies and financial institutions participating in the Federal Family Education Loan (FFEL) Programs, institutions of higher education, third-party servicers, and Federal and State agencies;

(b) To provide an applicant's financial aid history, including information about the applicant's Title IV, HEA loan defaults and Title IV, HEA grant program overpayments, the Department may disclose records to institutions of higher education, guaranty and State agencies and financial institutions participating in the FFEL Programs, and third-party servicers;

(c) To facilitate receiving and correcting application data, processing Federal Pell Grants and Direct Loans, and reporting Federal Perkins Loan Program expenditures to the Department's processing and reporting systems, the Department may disclose records to institutions of higher education, State agencies and third-party servicers;

(d) To assist loan holders with the collection and servicing of Title IV, HEA loans; to support pre-claims/supplemental pre-claims assistance; to assist in locating borrowers; and to assist in locating students who owe grant overpayments, the Department may disclose records to guaranty agencies and financial institutions participating in the FFEL Programs, institutions of higher education, third-party servicers, and Federal, State, and local agencies;

(e) To facilitate assessments of Title IV Program compliance, the Department may disclose records to guaranty agencies and financial institutions participating in the FFEL Programs, institutions of higher education, third-party servicers, and Federal, State, and local agencies;

(f) To assist in locating holders of loan(s), the Department may disclose records to student borrowers, guaranty agencies and financial institutions participating in the FFEL Programs, institutions of higher education, third-party servicers, and Federal, State, and local agencies;

(g) To assist in assessing the administration of Title IV program funds by guaranty agencies, financial institutions, institutions of higher education, and third-party servicers, the Department may disclose records to Federal and State agencies;

(h) To enforce the terms of a loan or grant or to assist in the collection of loan or grant overpayments, the Department may disclose records to guaranty agencies and financial institutions participating in the FFEL programs, institutions of higher education, third-party servicers, and Federal, State, and local agencies;

(i) To assist borrowers in repayment, the Department may disclose records to guaranty agencies and financial institutions participating in the FFEL program, institutions of higher education, third-party servicers, and Federal, State, and local agencies;

(j) To initiate legal action against an individual involved in illegal or unauthorized Title IV, HEA program expenditures or activities, the Department may disclose records to guaranty agencies and financial institutions participating in the FFEL programs, institutions of higher education, third-party servicers, and Federal, State, and local agencies;

(k) To initiate or support a limitation, suspension, or termination action, an emergency action, or a debarment or suspension action, the Department may disclose records to guaranty agencies and financial institutions participating in the FFEL programs, institutions of higher education, third-party servicers, and Federal, State, and local agencies;

(l) To investigate complaints, update files, and correct errors, the Department may disclose records to guaranty agencies and financial institutions participating in the FFEL programs, institutions of higher education, third-party servicers, and Federal, State, and local agencies;

(m) To inform the parent(s) of a dependent applicant, or a spouse of an applicant, of information about the parent(s) or spouse in an application for Title IV, HEA funds, the Department may disclose records to the parent(s) or the spouse, respectively;

(n) To disclose to the parent(s) of a dependent applicant applying for a PLUS loan (to be used on behalf of a student), to identify the student as the correct beneficiary of the PLUS loan funds, and to allow the processing of the PLUS loan application and promissory note, the Department may disclose records to the parent(s) applying for the PLUS loan;

(o) The Department, upon request by a third party, may disclose information to a third party for the purpose of expediting the student application process. The third party must provide the Department with the applicant's first and last name, SSN, date of birth, and Data Release Number (DRN). A DRN is a four-digit number assigned to an application by Federal Student Aid.

(p) The Department may disclose filing status information of an applicant who submits a FAFSA to an applicant's local educational agency and secondary school. This disclosure is for the purpose of allowing the applicant's local educational agency and secondary school to counsel the applicant whose submitted FAFSA may be incomplete or inaccurate and to offer the applicant assistance with completion.

(q) The Department may disclose information from this system of records to other Federal agencies, such as the Internal Revenue Service, to enable an applicant, should the applicant wish to do so, to obtain information from other Federal agencies' records that will assist the applicant in completing the FAFSA online.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, or local or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* If information in the system of records either alone or in connection with other information indicates a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose records to an entity charged with investigating or prosecuting those violations or potential violations.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the following parties is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity where the Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation of the employee;

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee;

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual or entity.

(d) *Parties, Counsel, Representatives and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the party, counsel representative or witness.

(5) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the DOJ or to the Office of Management and Budget (OMB), if the Department determines that disclosure would help in determining whether records are required to be disclosed under the FOIA.

(6) *Contracting Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records to the contractor's employees, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to establish and maintain the safeguards required under 5 U.S.C. 552a(m) of the Privacy Act with respect to the records.

(7) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress in response to an inquiry from the member made at the written request of the individual whose records are being disclosed. The member's right to the information is no greater than the right of the individual who requested it.

(8) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(9) *Employee Grievance, Complaint or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action, the Department may disclose the record in the course of investigation, fact-finding, or adjudication to any witness, designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(10) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(11) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(12) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. Further, the Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(13) *Disclosure to the OMB for Federal Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements. These requirements currently include transfer of data on lender interest benefits and special allowance payments, defaulted loan balances, and supplemental pre-claims assistance payments information.

(14) *Disclosures to third parties through computer matching programs.* Any information from this system of records, including personal information obtained from other agencies through computer matching programs, may be disclosed to any third-party through a computer matching program in connection with an individual's application or participation in any grant or loan program administered by the Department. Purposes of these disclosures may be to determine program eligibility and benefits, enforce the conditions and terms of a loan or grant, permit the servicing and collecting of a loan or grant, counsel the individual in repayment efforts, investigate possible fraud and verify compliance with program regulations, locate a delinquent or defaulted debtor, or initiate legal action against an individual involved in program fraud or abuse.

(15) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has

been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose the following information to a consumer reporting agency regarding a valid overdue claim of the Department: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper applications are maintained in standard Federal Records Center boxes in locked storage rooms at the contractor facility in Mt. Vernon, Illinois and then moved to the Federal archives and maintained there.

Computerized applicant records, which include optically-imaged documents, are maintained on magnetic tape reels, cartridges and hard disks in the computer facility and locked storage rooms within the Virtual Data Center. Microfiche records maintained in the Washington, DC office are stored in a locked fireproof file cabinet. Access is available only to authorized personnel.

RETRIEVABILITY:

Records are indexed and retrieved by the applicant's SSN, name, and the academic year in which the applicant applied for Title IV, HEA program assistance.

SAFEGUARDS:

Physical access to the data systems housed within the VDC is controlled by a computerized badge reading system, and the entire complex is patrolled by security personnel during non-business hours. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. Multiple levels of security are maintained within the computer system control program. This security system limits data access to Department and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded. Paper applications are maintained in standard Federal Records Center boxes in a locked storage room at the contractor facility in Mount Vernon, Illinois and then moved to the Federal archives and maintained there.

RETENTION AND DISPOSAL:

The Department will retain all identifiable CPS records for a period not to exceed 15 years after the end of the award year in accordance with the applicable Record Retention Schedule as approved by the National Archives and Records Administration. At the conclusion of the mandatory retention period, these records will be destroyed consistent with legal retention requirements established by the Department in conjunction with the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Application Processing Division, Program Management Systems, Federal Student Aid, U.S. Department of Education, 830 First St., NE., UCP Room 63C4, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager and provide your name, date of birth, and SSN or call 1–800–4–FED–AID (1–800–433–3243) and give the same information. Requests for notification about whether the system of records contains information about an individual must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager and provide information as described in the Notification Procedure. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record for the current processing year (which begins on January 1 of the calendar year and continues for 18 months until June 30 of the following calendar year) in the FAFSA, contact the system manager with the information described in the Notification Procedure, identify the specific items to be changed, and provide a justification for the change. Requests to amend a record must meet the requirements of regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Applicants for Federal student financial aid, their spouses, if married, and the parent(s) of dependent applicants provide the information used in this system by filing a phone, paper, or electronic version of the FAFSA with the Department of Education. (The electronic FAFSA can be accessed at *http://www.fafsa.ed.gov*).

Postsecondary institutions designated by the applicant or third-party servicers designated by the postsecondary institution may correct the records in this system as a result of documentation provided by the applicant or by a dependent applicant's parents, such as Federal income return(s) (IRS Form 1040, IRS Form 1040A or IRS Form 1040EZ), Social Security card(s), and Department of Homeland Security I–551 Resident Alien cards.

This system contains information added during CPS processing and information received from other Department systems, including NSLDS, COD, and SAIG, Participation Management System. For more information about the information received from these other Department systems, see the Appendix.

The results of computer matching programs with the following Federal agencies are also added to the student's record during CPS processing: The Social Security Administration (SSA), the Department of Veterans Affairs (VA), the Selective Service System (SSS), the Department of Homeland Security (DHS), the DOJ, and the Department of Defense (DOD). For more information about the information received from these computer matching programs, see the Appendix.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix to 18–11–01

ADDITIONAL INFORMATION ABOUT CATEGORIES OF RECORDS IN THE SYSTEM AND RECORD SOURCE CATEGORIES:

Data provided to the Department as a result of computer matching with other Federal agencies is added during CPS processing. These computer matches are with the SSA to verify the SSNs, U.S. citizenship status and date of death (if applicable) of applicants, and dependent applicants' parents, pursuant to sections 428B(f)(2), 483(a)(12), and 484(g) and (p) of the HEA (20 U.S.C. 1078–2(f)(2), 1090(a)(12), and 1091(g) and (p)); the VA to verify the status of applicants who claim to be veterans, pursuant to section 480(c) and (d)(1)(D) of the HEA (20 U.S.C. 1087vv(c) and (d)(1)(D)); the SSS to confirm the registration status of male applicants, pursuant to section 484(n) of the HEA (20 U.S.C. 1091(n)); the DHS to confirm the immigration status of applicants for assistance as authorized by section 484(g) of the HEA (20 U.S.C. 1091(g)); the DOJ to enforce any requirement imposed at the discretion of a court, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, as amended by section 1002(d) of the Crime Control Act of 1990, Public Law 101–647 (21 U.S.C. 862), denying Federal benefits under the programs established by Title IV of the HEA to any individual convicted of a State or Federal offense for the distribution or possession of a controlled substance; and the DOD to identify dependents of U.S. military personnel who died in service in Iraq and Afghanistan after September 11, 2001 to determine if they are eligible for increased amounts of Title IV, HEA program assistance, pursuant to sections 420R and 473(b) of the HEA (20 U.S.C. 1070h and 1087mm(b)).

During CPS processing, the Department's COD system sends information to this system for students who have received a Federal Pell Grant. The CPS uses this information for verification analysis and for end-of-year reporting. This data includes, but is not limited to: Verification Selection and Status, Potential Over-award Project (POP) indicator, School Cost of Attendance, Reporting and Attended Campus Pell ID and Enrollment Date, and Federal Pell Grant Program information (Scheduled Federal Pell Grant Award, Origination Award Amount, Total Accepted Disbursement Amount, Number of Disbursements Accepted, Percentage of Eligibility Used At This Attended Campus Institution, and Date of Last Activity from the Origination or Disbursement table).

CPS also receives applicant data from the Department's NSLDS System each time an application is processed or corrected. This process assesses student aid eligibility, updates financial aid history, and ensures compliance with Title IV, HEA regulations. Some of this data appears on the applicant's SAR and ISIR. Title IV, HEA award information is provided to NSLDS from several different sources. Federal Perkins Loan data and Federal Supplemental Educational Opportunity Grant (FSEOG) overpayment data is sent from postsecondary institutions or their third-party servicers; the Department's COD system provides Federal Pell Grant and Direct Loan data; State and Guaranty Agencies provide data on FFEL loans received from lending institutions participating in the FFEL programs.

Financial aid transcript data reported by NSLDS provides applicants, postsecondary institutions and third-party servicers with information about the type(s), amount(s), dates and overpayment status of prior and current Title IV, HEA funds the applicant received. FFEL and William D. Ford Federal Direct Student Loan (DL) data reported by NSLDS includes, but is not limited to: (1) Aggregate Loan Data, such as: Subsidized, Unsubsidized and Combined Outstanding Principal Balances, Unallocated Consolidated Outstanding Principal Balances, Subsidized, Unsubsidized and Combined Pending Disbursements, Subsidized, Unsubsidized and Combined Totals, and Unallocated Consolidated Total; (2) Detail Loan Data, such as: Loan Sequence Number, Loan Type Code, Loan Change Flag, Loan Program Code, Current Status Code and Date, Outstanding Principal Balance and Date, Net Loan Amount, Loan Begin and End Dates, Amount and Date of Last Disbursement, Guaranty Agency Code, School Code, Contact Code and Type, Grade Level; (3) system flags for: Additional Unsubsidized Loan, Capitalized Interest, Defaulted Loan Change, Discharged Loan Change, Loan Satisfactory Repayment Change, Active Bankruptcy Change, Overpayments Change, Aggregate Loan Change, Defaulted Loan, Discharged Loan, Loan Satisfactory Repayment, Active Bankruptcy, Additional Loans, DL Master Promissory Note, DL PLUS Loan Master Promissory Note, Subsidized Loan Limit, and the Combined Loan Limit. Federal Perkins Loan data reported by NSLDS includes, but is not limited to: Cumulative and Current Year Disbursement Amounts; flags for Perkins Loan Change, Defaulted Loan, Discharged Loan, Loan Satisfactory Repayment, Active Bankruptcy, Additional Loans, and Perkins Overpayment Flag and Contact (School or Region). Federal Pell Grant payment data reported includes, but is not limited to: Pell Sequence Number, Pell Attended School Code, Pell Transaction Number, Last Update Date, Scheduled Amount, Award Amount, Amount Paid to Date, Percent Scheduled Award Used, Pell Payment EFC, Flags for Pell Verification, Pell Payment Change. Federal Teacher Education Assistance for College and Higher Education (TEACH) Grant Program data includes, but is not limited to: TEACH Grant Overpayment Contact, TEACH Grant Overpayment Flag, and TEACH Grant Loan Principal Balance, TEACH Grant Total, Teach Grant change Flag. The National Science and Mathematics Access to Retain Talent Grant (SMART Grant) data includes, but is not limited to: SMART Grant Overpayment Flag, SMART Grant Overpayment Contact, and SMART Grant Change Flag. Iraq and Afghanistan Service Grants (IASG) data includes, but is not limited to: Total Award Amount. Academic Competitiveness Grant (ACG) data includes, but is not limited to: ACG Award Amount, ACG Overpayment Flag, and ACG Payment Change Flag. FSEOG data includes, but is not limited to: Overpayment Flag and contact information.

The Department obtains and exchanges information that is included in this system of records from postsecondary institutions, third-party servicers, State agencies and lending institutions that participate in the FFEL programs. The eligible entities (above) register with the SAIG to participate in the information exchanges specified for their business processes.

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BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Transition to Employment

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–1.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for a DRRP.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for a DRRP. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before January 28, 2010.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *donna.nangle@ed.gov.* You must include the term "Proposed Priority for a DRRP on Transition to Employment" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. *Telephone:* (202) 245–7462 or by *e-mail: donna.nangle@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.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for DRRP competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment:

We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 6029, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC, time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

DRRP Program

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

Transition to Employment.

Background:

Only 43 percent of youth with disabilities are employed during the period immediately after high school compared to 63 percent of their peers without disabilities (Wagner *et al.*, 2005). In addition, certain populations of youth with disabilities are at an even greater risk of experiencing poor employment outcomes, such as populations who are African-American, younger, or female (Coutinho *et al.*, 2006; Cameto *et al.*, 2003; Fabian, 2007; Wagner *et al.*, 2005, 2006; Wells *et al.*, 2003). The type of disability is also related to the employment outcomes for youth with disabilities (Cameto *et al.*, 2003; Wagner *et al.*, 2005, 2006; Wells *et al.*, 2003). Relative to the general population of youth with disabilities, youth with disabilities from disadvantaged backgrounds (e.g., poverty, foster care, involvement in the juvenile justice system) are at even greater risk of poor employment outcomes (Cameto *et al.*, 2003; National Council on Disability, 2008; Wagner *et al.*, 2005, 2006; Wells *et al.*, 2003).

Studies of promising practices for transition-age youth with disabilities suggest that facilitators of successful employment outcomes include, but are not limited to: increasing collaboration and coordination among providers serving these youth (Flannery *et al.*, 2007; Oertle & Trach, 2007; Wittenburg *et al.*, 2002), encouraging youth participation in the workforce during the high school years (Fabian, 2007; Wittenburg & Maag, 2002), encouraging participation in postsecondary education (Flannery *et al.*, 2007; Weathers *et al.*, 2007), providing work-specific and community participation support (Garcia-Iriarte *et al.*, 2007), and

involving employers in transition programs (Fabian, 2007; Garcia-Iriarte *et al.*, 2007; Rutkowski *et al.*, 2006). Some of these practices, such as youth participation in the workplace during high school and employer participation in transition programs, have been developed primarily for particular high-risk groups such as minority youth from urban areas (e.g., Fabian, 2007; Garcia-Iriarte *et al.*, 2007).

Many of the promising practices suggested by this research have been incorporated into projects supported by the U.S. Department of Education. Some projects involving promising practices, such as inter-agency collaboration, exposure to work experience, and community-based training, have been implemented by State vocational rehabilitation agencies (U.S. Department of Education, 2009). Promising practices like these and others (e.g., student-focused planning, family involvement, youth development activities) are also the focus of several current demonstration projects funded by the Rehabilitation Services Administration of the U.S. Department of Education (2007).

Despite these efforts, there is still little scientifically based research demonstrating the efficacy of many of these practices and interventions in improving employment outcomes for transition-age youth with disabilities, particularly for those transition-age youth with disabilities who are at increased risk for poor employment outcomes. The knowledge gained from the identification and evaluation of effective interventions will provide policymakers and practitioners with the evidence they need to justify a broad application of promising practices in vocational rehabilitation and educational settings.

References:

Cameto, R., Marder, C., Wagner, M., & Cardoso, D. (2003). Youth employment. NLTS2 Data Brief: A report from the National Longitudinal Transition Study-2, 2, pp. 1–5.

Coutinho, M.J., Owald, D.P., & Best, A.M. (2006). Differences in outcomes for female and male students in special education. Career Development for Exceptional Individuals, 29, 48–59.

Fabian, E.S. (2007). Urban youth with disabilities: Factors affecting transition employment. Rehabilitation Counseling Bulletin, 50, pp. 130–138.

Flannery, K.B., Slovic, R., Benz, M.R., & Levine, E. (2007). Priorities and changing practices: Vocational rehabilitation and community colleges improving workforce development programs for people with disabilities. Journal of Vocational Rehabilitation, 27, 141–151.

Garcia-Iriarte, E., Balcazar, F., & Taylor-Ritzler, T. (2007). Analysis of case managers' support of youth with disabilities transitioning from school to work. Journal of Vocational Rehabilitation, 26, 129–140.

National Council on Disability. (2008). The Rehabilitation Act: Outcomes for transition-age youth. *See www.ncd.gov/newsroom/publications/2008/publications.htm.*

Oertle, K.M., & Trach, J.S. (2007). Interagency collaboration: The importance of rehabilitation professionals' involvement in transition. Journal of Rehabilitation, 73, 36–44.

Rutkowski, S., Daston, M., Van Kuiken, D., & Richle, E. (2006). Project SEARCH: A demand-side model of high school transition. Journal of Vocational Rehabilitation, 25, 85–96.

U.S. Department of Education (2007). Notice inviting applications. **Federal Register,** 72 FR 36682–36685.

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Wagner, M., Newman, L., Cameto, R., Garza, N., & Levine, P. (2005). After high school: A first look at the postschool experiences of youth with disabilities. A report from the National Longitudinal Transition Study-2 (NLTS2). Menlo Park, CA: SRI International. Available at *http://www.nlts2.org/reports/2005_04/nlts2_report_2005_04_complete.pdf.*

Wagner, M., Newman, L., Cameto, R., Levine, P., & Garza, N. (2006). An overview of findings from Wave 2 of the National Longitudinal Transition Study-2 (NLTS2). Menlo Park, CA: SRI International. *See http://www.nlts2.org/reports/2006_08/nlts2_report_2006_08_complete.pdf.*

Weathers, R.R., Walter, G., Schley, S., Hennessey, J., Hemmeter, J., & Burkhauser, R.V. (2007). How postsecondary education improves adult outcomes for Supplemental Security Income children with severe hearing impairments. Social Security Bulletin, 67, 101–131.

Wells, T., Sandefur, G.D., & Hogan, D.P. (2003). What happens after the high school years among younger persons with disabilities? Social Forces, 82, 803–832.

Wittenburg, D.C., Golden, T., & Fishman, M. (2002). Transition options for youth with disabilities: An overview of the programs and policies that affect transition from school. Journal of Vocational Rehabilitation, 17, 195–206.

Wittenburg, D.C., & Maag, E. (2002). School to where? A literature review on economic outcomes of youth with disabilities. Journal of Vocational Rehabilitation, 17, 265–280.

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability and Rehabilitation Research Project (DRRP) on Transition to Employment. The purpose of this priority is to identify and evaluate promising practices that will facilitate job entry and career development for transition-age youth with disabilities who are at risk for poor employment outcomes.

A number of factors can affect employment outcomes for this population, including demographic characteristics (e.g., race/ethnicity, age), disability characteristics (e.g., disability type) and disadvantaged background (e.g., poverty, foster care, involvement in the juvenile justice system). The DRRP must build upon the current research literature and ongoing implementation and demonstration of promising practices in the field of transition to employment.

Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) New knowledge of promising employment-focused transition practices for transition-age youth with disabilities who are at risk for poor employment outcomes. The DRRP must contribute to this outcome by conducting research to identify such practices. These practices may include, but are not limited to: work experience during the secondary school years; involvement of employers in the design and implementation of the transition program; supported employment; and increased coordination among schools, State vocational rehabilitation programs, or other programs serving transition-age youth with disabilities.

(b) New knowledge regarding the effectiveness of employment-focused transition practices for transition-age youth with disabilities at risk for poor employment outcomes. The DRRP must contribute to this outcome by implementing and evaluating at least one promising practice identified under paragraph (a) for a particular at-risk group of transition-age youth with disabilities. In evaluating the promising practice or practices, the DRRP must use scientifically based research, as defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7801(37)). Applicants must identify the specific at-risk group or groups of transition-age youth with disabilities they propose to

study, provide evidence that the selected population or populations are, in fact, at risk for poor employment outcomes, and explain how the proposed practices are expected to address the needs of the population or populations.

(c) Enhancement of the knowledge base of policy makers, State VR personnel, and personnel of other programs serving transition-age youth with disabilities. The DRRP must contribute to this outcome by conducting targeted dissemination of results from research conducted under paragraphs (a), and (b).

• In addition, through coordination with the NIDRR Project Officer, the DRRP should contribute to this outcome by:

(1) Collaborating with relevant technical assistance grantees from the Rehabilitation Services Administration, such as the Technical Assistance and Continuing Education (TACE) Centers; and

(2) Collaborating with relevant technical assistance Grantees from the Office of Special Education Programs, such as the National Secondary Transition Technical Assistance Center.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge about transition to employment for youth with disabilities, through research, development, dissemination, utilization, or technical assistance projects.

Another benefit of this proposed priority is that the establishment of a new DRRP will improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information about transition to employment for youth with disabilities. This information will improve the options for youth with disabilities as they transition into adulthood and employment activities.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll- free, at 1–800–877–8339.

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: *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: December 21, 2009.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E9–30670 Filed 12–28–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Oil and Gas Reserves System Surveys package to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by January 28, 2010. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail to *Christine_J._Kymn@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jason Worrall. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*Jason.worrall@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–0670. Mr. Worrall may be contacted by telephone at (202) 586–6075.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; (8) estimate number of respondents; and (9) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response):

1. Form EIA–23S, "Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report."

Form EIA–23L, "Annual Survey of Domestic Oil and Gas Reserves, Field Level Report."

Form EIA–64A, "Annual Report of the Origin of Natural Gas Liquids Production."

2. Office of Oil and Gas (OOG).

3. OMB Number 1905–0057.

4. Three-year extension requested.

5. Mandatory.

6. The Oil and Gas Reserves System program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

7. Business or other for-profit.

8. Estimate number of respondents.

9. 16327 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC on December 22, 2009.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9–30769 Filed 12–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–23–000]

Sagebrush, a California Partnership; Notice of Filing

December 22, 2009.

Take notice that on December 7, 2009, pursuant to sections 210, 211 and 212 of the Federal Power Act, Sagebrush, a California Partnership (Sagebrush) filed a proposed open access transmission tariff (OATT) to govern the terms of new interconnection and transmission service on Sagebrush's existing transmission line (Line). Due to its unique jurisdictional status and to reflect the unique nature of the Line, Sagebrush states that the proposed OATT deviates from the Commission's *pro forma* OATT in several respects.

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, 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 comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 January 15, 2010.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–30805 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030–212]

Portland General Electric Company; Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 18, 2009.

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

a. *Application Type:* Amendment of License.

b. *Project No.:* 2030–212.

c. *Date Filed:* November 10, 2009.

d. *Applicant:* Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon.

e. *Name of Project:* Pelton Round Butte Hydroelectric Project.

f. *Location:* The project is located on the Deschutes River in Jefferson County, Oregon. The project occupies 3,503.74 acres of federal and tribal lands administered by the U.S. Forest Service, U.S. Bureau of Land Management, and U.S. Bureau of Indian Affairs.

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

h. *Applicant Contact:* Ms. Julie A. Keil, Director of Hydro Licensing, Portland General Electric Company, 121 SW Salmon Street, Portland, Oregon 97204; telephone (503) 464–8864.

i. *FERC Contact:* Linda Stewart, telephone (202) 502–6680, and e-mail address *linda.stewart@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* (January 19, 2010).

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

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2030–212) on any comments or motions filed.

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

k. *Description of Request:* Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon propose to: (1) Discontinue the use of the new U. S. Geological Survey (USGS) Madras gage installed pursuant to the current license and instead use the previous gage for monitoring; (2) modify the language of Articles 409 (stage change limits) and 412 (required minimum flows) to eliminate inconsistencies that exist between the articles; and (3) modify the Project Operating Plan (Exhibit C of Settlement Agreement) and the Operations Compliance Plan (Article 415) to provide for the use of the previous USGS Madras gage for monitoring.

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

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

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

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30809 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–92–006]

Liberty Gas Storage LLC; Notice of Amendment

December 22, 2009.

Take notice that on December 14, 2009, Liberty Gas Storage LLC ("Liberty"), 101 Ash Street, San Diego, CA 92101, filed in the above referenced docket, an application pursuant to section 7 of the Natural Gas Act (NGA), to amend a certificate of public convenience and necessity, 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to William Rapp, Liberty Gas Storage, 101 Ash Street, San Diego, CA 92101, phone (619) 699–5050.

The 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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 in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 online 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: January 5, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30818 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–30–000]

Port Barre Investments, LLC (d/b/a Bobcat Gas Storage); Notice of Amendment Application

December 22, 2009.

On December 15, 2009, Bobcat Gas Storage (Bobcat), pursuant to section 7(c) of the Natural Gas Act, as amended, and parts 157 and 284 of the Federal Energy Regulatory Commission's (Commission) regulations, filed to amend its certificate. The requested amendment would expand the Bobcat Gas Storage Project certificated in CP09–19–000 on March 19, 2009, to add working gas capacity totaling 9.3 billion cubic feet (Bcf) in two existing plus three new salt dome storage caverns. The amendment would expand total storage project working gas capacity to 48.9 Bcf. No construction is proposed in Bobcat's application. Bobcat also requests that the Commission reaffirm its market-based rates authorization and issue all requested authorizations on or before March 31, 2010.

Questions regarding this application should be directed to Paul Bieniawski, Bobcat Gas Storage, 11200 Westheimer, Suite 625, Houston, TX 77042, (713) 800–3535 or Lisa Tonery, Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, NY 10103, (212) 318–3009.

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.

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 online 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 January 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30814 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–398–002]

MoBay Storage Hub, LLC; Notice of Application

December 22, 2009.

Take notice that on December 10, 2009, MoBay Storage Hub, LLC (MoBay), 5847 San Felipe, Suite 3050, Houston, Texas 77057, filed an application in Docket No. CP06–398–002, pursuant to section 7(c) of the Natural Gas Act (NGA), to amend its Certificate of Public Convenience and Necessity issued by the Commission on December 20, 2006. Specifically, MoBay requests authorization for the addition of nine new injection/withdrawal wells;

two new caisson structures; and an increase in the certificated storage capacity, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application should be directed to Jim Goetz, MoBay Storage Hub, LLC, 5847 San Felipe, Suite 3050, Houston, Texas 77057, (713) 961–3204 (phone) or (713) 961–2676 (fax).

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 in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30813 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2621–009]

Lockhart Power Company; Notice Soliciting Scoping Comments

December 18, 2009.

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

a. *Type of Application:* New Major License.

b. *Project No.:* P–2621–009.

c. *Date filed:* November 16, 2009.

d. *Applicant:* Lockhart Power Company.

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

f. *Location:* The proposed project is located on the Pacolet River, near the Town of Pacolet, Spartanburg County, South Carolina. The project does not occupy federal lands.

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

h. *Applicant Contact:* Bryan D. Stone, P.O. Box 10, 420 River Street, Lockhart, SC 29364; Telephone (864) 545–2211.

i. *FERC Contact:* Lee Emery, Telephone (202) 502–8379, or by e-mail at *lee.emery@ferc.gov.*

j. *Deadline for filing scoping comments:* January 19, 2010.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*), under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include project name and number (i.e., Pacolet Project No. 2621–009) and bear the heading "Comments on Scoping Document 1."

k. This application is not ready for environmental analysis at this time.

l. The proposed Pacolet Project would consist of two developments; one that is an existing, licensed development (the Lower Pacolet development) and a new development (Upper Pacolet

development). The project would have an annual generation of 8,092,000 kilowatt-hours. The proposed project would consist of the facilities described below.

The Upper Pacolet development would consist of: (1) An existing 315-foot-long by 18-foot-high concrete and rubble masonry dam, with the addition of 3-foot-high flashboards; (2) an existing 30-acre reservoir, with a useable storage capacity of 90 acre-feet at elevation 519.0 feet North American Vertical Datum 1988 (NAVD 88); (3) new vertical slide intake gates with rack and pinion operators, sluice gates, and trashracks having a 1.375-inch clear bar spacing with a single trash rake cleaning mechanism; (4) a new 24-foot-wide by 40-foot-long concrete powerhouse that would contain a vertical Kaplan turbine with an estimated generating capacity of 1.1 megawatts (MW); (5) a proposed 200-foot-long, 34.5 kilovolt (kV) transmission line; (6) a proposed switchyard; and (7) appurtenant facilities.

The Lower Pacolet development (all existing facilities) would consist of: (1) A 347-foot-long by 24-foot-high concrete and rubble masonry dam, with 4-foot-high flashboards; (2) three sand gates; (3) an 11-acre reservoir, with a useable storage capacity of 44-acre feet at an elevation of 492.0 feet NAVD 88; (4) an intake structure equipped with trashracks, having a 1.375-inch clear bar spacing and a trash rake; (5) a 100-foot-long by 10-foot-diameter penstock; (6) a 67-foot-long by 32-foot-wide concrete powerhouse, integral with the dam, containing two vertical turbines, each generating 400 kilowatts (kW); (7) a tailrace with a 340-foot-long curved training wall; (8) a 250-foot-long, 34.5-kV transmission line; and (9) appurtenant facilities.

m. A copy of the application 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, contact FERC Online Support. A copy is available for inspection and reproduction at the address in Item H above.

n. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process*

The Commission staff intends to prepare a single Environmental Assessment (EA) for the Pacolet Hydroelectric Project, in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on December 18, 2009.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD 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, call 1–866–208–3676 or, for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30810 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 22, 2009.

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

Docket Numbers: EC10–20–000.

Applicants: Locust Ridge Wind Farm, LLC, Fortis Energy Marketing & Trading GP.

Description: Supplemental Filing of Fortis Energy Marketing & Trading GP and Locust Ridge Wind Farm, LLC.

Filed Date: 12/18/2009.

Accession Number: 20091218–5208.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

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

Docket Numbers: ER97–2846–017; ER99–2311–014.

Applicants: Carolina Power & Light Company; Florida Power Corporation.

Description: Notice of Change in Status for Florida Power Corporation.

Filed Date: 12/18/2009.

Accession Number: 20091218–5104.

Comment Date: 5 p.m. Eastern Time on Friday, January 8, 2010.

Docket Numbers: ER99–2341–014; ER06–1334–008; ER07–277–006.

Applicants: Invenergy Cannon Falls LLC, Spindle Hill Energy LLC, Hardee Power Partners Limited.

Description: Supplemental Information for Notification of Change in Fact Filing of Hardee Power Partners Limited, Spindle Hill Energy LLC and Invenergy Cannon Falls, LLC.

Filed Date: 12/22/2009.

Accession Number: 20091222–5124.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

Docket Numbers: ER07–277–007.

Applicants: Invenergy Cannon Falls LLC.

Description: Supplemental Information for Triennial Report Filing of Invenergy Cannon Falls LLC.

Filed Date: 12/22/2009.

Accession Number: 20091222–5121.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

Docket Numbers: ER08–237–006.

Applicants: Forward Energy LLC.

Description: Supplemental Information for Triennial Report Filing of Forward Energy LLC.

Filed Date: 12/22/2009.

Accession Number: 20091222–5127.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

Docket Numbers: ER09–1719–001.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits a compliance filing.

Filed Date: 12/17/2009.

Accession Number: 20091218–0206.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: ER10–444–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co. submits a revised Power Supply and Coordination Agreement.

Filed Date: 12/17/2009.

Accession Number: 20091218–0210.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: ER10–445–000.

Applicants: Oncor Electric Delivery Company LLC.

Description: Oncor Electric Delivery Co, LLC's submits First Revised Sheet No. 37 et al to FERC Electric Tariff, Twelfth Revised Volume No. 1.

Filed Date: 12/17/2009.

Accession Number: 20091218–0209

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: ER10–446–000.

Applicants: Oncor Electric Delivery Company LLC.

Description: Oncor Electric Delivery Co, LLC's submits a First Revised Sheet

No. 34 to FERC Electric Tariff, Seventh Revised Volume No. 2.

Filed Date: 12/17/2009.

Accession Number: 20091218–0208.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: ER10–447–000.

Applicants: Southwood 2000, Inc.

Description: Southwood 2000, Inc submits a Notice of Cancellation.

Filed Date: 12/17/2009.

Accession Number: 20091218–0205.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: ER10–448–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a Notice of Cancellation of Meter Agent Services Agreement.

Filed Date: 12/17/2009.

Accession Number: 20091218–0207.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: ER10–449–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits a Notice of Cancellation of Meter Agent Services Agreement.

Filed Date: 12/17/2009.

Accession Number: 20091218–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 proceedings 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–30803 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 18, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–11–000.

Applicants: Ridgewind Power Partners, LLC.

Description: Self Certification Notice of Ridgewind Power Partners, LLC for Exempt Wholesale Generator Status.

Filed Date: 12/09/2009.

Accession Number: 20091209–5091.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 30, 2009.

Docket Numbers: EG10–12–000.

Applicants: Green Country Operating Services, LLC.

Description: EWG Self Certification Notice of Green Country Operating Services, LLC.

Filed Date: 12/15/2009.

Accession Number: 20091215–5087.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 5, 2010.

Docket Numbers: EG10–14–000.

Applicants: Buffalo Ridge II LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Buffalo Ridge II.

Filed Date: 12/17/2009.

Accession Number: 20091217–5121.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: EG10–15–000.

Applicants: Elm Creek Wind II LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Statusof Elm Creek Wind II LLC.

Filed Date: 12/17/2009.

Accession Number: 20091217–5123.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

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

Docket Numbers: ER10–71–002.

Applicants: Elmwood Park Power LLC.

Description: Elmwood Park Power LLC submits amended tariff designated as FERC Electric Tariff, Original Volume 1.

Filed Date: 12/16/2009.

Accession Number: 20091217–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 6, 2010.

Docket Numbers: ER09–1400–003.

Applicants: Milford Wind Corridor Phase I, LLC.

Description: Milford Wind Corridor Phase I, LLC submits a revised version of its market-based rate wholesale power sales tariff.

Filed Date: 12/16/2009.

Accession Number: 20091217–0194.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 6, 2010.

Docket Numbers: ER10–211–001.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co. submits the Errata to the October 30, 2009 Filing re its Grid Management Charge Pass-Through Tariff.

Filed Date: 12/17/2009.

Accession Number: 20091217–0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 22, 2010.

Docket Numbers: ER10–306–001.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits the corrected sheets as Sub Original Sheet 70 through Sub Original Sheet 76.

Filed Date: 12/16/2009.

Accession Number: 20091217–0192.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 6, 2010.

Docket Numbers: ER10–338–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits the KEPCO Agreements with the proper designation as required by Order 614.

Filed Date: 12/17/2009.

Accession Number: 20091217–0210.

Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: ER10–425–000.
Applicants: Oceanside Power LLC.
Description: Oceanside Power LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: 12/17/2009.
Accession Number: 20091217–0206.
Comment Date: 5 p.m. Eastern Time on Thursday, January 7, 2010.

Docket Numbers: ER10–426–000.
Applicants: Stetson Wind II, LLC.
Description: Stetson Wind II, LLC submits its proposed FERC Electric Tariff, Original Volume 1 under which Stetson Wind II may make wholesale sales of electric capacity, energy, and ancillary services at market-based rates.
Filed Date: 12/16/2009.
Accession Number: 20091217–0193.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 6, 2010.

Docket Numbers: ER10–435–000.
Applicants: CPIDC, Inc.
Description: CPIDC, Inc. submits Notice of Succession informing the Commission that CPIDC adopts EPDC's market-based rate tariff.
Filed Date: 12/15/2009.
Accession Number: 20091217–0196.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 5, 2010.

Docket Numbers: ER10–436–000.
Applicants: CPI Energy Services (US) LLC.
Description: Notice of Name Change and Succession is being filed to inform the Commission of the change in name of EPLP Energy Services, LLC to CPI Energy Services.
Filed Date: 12/15/2009.
Accession Number: 20091217–0197.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 5, 2010.

Docket Numbers: ER10–437–000.
Applicants: ISO New England, Inc.
Description: ISO New England, Inc. submits tariff sheets reflecting the repositioning of tariff sheet etc.
Filed Date: 12/15/2009.
Accession Number: 20091217–0198.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 5, 2010.

Docket Numbers: ER10–438–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. *et al.* submits a package of materials that include the Installed Capacity Requirements and related values that will be used in the final Forward Capacity Market reconfiguration auction for the 2010/2011 Capability Year.
Filed Date: 12/15/2009.
Accession Number: 20091217–0200.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 5, 2010.

Docket Numbers: ER10–439–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits an amendment to Service Agreement 205 under its Open Access Transmission Tariff.
Filed Date: 12/16/2009.
Accession Number: 20091217–0209.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 6, 2010.

Docket Numbers: ER10–441–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits an Amended and Restated Interconnection Agreement dated 11/16/09 between Montana-Dakota and PacifiCorp to be designated as PacifiCorp First Revised Rate Schedule FERC 434.
Filed Date: 12/16/2009.
Accession Number: 20091217–0208.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 6, 2010.

Docket Numbers: ER10–442–000.
Applicants: North Western Corporation.
Description: North Western Corporation submits the executed Large Generator Interconnection Agreement between North Western and Martinsdale Wind Farm LLC.
Filed Date: 12/16/2009.
Accession Number: 20091217–0205.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 6, 2010.

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

Docket Numbers: ES10–17–000.
Applicants: South Carolina Electric & Gas Company, South Carolina Generating Company, Inc.
Description: Application of South Carolina Electric & Gas Company and South Carolina Generating Company, Inc.
Filed Date: 12/16/2009.
Accession Number: 20091216–5112.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 6, 2010.

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

Docket Numbers: QM10–3–000.
Applicants: New York State Electric & Gas Corp., Rochester Gas and Electric Corporation.
Description: Application of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation Requesting Termination of Their Obligation to Purchase from Qualifying Facilities with Net Capacity Greater than 20 MW.
Filed Date: 12/18/2009.
Accession Number: 20091218–5087.
Comment Date: 5 p.m. Eastern Time on Friday, January 15, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 proceedings 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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–30804 Filed 12–28–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12737–002]

Jordan Limited Partnership; Notice of Intent To Prepare an Environmental Assessment and Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

December 18, 2009.

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

a. *Type of Application:* New License.

b. *Project No.:* 12737–002.

c. *Date Filed:* April 16, 2009.

d. *Applicant:* Jordan Limited Partnership.

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

f. *Location:* On Jackson River in Alleghany County, Virginia.

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

h. *Applicant Contact:* Mr. James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, Tennessee 37738 (865) 436–0402.

i. *FERC Contact:* Jeffrey Browning, (202) 502–8677 or *jeffrey.browning@ferc.gov.*

j. *Deadline for filing scoping comments:* February 22, 2010.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

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

k. This application is not ready for environmental analysis at this time.

l. *Project Description:* Gathright Dam, which creates Lake Moomaw, is located on the Jackson River, 43.4 miles upstream of its confluence with the Cowpasture River to form the James River. Lake Moomaw extends upstream more than 12 miles from the dam. The dam is located in Alleghany County, Virginia with most of Lake Moomaw in Bath County.

The existing Corps facilities consist of: (1) The 257-foot-high, 1,172-foot-long rock-fill Gathright Dam with an impervious core and a top width of 32 feet; (2) an outlet works comprised of an intake tower with 10 water quality intake gates, outlet tunnel, stilling basin and outlet channel; (3) an emergency spillway located 2.4 miles south of the dam comprised of an ungated and unpaved trapezoidal channel 2,680 feet long and 100 feet wide at its crest; and (4) the 2,530-acre Lake Moomaw at a normal conservation pool water surface elevation of 1,582.0 [1] feet.

The proposed project would utilize the head created by the existing dam and consist of: (1) A new, 155-foot-high, 16-foot-wide, 10-foot deep intake module attached to the intake tower upstream of the south tunnel passageway trashrack; (2) one new 3.7-megawatt (MW) generating unit attached to the top of the intake module; (3) one new Francis turbine and draft tube at the bottom of the intake module; (4) a new 0.94-mile-long, 46-kilovolt transmission line; and (5) appurtenant facilities. The impoundment would provide an estimated average head of 140 feet for power generation purposes. The estimated average annual generation would be 17,500 megawatt hours.

m. *Locations of the Application:* A copy of the application 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction by contacting the applicant using the contact information in item (h) above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare a single environmental assessment (EA) for the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of these meetings and to assist staff in determining the scope of the environmental issues to be address in the environmental assessment. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: January 20, 2010.
Time: 1 p.m. (EST).
Place: Covington Public Library.
Address: Covington Public Library, 406 W Riverside Street, Covington, VA 24426.

Evening Scoping Meeting

Date: January 21, 2010.
Time: 6 p.m. (EST).
Place: Covington Public Library.
Address: Covington Public Library, 406 W Riverside Street, Covington, VA 24426.

The scoping document, which outlines the subject areas to be addressed in the environmental assessment, was mailed to the individuals and entities on the Commission's mailing list. Copies of the scoping document will be available at the scoping meetings or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (see item m above). Based on all oral and written comments, a revised scoping document may be issued.

Site Visit

We will hold a site visit to the project on Thursday, January 21, 2010, beginning at 10 a.m. (EST). To attend the site visit, meet at the U.S. Army Corps of Engineer's office at Gathright Dam. All participants are responsible for their own transportation and lunch. Anyone with questions about the site visit (or for directions) should contact James B. Price (865) 436–0402. Those individuals planning to participate in the site visit should notify Mr. Price of their intent, no later than January 18, 2010.

Note that Commission staff may hold a site visit and/or meeting at the project

[1] All elevations are referenced to NGVD 1,929 (National Geodetic Vertical Datum).

at a later date to discuss any project-related effects to archaeological, historic, or traditional cultural properties.

Meeting Objectives

At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from meeting participants all available information, especially quantifiable data, on the resources at issues; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Meeting Procedures

Scoping meetings will be recorded by a stenographer and will become part of the Commission's formal record for this proceeding.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist staff in defining and clarifying the issues to be addressed in the EA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30811 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–4–000]

Cranberry Pipeline Corporation; Notice of Petition for Rate Approval

December 22, 2009.

Take notice that on December 15, 2009, Cranberry Pipeline Corporation (Cranberry) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition requesting that the Commission approve its request to retain its existing interruptible transportation rate and firm and interruptible storage rates pursuant to section 311 of the Natural Gas Policy Act of 1978. Further, Cranberry requests approval to retain its existing fuel and lost and unaccounted for percentage for transportation and services.

Any person desiring to participate in this rate proceeding must file a motion 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 Applicant. 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 Applicant.

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, Monday, January 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30812 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division-Rate Order Nos. WAPA–144 and WAPA–148

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Concerning Transmission and Ancillary Services Rates and Transmission Service Penalty Rate for Unreserved Use.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order Nos. WAPA–144 and WAPA–148 and Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–AS7 and UGP–TSP1 on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are superseded. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expenses, and repay required investments within the allowable periods.

DATES: Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 and will be placed into effect on an interim basis on January 1, 2010, and will be in effect until FERC confirms, approves, and places the rate schedules in effect on a final basis through December 31, 2014, or until the rate schedules are superseded. The revised Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5 and UGP–AS6 dated January 1, 2010, supersede the similarly titled rate schedules dated October 1, 2005. Rate Schedule UGP–AS7 will be placed into effect on an interim basis on January 1, 2010; however, Rate Schedule UGP–AS7 will not be charged until such time as Western's OATT is revised to provide for Generator Imbalance Service. Rate Schedule UGP–AS7 will remain in effect through December 31, 2014, or until superseded, to coincide with the other ancillary service rates in this rate order. Rate Schedule UGP–TSP1 will be placed into effect on an interim basis on January 1, 2010; however, Rate Schedule UGP–TSP1 will not be charged until such time as Western's Open Access Transmission Tariff (OATT) is revised to provide for unreserved use of transmission service penalties. Rate schedule UGP–TSP1 will also remain in effect through December 31, 2014, or until superseded, to coincide with the other rates in this rate order. Western will post notice on its Open Access Same-Time Information System (OASIS) Web site of its intent to initiate charging for Rate Schedule UGP–AS7 or UGP–TSP1.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266 or Ms. Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT

59101–1266, telephone (406) 247–7439, e-mail *cady@wapa.gov*.

SUPPLEMENTARY INFORMATION: The transmission facilities in the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) are integrated with transmission facilities of Basin Electric Power Cooperative (Basin) and Heartland Consumers Power District (Heartland) such that transmission services are provided over an Integrated System (IS), and the rates are sometimes referred to as IS Rates. Western acts as the administrator of the IS and monitors service under the OATT.[1] As owners of the IS, Western, Basin, and Heartland may be referred to as IS Partners. The Deputy Secretary of Energy approved the current Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 for P–SMBP—ED firm and non-firm transmission rates and ancillary services rates through September 30, 2010.[2] The current rate schedules contain formula-based rates that are recalculated annually. The provisional formula rates will continue to be recalculated annually from financial and load information. Provisional rates will go into effect January 1, 2010, and recalculated rates annually on January 1 thereafter. The provisional rate for Generator Imbalance Service, under UGP–AS7, will go into effect January 1, 2010, but will not be charged until Western's OATT is revised to provide for Generator Imbalance Service. The provisional Penalty Rate for Unreserved Use of Transmission Service, under UGP–TSP1 will go into effect on January 1, 2010, but will not be charged until Western's OATT is revised to provide for unreserved use penalties. Western will post notice on its Open Access Same-Time Information System (OASIS) Web site of its intent to initiate charging for Rate Schedule UGP–AS7 or UGP–TSP1.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00C, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order Nos. WAPA–144, the proposed P–SMBP—ED Integrated System firm and non-firm transmission rates and ancillary services and WAPA–148, the proposed Transmission Service Penalty Rate for Unreserved Use into effect on an interim basis. The new Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–AS7 and UGP–TSP1 will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: December 23, 2009.

Daniel B. Poneman,

Deputy Secretary.

Department of Energy Deputy Secretary

Rate Order Nos. WAPA–144 and WAPA–148

In the matter of: Western Area Power Administration Rate Adjustment for the Pick-Sloan Missouri Basin Program—Eastern Division; Order Confirming, Approving, and Placing the Pick-Sloan Missouri Basin Program—Eastern Division Transmission and Ancillary Services and Transmission Service Penalty for Unreserved Use Formula Rates Into Effect on an Interim Basis.

This rate was established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

$/kWmonth: Monthly charge for capacity (*i.e.*, $ per kilowatt (kW) per month).

12-cp: 12-month coincident peak average.

Administrator: The Administrator of the Western Area Power Administration.

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the Transmission System in accordance with standard utility practice.

A&GE: Administrative and general expense.

ATRR: Annual Transmission Revenue Requirement.

Balancing Authority: An electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Balancing Authorities and contributing to frequency regulation of the Interconnection. Formerly known as control area.

Basin Electric: Basin Electric Power Cooperative.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts.

Control Area: An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) Match, at all times, the power output of the generators within the electric system(s) and capacity and energy purchased from entities outside the electric power system(s) with load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

Corps of Engineers: U.S. Army Corps of Engineers.

[1] Western's OATT was most recently approved by FERC on June 28, 2007, in Docket No. NJ07–2–000, 119 FERC 61,329 (2007) and the FERC's letter order issued on September 6, 2007, in Docket No. NJ07–2–001.

[2] Rate Order No. WAPA–122, 70 FR 55821, September 23, 2005, and the FERC confirmed and approved the rate schedules on May 30, 2006, under FERC Docket No. EF05–5031–000, 115 FERC ¶ 62,230.

Customer: An entity with a contract that is receiving service from Western Area Power Administration's Upper Great Plains Region.

DOE: United States Department of Energy.

Energy: Power produced or delivered over a period of time. Measured in terms of the work capacity over a period of time. It is expressed in kilowatthours.

Emergency Energy: Electric energy purchased by an electric utility whenever an event on the system causes insufficient operating capability to cover its own demand requirement.

Energy Imbalance Service: A service which provides energy correction for any hourly mismatch between a Transmission Customer's energy supply and the demand served.

Energy Rate: The rate which sets forth the charges for energy. It is expressed in mills per kilowatthour and applied to each kilowatthour delivered to each customer.

FERC: The Federal Energy Regulatory Commission.

FERC Order No. 888: FERC Order Nos. 888, 888–A, 888–B and 888–C unless otherwise noted.

FERC Order No. 890: FERC Order Nos. 890, 890–A, 890–B and 890–C unless otherwise noted.

Firm: A type of product and/or service available at the time requested by the customer.

Firm Point-to-Point: Service that is reserved and/or scheduled between Points of Receipt and Delivery.

FRN: **Federal Register** notice.

FY: Fiscal year; October 1 to September 30.

GWh: Gigawatthour—the electrical unit of energy that equals 1 billion watthours or 1 million kilowatt-hours.

Heartland: Heartland Consumers Power District.

Integrated System: Transmission system combining assets of Western, Basin Electric, and Heartland.

IS: Integrated System.

Intermittent Resource: An electric generator that is not dispatchable and cannot store its fuel source and, therefore, cannot respond to changes in demand or respond to transmission security constraints.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

kWyear: Kilowattyear—the electrical unit of the yearly amount of capacity.

Load: The amount of electric power or energy delivered or required at any specified point(s) on a system.

Load-ratio share: Ratio of the Network Transmission Customer's coincident hourly load (including its designated network load not physically interconnected with the Transmission Provider) to the Transmission Provider's monthly Transmission System peak, calculated on a rolling 12-month basis.

Long-Term Firm Point-to-Point: Firm Point-to-Point Transmission Service reservation with at least 12 consecutive equal monthly amounts.

MAPP: Mid-Continent Area Power Pool.

Mill: A monetary denomination of the United States that equals one tenth of a cent or one thousandth of a dollar.

Mills/kWh: Mills per kilowatthour—the unit of charge for energy.

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NERC: North American Electric Reliability Council.

Net Revenue: Revenue remaining after paying all annual expenses.

Network Customer: An entity receiving Transmission Service under the terms of the Transmission Provider's Network Integration Transmission Service of the Tariff.

Non-Firm Point-to-Point: Point-to-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to interruption for economic reasons.

O&M: Operation and maintenance.

OASIS: Open Access Same-Time Information System—provides access to information on transmission pricing and availability for potential transmission customers.

P–SMBP: Pick-Sloan Missouri Basin Program.

P–SMBP—ED: Pick-Sloan Missouri Basin Program—Eastern Division.

Point-to-Point: The reservation and transmission of capacity and energy on either a firm or non-firm basis from designated Point(s) of Receipt to designated Point(s) of Delivery.

Power: Capacity and energy.

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

Rate Brochure: Documents explaining the rationale and background for the rate proposals contained in this Rate Order.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Reactive Supply and Voltage Control Service: A service which provides reactive supply through changes to generator reactive output to maintain transmission line voltage and facilitate electricity transfers.

Regulation and Frequency Response Service: A service which provides for following the moment-to- moment variations in the demand or supply in a Control Area and maintaining scheduled interconnection frequency.

Reserve Services: Spinning Reserve Service and Supplemental Reserve Service.

Revenue Requirement: The revenue required to recover annual expenses (such as O&M, purchase power, transmission service expenses, interest, and deferred expenses) and repay Federal investments, and other assigned costs.

Schedule: An agreed-upon transaction size (megawatts), beginning and ending ramp times and rate, and type of service required for delivery and receipt of power between the contracting parties and the Balancing Authority(ies) involved in the transaction.

Scheduling, System Control, and Dispatch Service: A service which provides for (a) scheduling, (b) confirming and implementing an interchange schedule with other balancing authorities, including intermediary balancing authorities providing transmission service, and (c) ensuring operational security during the interchange transaction.

Service Agreement: The initial agreement and any amendments or supplements entered into by the Transmission Customer and Western for service under the Tariff.

Short-Term Firm Point-to-Point: Firm Point-to-Point Transmission Service with service duration of less than one year.

Spinning Reserve Service: Generation capacity needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Provider must offer this service when the transmission service is used to serve load within its Balancing Authority. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation.

Supplemental Reserve Service: Generation capacity needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generation units that are on-line but unloaded, by quick start generation or by interruptible load. The Transmission Provider must offer this

service when the transmission service is used to serve load within its Balancing Authority. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation.

Supporting Documents: A compilation of data and documents that support the Rate Brochure and the rate proposal.

System: An interconnected combination of generation, transmission and/or distribution components comprising an electric utility, independent power producer(s) (IPP), or group of utilities and IPP(s).

Tariff: Western Area Power Administration Open Access Transmission Service Tariff, originally approved in Docket No. NJ98–1–000, FERC 61,062 (2002) and amended in Docket No. NJ05–1–000, 112 FERC 61,044 (2005).

Transmission Customer: Any eligible customer (or its designated agent) that receives transmission service under the Tariff.

Transmission Provider: Any utility that owns, operates, or controls facilities used to transmit electric energy in interstate commerce. The Upper Great Plains Region, as operator of the IS, is the Transmission Provider for the purposes of this **Federal Register** notice.

Transmission System: The facilities owned, controlled, or operated by the Transmission Provider that are used to provide transmission service.

Transmission System Total Load: The 12-cp peak for Network Transmission Service plus reserved capacity for all Firm Point-to-Point Transmission Service.

UGPR: The Upper Great Plains Customer Service Region of the Western Area Power Administration. In some places in this order, UGPR maybe referenced generically as Western.

Unreserved Use: Use of transmission service in excess of reserved capacity at any point of receipt or any point of delivery.

VAR: A unit of reactive power.

WAUE: Western Area Power Upper Great Plains Region East Control Area.

WAUW: Western Area Power Upper Great Plains Region West Control Area.

Watertown Operation Office: Western Area Power Administration Upper Great Plains Customer Service Region, Operations Office, 1330 41st Street SE., Watertown, South Dakota.

Western: United States Department of Energy, Western Area Power Administration.

Western Regions: Customer service regions of the Western Area Power Administration.

Western's Tariff: Western's Open Access Transmission Service Tariff.

Effective Date

The provisional rates will take effect on January 1, 2010, and will remain in effect through December 31, 2014, pending approval by FERC on a final basis. Rate schedules UGP–AS7 and UGP–TSP1 will be placed into effect on an interim basis on January 1, 2010, but will not be charged until Western's Open Access Transmission Tariff (OATT) is revised to provide for Generator Imbalance Service and/or Transmission Service Penalty Rate for Unreserved Use. Western will post notice on its Open Access Same-Time Information System (OASIS) Web site of its intent to initiate charging for Rate Schedule UGP–AS7 or UGP–TSP1.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. The rate adjustment process began when Western's UGPR mailed a notice announcing an Advance Announcement of Rate Adjustment public meeting to all IS Transmission Customers and interested parties. The meeting was held on June 10, 2008, in Sioux Falls, South Dakota. At the Advance Announcement of Rate Adjustment meeting, Western provided pertinent information relevant to the rate adjustment and answered questions.

2. A **Federal Register** notice published on June 3, 2009 (74 FR 26682), announced the proposed rate adjustments for P–SMBP–ED Transmission and Ancillary Service rates. This publication began a public consultation and comment period and announced the public information and the public comment forums.

3. A **Federal Register** notice published on June 26, 2009 (74 FR 30567), announced the proposed Transmission Service Penalty Rate for Unreserved Use. This publication began a public consultation and comment period and announced the public information and the public comment forums.

4. On June 5, 2009, Western mailed letters to all IS Transmission Customers and interested parties transmitting the **Federal Register** notice published on June 3, 2009, and directing them to the rate brochure for the Transmission and Ancillary Services Rate Adjustment on Western's Web site. On June 26, 2009, Western mailed letters to all IS Transmission Customers and interested parties transmitting the **Federal Register** notice published on June 26, 2009, and directing them to the rate brochure for the Transmission Service Penalty Rate for Unreserved Use on Western's Web site.

5. On June 24, 2009, beginning at 9 a.m., Western held a public information forum at the Holiday Inn City Center in Sioux Falls, South Dakota. Western provided detailed explanations of the proposed Transmission and Ancillary Service Rates. Western provided Rate Brochures, informational handouts and answered questions at this meeting.

6. On July 28, 2009, beginning at 8 a.m., Western held a public information forum at the Holiday Inn City Center Sioux Falls, South Dakota. Western provided detailed explanations of the proposed Transmission Service Penalty Rate for Unreserved Use. Western provided Rate Brochures, informational handouts, and answered questions at this meeting.

7. On July 28, 2009, beginning at 9 a.m., Western held a public comment forum at the Holiday Inn City Center Sioux Falls, South Dakota, to give the public the opportunity to comment for the record on the proposed Transmission and Ancillary Services Rates and the Transmission Service Penalty Rate for Unreserved Use.

8. Western received one comment letter during the consultation and comment period for proposed rates for P–SMBP–ED Transmission and Ancillary Service rates, which ended on October 1, 2009. Western received two comment letters during the consultation and comment period for proposed Transmission Service Penalty Rate for Unreserved Use, which ended on September 24, 2009. All formally submitted comments have been considered in preparing this Rate Order.

Comments

Representatives of the following organization made oral comments pertaining to the proposed P–SMBP–ED Transmission and Ancillary Service rates:

Missouri River Energy Services

The following organizations submitted written comments pertaining to the proposed P–SMBP–ED Transmission and Ancillary Service rates:

Missouri River Energy Services

The following organizations submitted written comments pertaining

to the proposed P–SMBP–ED Transmission Service Penalty Rate for Unreserved Use rate:

Midwest ISO Transmission Owners

ITC Holdings Corp.

Project Description

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of 1944 (58 Stat. 887, 890, Pub. L. No. 78–534). It was later renamed the P–SMBP. The P–SMBP is a comprehensive program with the following authorized functions: flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

The UGPR markets significant quantities of Federally-generated hydroelectric power from the P–SMBP–ED. Western owns and operates an extensive system of high-voltage transmission facilities which the UGPR uses to market approximately 2,400 MW of capacity from Federal projects within the Missouri River Basin. This capacity is generated by eight power plants located in Montana, North Dakota, and South Dakota. The UGPR uses the transmission facilities of Western and others to market this power and energy to customers located within the P–SMBP–ED. This marketing area includes Montana, east of the Continental Divide, all of North and South Dakota, eastern Nebraska, western Iowa, and western Minnesota.

Integrated System Description

Using a single system, joint-planning concept, Western, Basin Electric, and Heartland combined their transmission facilities to form the IS and developed Transmission and Ancillary Service rates for transmission over the IS. This action was necessary because the UGPR, Basin Electric, and Heartland, whose facilities are fully integrated, did not have rates suitable for long-term open access transmission service. The transmission facilities included in the IS are transmission lines, substations, communication equipment and facilities related to operation, maintenance, and support of the IS Transmission System. The UGPR is designated as the operator of the other participants' transmission facilities and as such contracts for service, determines and posts the available transmission capacity on the OASIS, bills for service, collects payments, and distributes revenues to each IS participant. The IS consists of the transmission facilities owned by Basin Electric and Heartland east of the east-west electrical separation in the United States, the transmission facilities owned by Western in the P–SMBP–ED, and the Miles City Converter Station owned by Western and Basin Electric. These facilities interconnect with utilities in the states of Montana, North Dakota, South Dakota, Iowa, Minnesota, Missouri, and in addition include facilities which interconnect with Canada.

The approach for formation of the IS was to include facilities which followed the spirit and intent of the FERC Order No. 888 and to make the system the most useful to all transmission requestors. The "seven-factor test" defined in FERC Order No. 888 was used to determine the distribution facilities that were excluded from the IS Transmission System.

P–SMBP–ED Transmission and Ancillary Services Rates Study

Western prepared a Transmission and Ancillary Service rates study to ensure that Formula IS Transmission and Ancillary Service rates are based on the cost of service of the IS Transmission System. This study includes all IS Transmission and Ancillary Service expenses and associated offsetting revenues.

In the past, rates have been based on the most recently available historical test year data. In preparing the current rates study, projections for the various revenue requirement components were used to develop the forward looking (projected) rate. The annual revenue requirements include O&M expenses, administrative and general expenses, interest expense, and depreciation expense. These revenue requirements are offset by appropriate estimated revenues. Annual audited financial data will be used to true-up the estimates used to project the forward looking rate to the actual expenses and load incurred.

Existing and Provisional Rates

The revenue requirements for the individual services and comparison values are outlined in the following table. These rates are calculated comparing the Existing Revenue Requirement to the Provisional Revenue Requirement based upon the most recent historical data available at the time of the initial rate proposal.

COMPARISON OF EXISTING AND PROVISIONAL INTEGRATED SYSTEM TRANSMISSION AND ANCILLARY SERVICES

Service	Existing revenue requirement	Provisional revenue requirement	Percentage change
Transmission	$155,056,530	$163,521,251	5.46
Scheduling, System Control, and Dispatch	3,649,053	3,649,053	0.00
Reactive Supply and Voltage Control	4,496,498	2,376,635	−47.14
Regulation and Frequency Control	1,362,791	1,362,791	0.00
Reserves	2,569,924	3,384,360	31.69
Energy Imbalance	N/A	N/A	N/A
Generator Imbalance	N/A	N/A	N/A
Transmission Service Penalty Rate for Unreserved Use	N/A	N/A	N/A

Certification of Rates

Western's Administrator certifies that the IS Transmission and Ancillary Service rates placed into effect on an interim basis are the lowest possible rates consistent with sound business principles. The provisional formula rates were developed following administrative policies and applicable laws.

Integrated System Transmission Service Rates Discussion

Western offers Network Integration Transmission, Firm Point-to-Point and Non-firm Point-to-Point Transmission, Scheduling, System Control, and Dispatch Service, Reactive Supply and Voltage Control Service, Regulation and Frequency Response Service, Energy Imbalance Service, and Reserve Service on the IS. The rate schedules for the IS were initially placed into effect by Rate Order No. WAPA–79 on August 1, 1998,

and were effective through July 31, 2003. The FERC order to confirm these rate schedules was issued on November 25, 1998. These rate schedules were then extended by Rate Order No. WAPA–100 through September 30, 2005. Rate Order No. WAPA–122 removed the Generator Step Up Transformers from transmission and placed them in generation in the formula rate calculations. The rate schedules placed into effect by Rate Order No. WAPA–122 were effective on October 1, 2005, and will remain in effect until September 30, 2010, or until superseded.

The provisional formula rates include revisions to the Network Integration, Firm and Non-firm Transmission, and Ancillary Service Rates as described in Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6. These revisions will utilize estimates of transmission costs for the upcoming year to calculate annual revenue requirements, update formulas utilized in the formula rate calculations, change the effective date for rates resulting from the annual recalculation, provide a rate recalculation review/comment period, and standardize input data requirements.

The provisional IS Transmission Service rates will be applied to customers who purchase transmission services. Western, Basin Electric, and Heartland will take IS Transmission Service. The IS Transmission Service to the UGPR's Customers will continue to be bundled in their firm electric service under existing contracts that expire in 2020.

IS Transmission System Total Load

The IS Transmission System Total Load is the 12-cp system peak for Network IS Transmission Service plus the reserved capacity for all IS Long-Term Firm Point-to-Point Transmission Service. For the provisional rate, the IS Transmission System Total Load is estimated to be 4,605,000 kW.

Revenue Requirement for IS Transmission Service

The current rates for the IS Transmission Service are based on a revenue requirement that recovers the annual costs of Western, Basin Electric, Heartland, and approved customer facility credits associated with providing IS Transmission Service. The annual costs are offset by appropriate transmission revenue credits to avoid over recovery of costs.

Western is changing the method of developing the revenue requirement for Network, Firm Point-to-Point, and Non-Firm Point-to-Point transmission services. Western is changing the implementation of the formula rates to recover expenses and investments in transmission on a current (forward looking) rather than a lagging basis. This change will allow Western to more accurately match cost recovery with cost incurrence. To implement this change, Western will utilize estimates of the IS transmission system costs and load for the upcoming year in the formula rate recalculation. Western will true-up the estimates based on IS actual costs and actual load. Rates will continue to be recalculated every year. Revenue collected in excess of Western's, Basin Electric's, Heartland's, and entities' receiving customer facility credits actual net revenue requirements will be returned to customers through a reduction in revenue requirement in a subsequent year. Actual revenues that are less than the net revenue requirement would likewise be recovered by an increase in a subsequent year's revenue requirement. The true-up procedure ensures the IS will recover no more and no less than its actual transmission costs.

Revenue Requirement Calculation Templates

Western will initiate the use of standardized revenue requirement calculation templates by those entities submitting financial data for the annual rate recalculation to aid in the revenue requirement/rate recalculation and review processes. These revenue requirement templates will gather required financial information and data from IS partners and other entities for the calculation of revenue requirements and facility credits. Western will review requests to utilize other or modified templates for appropriateness and conduct a public process prior to granting approval for use. Western will accept use of a FERC approved template for a particular entity without conducting a public process prior to granting approval for use provided that the following conditions are met: (1) The template addresses all the transmission facilities owned by the entity; (2) the template includes a separate allocation for IS qualifying facilities; and (3) it is the latest FERC approved template for this entity.

Review of Annual Revenue Requirement and Rate Recalculation

Western will determine the IS net projected revenue requirement and load for each year in accordance with applicable IS rate schedules. Western will make the IS net projected revenue requirement available to customers including projected costs of plant in the rate base, transmission O&M expense, transmission administrative and general expense, transmission depreciation expense, load, and resulting rates incorporating any True-up Adjustment. All data will be provided in sufficient detail to identify the components of Western's net revenue requirement.

Western has conducted an annual IS rate recalculation utilizing the previous year's data with the recalculated rate effective May 1 of each year. With the implementation of the provisional formula rates resulting from this process effective on January 1, 2010, Western will conduct future rate recalculations with an effective date of January 1.

Western will provide the results of this annual rate recalculation to customers on or about September 1 of each year and will provide customers the opportunity to discuss and comment on the recalculated rates by October 31 of each year. Western will respond to customer comments prior to or at the time of the implementation of the recalculated revenue requirements and/or rates. For the provisional rates going into effect on January 1, 2010, the Annual Revenue Requirement for IS Transmission Service is $163,521,251.

Should Western find that any comment concerning the rate formula bears merit, Western reserves the right to make adjustments to the revenue requirements and/or rates consistent with proper application of the Formula Rate. Western's determination concerning the proper application of the Formula Rate will be final.

True-Up Procedures

Under the true-up procedures, any differences between estimated revenue requirements and actual revenue requirements in any given year are identified based on Revenue Requirement Templates utilizing actual financial data and actual load data for the preceding year. Revenue collected in excess of the actual net revenue requirement will be returned to customers through a reduction in revenue requirement in the subsequent year following the calculation of the true-up. Revenues that are less than the forecast net revenue requirement would likewise be recovered in the IS rates for the subsequent year.

Actual Net Revenue Requirement (calculated in accordance with Western's Rate Recalculation process) for the previous year as provided in the revenue requirement templates for Western IS partners and entities receiving revenue credits shall be compared to the projections made for the same year (True-up Year). The

comparison of actual net revenue to projected net revenue determines the excess or shortfall in the projected revenue requirement used for billing purposes in the True-up Year. In addition, actual divisor loads (12-cp average) will be compared to projected divisor loads and the difference multiplied by the rate actually billed to determine any excess or shortfall in collection due to volume. The sum of the excess or shortfall due to the actual versus projected revenue requirement and the excess or shortfall due to volume shall constitute the True-up Adjustment. The True-up Adjustment and related calculations shall be posted to Western's OASIS no later than July 1 following the issuance of financial statements for the previous year. Western will provide an explanation of the True-up Adjustment in response to customer inquiries and will post on the OASIS information regarding frequently asked questions.

The Net Revenue Requirement for transmission services for the following year will be the sum of the projected revenue requirement for the following year, plus or minus the True-Up Adjustment and any other adjustments from the previous year.

Formula Rate for Network IS Transmission Service

While Western is changing the method for developing annual revenue requirements, the formula for calculating the Network Transmission Service rate is unchanged from Western's previously approved filing with the FERC. Western will use a current year formula rate which involves a change to the manner in which the inputs are developed rather than a change in the formula itself. The charge for monthly Network IS Transmission Service is the product of the network customer's load ratio share times one-twelfth (1/12) of the annual Network Transmission Revenue Requirement. The Network Transmission Revenue Requirement is the annual cost associated with providing transmission service less revenue credits for Non-Firm Transmission Service. The Network Transmission Revenue Requirement will be based on estimates for costs to provide transmission service for the upcoming year. The load ratio share is the network customer's hourly load coincident with the IS monthly Transmission System peak minus the coincident peak for all IS Firm Point-to-Point Transmission Service plus the Firm Point-to-Point reservations. The Network rate includes costs for scheduling, system control, and dispatch service needed to provide transmission service.

Formula Rate for Firm Point-to-Point IS Transmission Service

The monthly rate for Firm Point-to-Point IS Transmission Service is 1/12 the annual cost associated with providing transmission service less revenue credits for Non-Firm Transmission Service divided by the capacity reservation needed to support the average monthly IS Transmission System load. As with Network Transmission Service, Western will be using a current year formula rate which involves a change to the manner in which the inputs are developed rather than a change in the formula itself. This rate may be summarized with the following formula: ISFPTP = (Total Annual Revenue Requirement—Non Firm Revenue Credits)/12 months/ Average Transmission System Monthly Peak Load. Firm Point-to-Point Transmission Service will be offered on an up to basis at daily, weekly, monthly, and yearly rates.

Formula Rate for Non-Firm Point-to-Point Transmission

Western will not change the rate formula for Non Firm Point-to-Point Transmission Service other than utilizing cost projections as data inputs to determine the annual revenue requirement as described above. The Non Firm Point-to-Point Transmission Service rate formula remains: Monthly IS Firm Point-to-Point Transmission Service rate divided by 730 hours per month times 1000 mills per dollar.

The following table summarizes the difference between the current IS Transmission Service rates and the provisional IS Transmission Service rates. It compares the change in the projections for the 2009–2010 transmission and ancillary services study and the provisional IS Transmission Service rates for this rate adjustment based on the most recent historical data and estimated data available at the time of the initial rate proposal.

COMPARISON OF ANNUAL REVENUES

Item	Existing rate	Provisional rate	Percentage change
Annual IS Cost (Net of Revenue Credits)	$147,038,956	$154,900,362	5.35
Transmission Customer Facility Credits	8,541,224	8,620,889	0.93
Annual Revenue Requirement for IS Transmission Service	155,580,180	163,521,251	5.10
Adjustment for Prior Year	523,417	N/A	N/A
Annual Transmission Revenue Requirement	155,056,530	163,521,251	5.46

Basis for Rate Development

The current IS Network, Firm Point-to-Point and Non-Firm Point-to-Point Transmission Service formula rates are scheduled to expire on September 1, 2010. The current Network, Firm Point-to-Point and Non-Firm Point-to-Point Transmission Service formula rates do not capture new investment costs until they have been in service for up to 2 years. The proposed rates are forward looking and include estimates for investments being placed in service, annual operation and maintenance expenses, depreciation, interest, and administrative and general costs. In the past, rates were recalculated in April and were effective on May 1. The rates implemented in this process will be available for review on or about September 1 and placed into effect on January 1.

Integrated System Ancillary Services Rates Discussion

The IS will continue to offer the following six ancillary services: (1) Scheduling system control, and dispatch service; (2) reactive supply and voltage control from generation sources service; (3) regulation and frequency response service; (4) energy imbalance service; (5) spinning reserve service and (6) supplemental reserve service; and will add a seventh ancillary service; (7) generator imbalance service.

Western has already marketed the maximum practical amount of power from each of its projects, based on a reasonable level of risk, leaving little or no Federal hydroelectric power resources available for ancillary services. Changes in water conditions

frequently affect the ability of the hydroelectric projects to meet obligations on a short-term basis. The unique characteristics of the hydro resource, Western's existing long-term power commitments, and the limitations of the resource due to changing water conditions limit Western's ability to provide Transmission Customers generation-related ancillary services and redispatch using Federal hydro resources. Consequently, Western will provide ancillary services by purchasing power resources whenever necessary and pass through these costs to the customer.

Formula Rate for Scheduling, System Control, and Dispatch Service

Western's annual revenue requirement for Scheduling, System Control, and Dispatch Service is determined by multiplying the portion of the Watertown Operations Office net plant, and the communications facilities net plant associated with Scheduling, System Control, and Dispatch Service by the transmission fixed charge rate. In the past, the annual revenue requirement for Scheduling, System Control, and Dispatch Service has been divided by the number of daily schedules in the calculation year. Western is changing this formula. Instead of dividing the annual revenue requirement for Scheduling, System Control, and Dispatch Service by the number of daily schedules in the calculation year, Western will divide the annual revenue requirement for Scheduling, System Control, and Dispatch Service by the number of daily tags in the calculation year. This rate and rate design is recovering only Western's revenue requirement.

Formula Rate for Reactive Supply and Voltage Control Services From Generation Sources Service

Western's current formula for Reactive Supply and Voltage Control from Generation Sources (RSVC) Service is determined by multiplying the total P–SMBP–ED generation net plant by the generation fixed charge rate. The annual cost is multiplied by the five (5) year average peak monthly percentage of Western's generation operating in a synchronous condenser mode to determine Western's reactive service revenue requirement. Western's, Basin Electric's, Heartland's, and Missouri River Energy Services' revenue requirements for RSVC Service are summed to get the total revenue requirement for this service. The RSVC Service rate is then derived by dividing the total annual revenue requirement by the load requiring RSVC Service. The annual cost is then divided by 12 months to obtain a monthly rate. In this formula, Western is only compensated for providing RSVC Service based upon the cost of Western's generation operating outside the 0.95 leading to 0.95 lagging power factor bandwidth, while Basin, Heartland, and Missouri River Energy Services are compensated based on costs for generation operating within this power factor bandwidth.

Western is changing its rate for RSVC Service by removing costs of any generation associated with operation within the bandwidth from the total revenue requirement for this service. Under Western's current rate, Western is not compensated for providing RSVC Service from its own generators operating inside the bandwidth while non-Federal generators are receiving compensation for providing RSVC Service within the bandwidth. Western believes that both Federal and non-Federal generators should be treated comparably when they provide RSVC Service within the bandwidth. Therefore, Western is discontinuing payment for all other generators providing RSVC Service within the 0.95 leading to 0.95 lagging power factor bandwidth.

Western will continue to collect its RSVC Service cost, for its generators operating within the bandwidth, in the firm power revenue requirement under the then appropriate firm power rate schedule and not from Transmission Customers under its OATT. Therefore, only Federal preference power customers will pay the RSVC costs of the Federal generators operating within the bandwidth. This change will result in transmission service customers paying for RSVC Service based only upon costs for generators operating outside the bandwidth. Excluding RSVC Service costs associated with generator operation within the bandwidth from the RSVC Service revenue requirement will require all other non-Federal generator owners to recover their RSVC Service costs, for operation within the bandwidth, elsewhere.

Western's Federal generation is required to operate in synchronous condenser mode (i.e., outside the power factor bandwidth) to maintain system voltages and meet reliability criteria and, therefore consistent with the previous practice, Western will include its costs to provide RSVC Service for Federal generators operating outside the bandwidth. Western will include costs associated with other non-Federal generators required to operate outside the power factor bandwidth to maintain system voltages and meet reliability criteria (e.g., other generators that operate as synchronous condensers, or generators that are requested by Western to operate outside the bandwidth as noted in Western's generator interconnection procedures and agreements).

The following provisional rate formula will apply: Western's total P–SMBP–ED generation net plant multiplied by the generation fixed charge rate (in percent) equals Western's annual cost. Western's annual cost is multiplied by the five (5) year average peak monthly percentage of Western's Federal synchronous condensing generation to determine Western's outside the bandwidth reactive service revenue requirement. Western's revenue requirement plus any revenue requirement or costs incurred from other non-Federal generators required by Western to operate outside the bandwidth is the total annual revenue requirement for RSVC Service. This total annual revenue requirement is then divided by the total load (kWyear) in Western's Control Areas.[3] The product is then divided by 12 months to obtain a monthly charge.

Formula Rate for Regulation and Frequency Response Service

Western will continue the current formula-based rate methodology for Regulation and Frequency Response Service as described below. Regulation and Frequency Response Service in the east side of the Control Area is provided primarily by Oahe generation and in the west side of the Control Area by Fort Peck, both of which are Corps of Engineers (Corps) facilities. The Corps generation fixed charge rate (in percent) is applied to Oahe and Fort Peck net plant investment, producing an annual Corps generation cost for the Oahe and Fort Peck power plants. This cost is divided by the capacity at the plants (937,000 kW) to derive a dollar per kilowatt amount for Oahe's and Fort Peck's installed capacity (kWYear). This dollar per kilowatt amount is then

[3] Western has retained the term "Control Area" in this document maintaining consistency with usage of the term in FERC's *pro forma* tariff and Western's current OATT. As defined in Western's OATT, a Control Area is: An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) Match, at all times, the power output of the generators within the electric system(s) and capacity and energy purchased from entities outside the electric power system(s), with load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

applied to the capacity (in kW) of Oahe and Fort Peck generation reserved for regulation and frequency response in the Control Area. Western's annual revenue requirement for Regulation and Frequency Response Service is determined by applying the dollar per kilowatt charge to the capacity used for Regulation and Frequency Response Service plus the cost of any additional resources acquired to support regulation requirements for intermittent renewable resources serving load within Western's Control Areas. The total Regulation and Frequency Response Revenue Requirement is determined by adding Western's, Basin Electric's, and Heartland's Regulation and Frequency Response Revenue Requirements. The Regulation and Frequency Response Service charge is then determined by dividing the total revenue requirement by the total load in the Control Area (kWYear). The result is then divided by 12 months to obtain a monthly charge.

Western supports the installation of renewable sources of energy but recognizes that certain operational constraints exist in managing the significant fluctuations that are a normal part of their operation. When Western purchases power resources to provide Regulation and Frequency Response Service to intermittent renewable generation resources serving load within Western's Control Areas, costs for these regulation resources will become part of Western's Regulation and Frequency Response Service charges. However, Western has marketed the maximum practical amount of power from each of its projects leaving little or no flexibility for provision of additional power services. Consequently, Western will not regulate for the difference between the output of an intermittent generator located within Western's Control Area and a delivery schedule from that generator serving load located outside of Western's Control Area. Intermittent generators serving load outside Western's Control Area will be required to pseudo-tie or dynamically schedule their generation to another Control Area.

Rate for Energy Imbalance Service

Western is changing its rate for Energy Imbalance Service to be consistent with the rules promulgated by FERC to the extent that it is consistent with Western's mission and is permitted by law and regulations. Currently penalty charges apply only to energy imbalances outside a 3 percent bandwidth (+/− 1.5 percent deviation). The penalty for under deliveries outside the 3 percent bandwidth is 100 mills/kWh while over deliveries outside the bandwidth are forfeited.

Western proposes charges be modified and based on the deviation bands as follows: Deviations within +/− 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost for the month. Deviations greater than +/− 1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 110 percent of incremental cost when energy taken by the Transmission Customer in a schedule hour is greater than the energy scheduled or 90 percent of incremental cost when energy taken by a Transmission Customer in a schedule hour is less than the scheduled amount. Deviations greater than +/− 7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 125 percent of the incremental cost for energy taken by the Transmission Customer in a scheduled hour that is greater than the energy scheduled, or 75 percent of the incremental cost for that hour when energy taken by a Transmission Customer is less than the scheduled amount.

Western's incremental cost will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on Western's OASIS *http://www.oatioasis.com/wapa/index.html* at least 30 days prior to use for determining Western's incremental cost and will not be changed more often than once per year unless Western determines that the existing index is no longer a reliable price index.

Formula Rates for Operating Reserves Service—Spinning and Supplemental

Western will continue the current formula-based rate methodology for Spinning Reserve Service and Supplemental Reserve Service (Reserve Services), except that Western will substitute the reserve requirement of the current reserve sharing group of which Western and the IS Partners are members or will substitute Western's and the IS Partners' own operating reserve requirement for that of the Mid-Continent Area Power Pool (MAPP) requirement.

Western's annual cost of generation for Reserve Services is determined by multiplying the generation fixed charge rate by the P-SMBP–ED generation net plant investment. The cost/kWyear is determined by dividing the annual cost of generation by the plant capacity. The capacity used for Reserve Services is determined by multiplying the peak IS load by either the operating reserve requirement of the current reserve sharing group of which Western and the IS Partners are members or their own operating reserve requirement. The cost/kWyear is multiplied by the capacity used for Reserve Services to obtain the annual revenue requirement. The annual revenue requirement for Reserve Services is divided by Western's peak transmission load to calculate the annual rate. The annual rate is then divided by 12 months to obtain a monthly rate. This rate design recovers only Western's revenue requirement associated with Reserve Services.

Western has no long-term reserves available beyond its own internal requirements. At a customer's request, Western will acquire needed resources and pass the costs on to the requesting customer. The customer is responsible to provide the transmission to deliver these reserves.

Rate for Generator Imbalance Service

Western is adding a Generator Imbalance Service rate under a new Rate Schedule, UGP–AS7, to be consistent with rules promulgated by FERC to the extent consistent with Western's mission and permitted by law and regulations. However, if Western does not also implement a Generator Imbalance Service in a revised OATT, this rate will not be utilized.

Generator Imbalance Service is provided when a difference occurs between the output of a generator located within the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour. Western will offer this service, to the extent that it is feasible to do so from its own resources or from resources available to it, when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer must either purchase this service from Western or make alternative comparable arrangements, which may include use of non-generation resources capable of providing this service, to satisfy its Generator Imbalance Service obligation.

Western may charge a Transmission Customer a penalty for either hourly generator imbalances under this Schedule UGP–AS7 or hourly energy imbalances under Rate Schedule UGP–AS4 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other.

Western bases the rate on deviation bands as follows: Deviations within +/− 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost. Deviations greater than +/− 1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month. When energy delivered in a schedule hour from the generation resource is less than the energy scheduled, the charge is 110 percent of incremental cost. When energy delivered from the generation resource is greater than the scheduled amount, the credit is 90 percent of the incremental cost. Deviations greater than +/− 7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled at 125 percent of Western's incremental cost when energy delivered in a schedule hour is less than the energy scheduled or 75 percent of Western's daily incremental cost for that hour when energy delivered from the generation resource is greater than the scheduled amount. As an exception, an intermittent resource will be exempt from this deviation band and will pay the deviation band charges for all deviations greater than the larger of 1.5 percent or 2 MW.

Deviations from scheduled transactions in order to respond to directives by the Transmission Provider, a balancing authority, or a reliability coordinator shall not be subject to the deviation bands identified above and, instead, shall be settled financially, at the end of the month, at 100 percent of incremental cost. Such directives may include instructions to correct frequency decay, respond to a reserve sharing event, or change output to relieve congestion.

Western's incremental cost will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on Western's OASIS *http://www.oatioasis.com/wapa/index.html* at least 30 days prior to use for determining the Western incremental cost and will not be changed more often than once per year unless Western determines that the existing index is no longer a reliable price index.

The following table summarizes the difference in calculations between the current IS Ancillary Service rates and the provisional IS Ancillary Service rates. It compares the change in the average annual projections used in the 2009–2010 transmission and ancillary services study and the provisional IS Transmission and Ancillary Service rates for this rate adjustment based on the most recent historical and estimated data available at the time of the rate estimate.

COMPARISON OF ANCILLARY SERVICE RATES

Item	Unit	Existing rate	Provisional rate	Percentage change
Scheduling, System Control, and Dispatch Service.	Schedule/Tag	$44.59/Schedule/day	$44.59/Tag/day	0.00
Reactive Supply and Voltage Control.	kWmonth	0.09	0.05	−44.44
Regulation and Frequency Response.	kWmonth	0.05	0.05	0.00
Energy Imbalance	Deviation Bands as Described	N/A	N/A	N/A
Reserves	kWmonth	0.14	0.18	28.57
Generator Imbalance	Deviation Bands as Described	N/A	N/A	N/A

Basis for Rate Development

The current IS Ancillary Service formula rates are scheduled to expire on September 30, 2010. The current IS Ancillary Service formula rates do not capture new investments costs until they have been in service for up to 2 years. In the past, rates were recalculated in April and were effective on May 1. The rates implemented in this process will be available for review on or about September 1 and placed into effect on January 1. In addition the provisional rates alter the deviation bands for energy imbalance and define incremental costs for energy imbalance based on an index price. A similar service for generator imbalance is introduced. The rate for RSVC Service will no longer include the costs of any generation associated with operation within the 0.95 leading and 0.95 lagging power factor bandwidth from the total revenue requirement for this service. Rates for Spinning Reserve Service and Supplemental Reserve Service (Reserve Services) will be based on the reserve requirement of the current reserve sharing group of which Western and the IS Partners are members or will substitute Western's and the IS Partners' own operating reserve requirement.

Comments

The comments and responses below regarding the transmission and ancillary services rates are paraphrased for brevity when not affecting the meaning of the statement(s). Direct quotes from oral or written comments are used for clarification when necessary.

1. *Comment:* Western received both oral and written comments that the need for an Energy Imbalance Rate Schedule would be eliminated if Western participated in an organized market such as the Midwest Independent System Operator (MISO) market.

Response: This comment is not directly related to the proposed rate action and is outside the scope of this rate process. However, Western has and will continue to evaluate this and other options based on the cost and benefit to Western's customers.

2. *Comment:* Western received comments that introducing an Energy Imbalance Service and a Generator Imbalance Service to mitigate imbalances create an arbitrarily punitive structure for deviations while at the same time ignoring whether or not one party's deviation may actually off-set another party's deviation and eliminate the net deviation.

Response: Western disagrees that introducing the Energy Imbalance and Generator Imbalance Services creates an arbitrarily punitive structure for deviations. In establishing its Energy Imbalance and Generator Imbalance Services, Western is implementing the deviation structure as delineated in the FERC's Order 890 and Orders 890A through C. It is Western's intent that imbalance charges should provide appropriate incentives to keep schedules accurate and that the tiered structure recognizes the link between escalating deviations and potential reliability impacts on the system. Western believes that to net one party's deviation against another party's deviation, absent formal agreements among the parties, would not necessarily provide an appropriate incentive for either party to accurately schedule. Western recognizes that, other than the first deviation band, there is no netting of energy; however, there is financial netting in the financial settlement process.

3. *Comment:* Western received a comment advocating that the Imbalance Services be applicable to all network customers independent of their respective marketing arrangements.

Response: Western disagrees that Imbalance Services be applicable to all transmission customers regardless of their respective marketing arrangements. If a group of transmission customers create a formal marketing arrangement between them and agree to share imbalances (*i.e.*, essentially self supplying) Western will allow that group of transmission customers to be treated as a single entity in regard to Western's application of imbalance charges. Western believes that this is reasonable if the group of transmission customers has formal arrangements to provide imbalance service to each other. To the extent that the overall group is assigned an imbalance charge by Western, the group would assign the responsibility for such charges within the group based upon their formal marketing arrangements. Western would assign imbalance charges to the group in a similar manner that it assigns imbalance charges to an individual transmission customer that relies only on the balancing authority to make up for its imbalances. Western will allow any group of transmission customers to utilize formal marketing arrangements to meet its imbalance obligations on a comparable manner.

4. *Comment:* Western received oral and written comments that if the Integrated System proceeds with implementation of the Energy Imbalance and Generator Imbalance schedules, that it should introduce steps to offset deviations from the individual network customers and then consider the net impact to the Control Area.

Response: Western disagrees with the comment that it should offset imbalances between individual network customers without any formal arrangements between those transmission customers. To do so would allow individual transmission customers to improperly take delivery from other transmission customers without any arrangements or agreement by other transmission customers to allow such deliveries. Western's proposed imbalance schedules are intended to incent individual transmission customers or formal groups of transmission customers to meet their individual or group responsibilities to accurately schedule and not rely on the control area or other transmission customers with which it has no arrangements. Western believes that it is necessary to net the various transmission deliveries of each individual transmission customer or formal group of transmission customers (*e.g.*, multiple Point-to-Point deliveries) to assign imbalance charges to that individual customer or formal group of transmission customers based upon their overall impact to Western's control area(s).

5. *Comment:* Western received a comment that revenue generated from the Energy and Generator Imbalance schedules should credit Western's transmission customers on a load ratio share basis so as not to incent Western from continuing with this service in lieu of participating in an organized market such as MISO.

Response: Western's Energy and Generator Imbalance revenue in excess of its incremental costs will reduce future annual transmission revenue requirements. Participation in an organized market such as MISO is not directly related to the proposed rate action and is outside the scope of this rate process.

6. *Comment:* Western received both oral and written comments concerning utilizing price indexes in its Energy and Generator Imbalance rate schedules. Comments advocated utilizing a single index for each of the eastern and western interconnections rather than the higher of the two. Barring using a price index for each interconnection, commenter advocated use of a ratio of index prices and provided suggestions for ratio formula. Also received was a written suggestion that Western utilize hourly pricing instead of the highest daily price as a method to allocate costs. Commenter also questioned what the two index prices will be based on, why the highest daily price is used for the +/−7.5% band, and if the index prices are negative if Western is prepared to credit the customer for the deviation.

Response: Western disagrees with the comments received that it should utilize individual indexes or a weighted index based upon its eastern and western interconnection control areas based upon the argument that its transmission customers may only be participating in one market (east or west). Western operates its combined system as one system, and utilizes both east and west resources to provide for ancillary services across its entire system under its tariff. Therefore, if a transmission customer creates an imbalance due to its operations in the east market, Western may need to utilize resources from its west side to provide for the imbalance service required by the transmission customer. Western does, however, agree with the suggestion that Western utilize hourly pricing instead of the highest daily price as a method to allocate costs in the +/− 7.5% band. Western also clarifies that it will limit the selected index to a minimum of zero in the case where index prices may become negative and does not expect that will be an issue based upon its proposal to utilize the higher of the eastern and western interconnection price index.

7. *Comment:* Western received two comments expressing concern for the method of measuring the energy taken on an hourly basis and how supplemental or co-supplier energy imbalance would be determined for customers with a fixed Contract Rate of Delivery and supplemental supplier(s).

Response: Western thanks commenter for addressing these issues. Western recognizes that these issues will need to be resolved prior to charging for Energy or Generator Imbalance Service. Consequently, Western will delay charging until such time as these issues can be resolved. Western will collaborate closely with its customers affected by these issues and resolve them. These issues are billing related rather than rate related; therefore, the rate will become effective as scheduled. However, Western will not implement these schedules until the billing issues are resolved. Upon completing arrangements with its customers concerning the method(s) to be used in calculating energy and generator imbalance charges, Western will post notice on its OASIS Web site providing 30 days notice to customers prior to initiating charging/billing for Energy or Generator Imbalance Service. Similar to the process for allowing review of annual revenue data submittals

discussed below, Western is committed to providing customers with a forum to address implementation issues related to Energy and Generator Imbalance schedules that are outside the rate schedules themselves.

8. *Comment:* A comment was received by Western questioning the point in Energy Imbalance and Generator Imbalance Service where charges were rounded and if the rounding was done for each hour.

Response: Western will round energy and generator imbalance calculations to the nearest cent on an hourly basis with the exception of the first deviation tier. In the first deviation band, deviations will be netted and settled financially at the end of the month.

9. *Comment:* A comment was received by Western expressing concern for the billing process for energy and generator imbalance calculations.

Response: Western anticipates billing procedures for Energy Imbalance and Generator Imbalance will be similar to billing for any other service and that customer bills will provide sufficient data to verify charges. Western's policy for correction of billing errors will apply for these charges as it does for all other services.

10. *Comment:* Western received a comment expressing concern that implementing Generator Imbalance Service would further deter development of renewable generation such as wind fueled generation.

Response: This comment is not directly related to the proposed rate action and is outside the scope of this rate process.

11. *Comment:* Western received oral and written comments requesting Western delay implementation of Rate Schedule UGP–AS2 pending provision of additional information concerning compensation of generators requested by Western to operate outside the identified bandwidth in providing Reactive Supply and Voltage Support.

Response: Western disagrees that it should delay the implementation of Rate Schedule UGP–AS2 pending providing additional information concerning its procedures for compensation of generators for providing reactive support outside the bandwidth identified in its Large and Small Generator Interconnection Procedures (LGIP/SGIP) and Agreements (LGIA/SGIA). Western has included such provisions and currently has a requirement to provide compensation for requesting an interconnection customer to operate its generation outside the standard power factor bandwidth indentified in its tariff. For example, Western will provide compensation to a large generator as outlined in its LGIA Sections 9.6.3 and 11.6. Western will request the interconnection customer to identify its appropriate costs or rate schedule for it providing reactive support to the transmission provider and will compensate the interconnection customer based upon the agreed upon methodology between the parties.

12. *Comment:* Western received oral and written comments recommending that the IS accept any annual transmission revenue requirement template specifically approved by the FERC for an individual party without approval via a public process.

Response: Western's UGPR agrees with the commenter that a party should be able to utilize a FERC approved template for a particular party, provided that the following conditions are met: (1) the template addresses all the transmission facilities owned by the party; (2) the template includes a separate allocation for IS qualifying facilities; and (3) it is the latest FERC approved template for this party.

13. *Comment:* A comment received by Western expressed understanding for the implementation of the forward looking rates with annual true-up in an era of tremendous transmission expansions.

Response: Western appreciates commenter's understanding of Western's need and efforts to match cost recovery to cost incurrence through the forward looking rate with annual true-up.

14. *Comment:* Western received a comment suggesting a forum for customers to provide comments and ask questions concerning rate adjustments needed for prior year over/under collections.

Response: Western recognizes that an annual customer meeting or forum to discuss application of the true-up of the revenue requirement(s) based on actual, audited financial data is necessary and beneficial. Accordingly, Western has committed to making data for annual rate recalculations and true-ups of prior year over/under collections available to customers on or about September 1 of each year and to providing a forum during which customers can ask questions concerning the data utilized in rate recalculations and the annual revenue requirement true-up calculation prior to October 31.

15. *Comment:* Western received a comment concerning revenue requirement review for reasonableness and providing answers to customer questions.

Response: Western agrees with commenter concerning the need to review revenue requirements for reasonableness. Western has committed to making data for annual rate recalculations and true-ups of prior year over/under collections available to customers on or about September 1 of each year and to providing a forum during which customers can ask questions concerning the data utilized in rate recalculations and the annual revenue requirement true-up calculation prior to October 31.

16. *Comment:* A comment was received that Western should add a statement to its rate schedules that use of a standard template or formula does not remove the obligation of transmission owners to substantiate accuracy of financial data with audited financial statements, FERC Form 1, or other publically available information.

Response: Western agrees that accurate financial data is necessary and will require entities submitting financial data in support of revenue requirements or facility credits to provide appropriate substantiation.

17. *Comment:* Western received a comment advocating that an interest rate apply to any over collection of funds.

Response: Every effort will be made to accurately forecast costs and load in an effort to minimize any over or under collection of annual revenue requirements. Western intends to closely monitor collections and will make or insist upon appropriate revenue requirement adjustments. Western does not believe assessing interest on over collections while not assessing interest on under collections to be equitable.

18. *Comment:* Western received a comment that Western and other IS owners should continue to provide detailed facility information on existing and new facilities included in transmission rates similar to what is done today.

Response: Western agrees with this comment and will continue to provide facility information.

Penalty Rate for Unreserved Use of Transmission Service

Unreserved Use of Transmission Service is provided when a Transmission Customer uses transmission service that it has not reserved or uses transmission service in excess of its reserved capacity. A Transmission Customer that has not secured reserved capacity or exceeds its firm or non-firm reserved capacity at any point of receipt or any point of delivery will be assessed penalties for Unreserved Use of Transmission Service under new Rate Schedule UGP–TSP1. Western has not concluded

modifications to its OATT required as a result of FERC Order 890. Consequently, charges for unreserved use will not be implemented until such time as Western's revised OATT is effective. However, by establishing its Penalty Rate for Unreserved Use of Transmission Service in this process, Western will avoid the need and cost for a separate public process to develop this rate at a later date. Western will provide written notification to its Transmission Customers prior to implementing the penalty rate for unreserved use and will also post a notification on its OASIS web site indicating the implementation of Transmission Service Penalty Rate for Unreserved Use.

The penalty charge for a Transmission Customer that engages in unreserved use is 200 percent of Western's approved transmission service rate for point-to-point transmission service assessed as follows: the Unreserved Use Penalty for a single hour of unreserved use will be based upon the rate for daily firm point-to-point service. The Unreserved Use Penalty for more than one assessment for a given duration (*e.g.*, daily) will increase to the next longest duration (*e.g.*, weekly). The Unreserved Use Penalty charge for multiple instances of unreserved use (for example, more than 1 hour) within a day will be based on the rate for daily firm point-to-point service. The penalty charge for multiple instances of unreserved use isolated to 1 calendar week would result in a penalty based on the charge for weekly firm point-to-point service. The penalty charge for multiple instances of unreserved use during more than 1 week during a calendar month is based on the charge for monthly firm point-to-point service.

A Transmission Customer that exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or an Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved is required to pay for all Ancillary Services identified in Western's OATT that were provided by Western and associated with the unreserved service on the IS system. The Transmission Customer or Eligible Customer will pay for Ancillary Services based on the amount of transmission service it used but did not reserve. Unreserved Use Penalties collected over and above the base point-to-point transmission service charge will be credited against the IS Annual Transmission Revenue Requirement (ATRR).

Basis for Rate Development

The provisional penalty rate provides payment for transmission and ancillary services at the current rates for these services thereby contributing to the revenues required to pay all annual costs, including interest, and repay investments within the allowable periods. The penalty portion of the rate will be returned to customers via credits to future transmission revenue requirement.

Comments

The comments and responses below regarding the Transmission Service Penalty Rate for Unreserved Use rate are paraphrased for brevity when not affecting the meaning of the statement(s). Direct quotes from oral or written comments are used for clarification when necessary.

1. *Comment:* Western received a comment that Western should provide details to several issues associated with the determination of unreserved use and billing for unreserved use. Specifically, commenter states that while Western provides a general description of what it will consider unreserved use, it does not furnish information about the methods that will be utilized to determine that unreserved use has occurred and that Western should explain how it will identify that the unreserved use is a result of exceeding reserved capacity rather than loop flows due to system conditions. Commenter continues to express the desire to have the specific methods for determining unreserved use identified ahead of time so that all parties know what to expect and can plan accordingly. Commenter further asks that Western develop a method and make that method for determining which flows are from insufficient capacity and which are loop flows publicly available.

Response: Western disagrees that it is necessary to identify in advance all specific methods for determining unreserved use but intends to provide such detailed information to any party that it proposes to charge under this rate. Western has indicated that it does not charge for loop flow but does expect its neighboring transmission providers to have adequate transmission capacity on its own system to provide the transmission service that it provides without improperly using Western's transmission system. The determination of adequate transmission capability likely needs to be determined on a case-by-case basis. To the extent that a party disagrees with Western's specific methodologies to base its unreserved use charge, such party has recourses outlined in Western's tariff to dispute such charge, including ultimately seeking feedback from the Federal Energy Regulatory Commission.

2. *Comment:* Western received a comment that Western should explain how the method of determining whether insufficient capacity exists is consistent with the Congestion Management Process as Western takes Interconnected Operations and Congestion Management Service under Part II of Module F of the Midwest ISO Tariff. Commenter requests Western commit that any process it develops will not be in conflict with the Congestion Management Process.

Response: Western has previously filed comments with the Commission noting that its charge for transmission service based upon a party not having sufficient transmission capacity to meet its obligations without utilizing Western's transmission system is not in conflict with its Seams agreement with the Midwest ISO. Western's Seams agreement with the Midwest ISO does not provide for uncompensated use of each other's system and specifically notes that each party to that agreement will respect their own transmission capability in providing transmission service under their separate tariffs. Western's current implementation and proposed changes to its implementation of unreserved use charges will be consistent with any provisions of Seams agreements that it enters into with its neighboring interconnected transmission providers, including the Midwest ISO.

3. *Comment:* Western received a comment that the **Federal Register** notice lacks detail regarding who will be billed for unreserved use penalty charges and asks if Western intends to send bills monthly and which entities will be billed.

Response: Western will bill unreserved use (including the newly proposed penalty charge) to the party that utilizes Western transmission system without making proper arrangements for the transmission service that it is taking. Western bills on a monthly basis; however, to the extent that Western determines that an entity is improperly taking transmission service without reserving such, Western may contact such entity prior to the normal monthly billing cycle to notify such entity that it intends to send that party a bill for service. The appropriate party to be billed will be determined on a case-by-case basis.

4. *Comment:* Western received a comment requesting that commenter be informed of the FERC actions concerning the unreserved use rate.

Response: Western will post FERC actions on its web sites at *http://www.wapa.gov/ugp/* and *http://www.oatioasis.com/wapa/index.html.*

Availability of Information

Information about this rate adjustment, including studies, brochures, comments, letters, memorandums, and other supporting material made or kept by Western, used to develop the provisional rates, is available for public review in the Upper Great Plans Regional Office, 2900 4th Avenue North, Billings, Montana.

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The provisional rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective January 1, 2010, rates for the IS Transmission and Ancillary Services under Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–AS7 and UGP–TSP1. The rate schedules shall remain in effect on an interim basis, pending FERC's confirmation and approval of them or substitute rates on a final basis through December 31, 2014.

Daniel B. Poneman

Deputy Secretary

Rate Schedule UGP–NT1

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy
Western Area Power Administration

Upper Great Plains Region Integrated System

Annual Transmission Revenue Requirement for Network Integration Transmission Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

The Transmission Customer shall compensate the Upper Great Plains Region (UGPR) each month for Network Transmission Service under the applicable Network Integration Transmission Service Agreement and annual revenue requirement outlined below. The formula for the annual revenue requirement used to calculate the charges for this service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

UGPR may modify the charges for Network Integration Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Network Integration Transmission Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. UGPR shall charge the Transmission Customer under the revenue requirement then in effect.

Formula Rate

$$\text{Monthly Charge} = \frac{\text{Transmission Customer's Load-Ratio Share} \times \text{Annual Revenue Requirement for IS Transmission Service}}{\text{12 months}}$$

Annual Revenue Requirement

A recalculated annual revenue requirement will go into effect every January 1 based on updated financial data. UGPR will notify the Transmission Customer annually of the recalculated annual revenue requirement on or before September 1.

Rate Schedule UGP–FPT1

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy
Western Area Power Administration

Upper Great Plains Region Integrated System

Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

The Transmission Customer shall compensate the Upper Great Plains Region (UGPR) each month for Reserved Capacity under the applicable Firm Point-to-Point Transmission Service Agreement and rates outlined below. The formula rates used to calculate the charges for service under this schedule were developed and may be modified under applicable Federal laws, regulations, and policies.

UGPR may modify the rate for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the rate for Firm Point-to-Point Transmission Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. UGPR shall charge the Transmission Customer under the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by UGPR must be announced to all eligible Transmission Customers solely by posting on the Open Access Same-Time Information System (OASIS); (2) any Transmission Customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS; and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, UGPR must offer the same discounted transmission service rate for the same time period to all eligible Transmission Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Formula Rate

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{Annual IS Transmission Service Revenue Requirement}}{\text{IS Transmission System Total Load}}$$

A recalculated rate will go into effect every January 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before September 1.

Rate Schedule UGP–NFPT1

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy Western Area Power Administration

Upper Great Plains Region Integrated System

Non-Firm Point-To-Point Transmission Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

The Transmission Customer shall compensate Upper Great Plains Region (UGPR) for Non-Firm Point-to-Point Transmission Service under the applicable Non-Firm Point-to-Point Transmission Service Agreement and rate outlined below. The formula rates used to calculate the charges for service under this schedule were developed and may be modified under applicable Federal laws, regulations, and policies.

UGPR may modify the rate for Non-Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the rate for Non-Firm Point-to-Point Transmission Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. UGPR shall charge the Transmission Customer under the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by UGPR must be announced to all eligible Transmission Customers solely by posting on the Open Access Same-Time Information System (OASIS); (2) any Transmission Customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS; and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, UGPR must offer the same discounted transmission service rate for the same time period to all eligible Transmission Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Formula Rate

$$\text{Maximum Non-Firm Point-to-Point} = \frac{\text{Firm Point-to-Point Transmission Rate} \times 1000 \text{ Mills/\$}}{730 \text{ hours/month}}$$

Rate

A recalculated rate will go into effect every January 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before September 1.

Rate Schedule UGP–AS1

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy Western Area Power Administration

Upper Great Plains Region Integrated System

Scheduling, System Control, and Dispatch Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

This service is required to schedule the movement of power through, out of, within, or into the Western Area Upper Great Plains Balancing Authorities (WAUE and WAUW). The charges for Scheduling, System Control, and Dispatch Service are to be based on the rate outlined below. The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The rate will be applied to all schedules for IS non-Transmission Customers. Western will accept any reasonable number of schedule changes over the course of the day without any additional charge.

The charges for Scheduling, System Control, and Dispatch Service may be modified upon written notice to the customer. Any change to the charges for the Scheduling, System Control, and Dispatch Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement.

Upper Great Plains Region (UGPR) shall charge the non-Transmission Customer under the rate then in effect.

Formula Rate

$$\text{Rate per Tag per Day} = \frac{\text{Annual Revenue Requirement for Scheduling, System Control, and Dispatch Service}}{\text{Number of Daily Tags per Year}}$$

Rate

A recalculated rate will go into effect every January 1 based on the above formula and data. UGPR will notify the customer annually of the recalculated rate on or before September 1.

Rate Schedule UGP–AS2

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy Western Area Power Administration

Upper Great Plains Region Integrated System

Reactive Supply and Voltage Control From Generation Sources Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

To maintain transmission voltages on all transmission facilities within acceptable limits, generation facilities under the control of the Western Area Upper Great Plains balancing authorities (WAUE and WAUW) are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) must be provided for each transaction on the transmission facilities. The amount of Reactive Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the Reactive Service necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by Western.

The Transmission Customer must purchase this service from the Transmission Provider. The charges for such service will be based upon the rate outlined below. The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The charges for Reactive Service may be modified upon written notice to the Transmission Customer. Any change to the charges for Reactive Service shall be as set forth in a revision to this rate schedule developed to applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Any waiver of this charge or any crediting arrangements for Reactive Service must be documented in the Transmission Customer's Service Agreement.

Formula Rate

$$\text{Reactive Service Rate} = \frac{\text{Annual Revenue Requirement for VAR Support}}{\text{Load Requiring VAR Support}}$$

Rate

A recalculated rate will go into effect every January 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before September 1.

Rate Schedule UGP–AS3

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy Western Area Power Administration

Upper Great Plains Region Integrated System

Regulation And Frequency Response Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

Regulation and Frequency Response Service (Regulation) is necessary to provide for the continuous balancing of resources, generation, and interchange with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). Regulation is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Upper Great Plains balancing authorities (WAUE and WAUW) operator. The Transmission Customer must either purchase this service from Western or make alternative comparable arrangements to satisfy its Regulation obligation. The charges for Regulation are outlined below. The amount of Regulation will be set forth in the applicable Transmission Customer's Service Agreement.

Western supports the installation of renewable sources of energy but recognizes that certain operational constraints exist in managing the significant fluctuations that are a normal part of their operation. When Western purchases power resources to provide Regulation and Frequency Response Service to intermittent renewable generation resources serving load within Western's Control Areas, costs for these regulation resources will become part of Western's Regulation and Frequency Response Service charges. However, Western has marketed the maximum practical amount of power from each of its projects leaving little or no flexibility for provision of additional power services. Consequently, Western will not regulate for the difference between

the output of an intermittent generator located within Western's Control Area and a delivery schedule from that generator serving load located outside of Western's Control Area. Intermittent generators serving load outside Western's Control Area will be required to pseudo-tie or dynamically schedule their generation to another Control Area.

An intermittent resource, for the limited purpose of these Rate Schedules, is an electric generator that is not dispatchable and cannot store its fuel source and, therefore, cannot respond to changes in demand or respond to transmission security constraints.

The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

Charges for Regulation may be modified upon written notice to the Transmission Customer. Any change to the Regulation charges shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Transmission Customers will not be charged for this service if they receive Regulation from another source, or self-supply it for their own load. Any waiver of this charge or any crediting arrangement for Regulation must be documented in the Transmission Customer's Service Agreement.

Formula Rate

$$\text{Regulation Rate} = \frac{\text{Annual Revenue Requirement for Regulation}}{\text{Load in the Control Area Requiring Regulation}}$$

Rate

A recalculated rate will go into effect every January 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before September 1.

If resources are not available from a Western resource, the UGPR will offer to purchase the Regulation and pass through the costs, plus an amount for administration, to the Transmission Customer.

Rate Schedule UGP–AS4

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy Western Area Power Administration

Upper Great Plains Region Integrated System

Energy Imbalance Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

Energy Imbalance Service is provided when a difference occurs between scheduled and actual delivery of energy to a load located within Western's Control Areas over a single hour. The Transmission Customer must either obtain this service from Western or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation.

Western may charge a Transmission Customer a penalty for either hourly energy imbalances under this Schedule UG–AS4 or hourly generator imbalances under Rate Schedule UGP–AS7 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other.

The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The charges for Energy Imbalance Service may be modified upon written notice to the Transmission Customer. Any change to the charges for Energy Imbalance shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Formula Rate

For deviations within +/− 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost.

Deviations greater than +/− 1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month. When energy taken in a schedule hour is greater than the energy scheduled, the charge is 110 percent of incremental cost. When energy taken is less than the scheduled amount, the credit is 90 percent of the incremental cost.

Deviations greater than +/− 7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled at 125 percent of Western's incremental cost when energy taken in a schedule hour is greater than the energy scheduled or 75 percent of Western's incremental cost when energy taken by a Transmission Customer is less than the scheduled amount.

Western's incremental cost will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on Western's OASIS *http://www.oatioasis.com/wapa/index.html* at least 30 days prior to use for determining the Western incremental cost and will not be changed more often than once per year unless Western determines that the existing index is no longer a reliable price index.

Rate

The pricing and penalty for deviations in the above deviation bandwidths is as specified above.

Rate Schedule UGP–AS5

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy Western Area Power Administration

Upper Great Plains Region Integrated System

Operating Reserve—Spinning Reserve Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

Spinning Reserve Service (Reserves) is needed to serve load immediately in the event of a system contingency. Reserves may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Customer must either purchase this service from Western or make alternative comparable arrangements to satisfy its Reserves obligation. The charges for Reserves are outlined below. The amount of Reserves will be set forth in the applicable Transmission Customer's Service Agreement.

The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The charges for Reserves may be modified upon written notice to the Transmission Customer. Any change to the charges for Reserves shall be as set forth in a revision to this rate schedule developed pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Formula Rate

$$\text{Reserves Rate} = \frac{\text{Annual Revenue Requirement for Reserves}}{\text{Load Requiring Reserves}}$$

Rate

A recalculated rate will go into effect every January 1 based on the above formula and updated financial and load data. UGPR will notify the Transmission Customer annually of the recalculated rate on or before September 1.

If resources are not available from a Western resource, UGPR will offer to purchase the Reserves and pass through the costs, plus an amount for administration, to the Transmission Customer.

In the event that Reserves are called upon for emergency use, UGPR will assess a charge for energy used at the prevailing market energy rate in the region. The Transmission Customer would be responsible for providing transmission service to get the Reserves to its destination.

Rate Schedule UGP–AS6

January 1, 2010

Supersedes 2005 Schedule

United States Department of Energy Western Area Power Administration

Upper Great Plains Region Integrated System

Operating Reserve—Supplemental Reserve Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

Supplemental Reserve Service (Reserves) is needed to serve load in the event of a system contingency: however, it is not available immediately to serve load but rather within a short period of time. Reserves may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Transmission Customer must either purchase this service from Western or make alternative comparable arrangements to satisfy its Reserves obligation. The charges for Reserves are outlined below. The amount of Reserves will be set forth in the applicable Transmission Customer's Service Agreement.

The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The charges for Reserves may be modified upon written notice to the Transmission Customer. Any change to the charges for Reserves shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Formula Rate

$$\text{Reserves Rate} = \frac{\text{Annual Revenue Requirement for Reserves}}{\text{Load Requiring Reserves}}$$

Rate

A recalculated rate will go into effect every January 1 based on the above formula and updated financial and load data. The UGPR will notify the Transmission Customer annually of the recalculated rate on or before September 1.

If resources are not available from a Western resource, UGPR will offer to purchase the Reserves and pass through the costs, plus an amount for administration, to the Transmission Customer.

In the event Reserves are called upon for Emergency Energy, UGPR will assess a charge for energy used at the prevailing market energy rate in the region. The Transmission Customer would be responsible for providing transmission service to get the Reserves to its destination.

Rate Schedule UGP–AS7

January 1, 2010

United States Department of Energy Western Area Power Administration

Upper Great Plains Region Integrated System

Generator Imbalance Service

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule. Western will not charge for Generator Imbalance Service until Western's OATT is revised to provide for Generator Imbalance Service.

Applicable

Generator Imbalance Service is provided when a difference occurs between the output of a generator located within the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour. Western will offer this service, to the extent that it is feasible to do so from its own resources or from resources available to it, when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer must either purchase this service from Western or make alternative comparable arrangements, which may include use of non-generation resources capable of providing this service, to satisfy its Generator Imbalance Service obligation. Western may charge a Transmission Customer a penalty for either hourly generator imbalances under this Schedule UG–AS7 or hourly energy imbalances under Rate Schedule UGP–AS4 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other. Intermittent generators serving load outside Western's Control Area will be required to pseudo-tie or dynamically schedule their generation to another Control Area.

An intermittent resource, for the limited purpose of these Rate Schedules, is an electric generator that is not dispatchable and cannot store its fuel source and, therefore, cannot respond to changes in demand or respond to transmission security constraints.

The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The charges for Generator Imbalance Service may be modified upon written notice to the Transmission Customer. Any change to the charges for Generator Imbalance shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Formula Rate

Western bases the rate on deviation bands as follows: deviations within +/− 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost. Deviations greater than +/− 1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month. When energy delivered in a schedule hour from the generation resource is less than the energy scheduled, the charge is 110 percent of incremental cost. When energy delivered from the generation resource is greater than the scheduled amount, the credit is 90 percent of the incremental cost. Deviations greater than +/− 7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled at 125 percent of Western's highest incremental cost for the day when energy delivered in a schedule hour is less than the energy scheduled or 75 percent of Western's lowest daily incremental cost when energy delivered from the generation resource is greater than the scheduled amount. As an exception, an intermittent resource will be exempt from this deviation band and will pay the deviation band charges for all deviations greater than the larger of 1.5 percent or 2 MW. An intermittent resource, for the limited purpose of these schedules, is an electric generator that is not dispatchable and cannot store its fuel source and therefore cannot respond to transmission security constraints.

Deviations from scheduled transactions responding to directives by the Transmission Provider, a balancing authority, or a reliability coordinator shall not be subject to the deviation bands identified above and, instead, shall be settled financially, at the end of the month, at 100 percent of incremental cost. Such directives may include instructions to correct frequency decay, respond to a reserve sharing event, or change output to relieve congestion.

Western's incremental cost will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on Western's OASIS *http://www.oatioasis.com/wapa/index.html* at least 30 days prior to use for determining the Western incremental cost and will not be changed more often than once per year unless Western determines that the existing index is no longer a reliable price index.

Rate

The pricing and penalty for deviations in the above deviation bandwidths is as specified above.

Rate Schedule UGP–TSP1

January 1, 2010

United States Department of Energy
Western Area Power Administration

Upper Great Plains Region Integrated System

Transmission Service Penalty Rate for Unreserved Use

Effective

January 1, 2010, through December 31, 2014, or until superseded by another rate schedule.

Applicable

The Transmission Customer shall compensate the Upper Great Plains Region (UGPR) each month for Unreserved Use of Transmission Service under the applicable Transmission Service rates as outlined below. The formula for the transmission service rate used to calculate the charges for this service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

UGPR may modify the charges for Unreserved Use of Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Unreserved Use of Transmission Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. UGPR shall charge the Transmission Customer under the applicable transmission service rate then in effect.

Penalty Rate

Unreserved Use of Transmission Service is provided when a Transmission Customer uses transmission service that it has not reserved or uses transmission service in excess of its reserved capacity. A Transmission Customer that has not secured reserved capacity or exceeds its firm or non-firm reserved capacity at any point of receipt or any point of delivery will be assessed Unreserved Use Penalties under new Rate Schedule UGP–TSP1. Charges for Unreserved Use will be implemented when Western's revised OATT becomes effective.

Western will provide written notification to its Transmission Customers prior to implementing the Penalty Rate for Unreserved Use and will also post a notification on its OASIS web site indicating the implementation of Transmission Service Penalty Rate for Unreserved Use.

The penalty charge for a Transmission Customer that engages in Unreserved Use is 200 percent of Western's approved transmission service rate for point-to-point transmission service assessed as follows: The Unreserved Use Penalty for a single hour of unreserved use will be based upon the rate for daily firm point-to-point service. The Unreserved Use Penalty for more than one assessment for a given duration (*e.g.*, daily) will increase to the next longest duration (*e.g.*, weekly). The Unreserved Use Penalty charge for multiple instances of unreserved use (for example, more than 1 hour) within a day will be based on the rate for daily firm point-to-point service. The penalty charge for multiple instances of unreserved use isolated to 1 calendar week would result in a penalty based on the charge for weekly firm point-to-point service. The penalty charge for multiple instances of unreserved use during more than 1 week during a calendar month is based on the charge for monthly firm point-to-point service.

A Transmission Customer that exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or an Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved is required to pay for all Ancillary Services identified in Western's OATT that were provided by Western and associated with the unreserved service on the IS system. The Transmission Customer or Eligible Customer will pay for Ancillary Services based on the amount of transmission service it used, but did not reserve.

Rate

The rate for Unreserved Use of Transmission Service is 200 percent of the approved transmission service rate for point-to-point transmission service assessed as described above.

[FR Doc. E9–30827 Filed 12–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Revised Implementation Guide for Electronic Filing

December 18, 2009.

In Order No. 714,[1] the Commission adopted regulations requiring tariff and tariff related filings to be made electronically starting April 1, 2010. Instructions on how to assemble an electronic filing are provided in *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, located at *http://www.ferc.gov/docs-filing/etariff.asp*.

Take notice that the *Implementation Guide* has been revised as follows (changes are marked by redline in the document):

1. The date to be used by filers that are not proposing a specific effective date has been changed from 12/31/9999 to 12/31/9998 due to Commission software constraints.

2. The Implementation Guide as been revised to clarify the usage of the "Withdraw Type of Filing Category" and the "Withdraw Record Change Type".

a. The description of the "Withdraw Type of Filing" category has been modified to reflect §§ 35.17(a) and 154.205(a) of the Commission's regulations, as adopted in Order No. 714. The revision clarifies that the Type of Filing category of "Withdraw" is the equivalent of a request to withdraw the complete associated tariff filing, not individual components of thereof.

b. The description of the "Withdraw Record Change Type" has been modified to reflect the ability to withdraw a specific tariff record without withdrawing the entire filing.

3. Discussion of the Company Identifier and password have been coordinated with the October 23, 2009 Notice regarding Company Registration and related *Instructions for Company Registration*. These instructions are located at *http://www.ferc.gov/docs-filing/company-reg.asp*. The revisions reflect the October 23, 2009 Notice's implementation of Company Identifiers and passwords, and the treatment of the Company Identifiers as public information.

For more information, please contact Keith Pierce, Office of Energy Market Regulation at (202) 502–8525 for technical information, or Anthony Barracchini, Office of the Executive Director, (202) 502–8920 for software information, or send an e-mail to *ETariff@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30808 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Electronic Tariff Filings*, Order No. 714, 73 FR 57,515 (Oct. 3, 2008), 124 FERC ¶ 61,270, FERC Stats. & Regs [Regulations Preambles] ¶ 31,276 (2008) (Sept. 19, 2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Regional State Committee Meeting and Southwest Power Pool Board of Directors Meeting

December 22, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool (SPP) Regional State Committee, and SPP Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Regional State Committee Meeting

January 25, 2010 (1 p.m.–5 p.m. CST), Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, LA 70130, 504–525–2500.

SPP Board of Directors Meeting

January 26, 2010 (8 a.m.–3 p.m. CST), Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, LA 70130, 504–525–2500.

The discussions may address matters at issue in the following proceedings:

Docket No. EL09–40, Southwest Power Pool, Inc.
Docket No. ER06–451, Southwest Power Pool, Inc.
Docket No. ER08–923, Xcel Energy Services, Inc.
Docket No. ER08–1307, Southwest Power Pool, Inc.
Docket No. ER08–1308, Southwest Power Pool, Inc.
Docket No. ER08–1357, Southwest Power Pool, Inc.
Docket No. ER08–1358, Southwest Power Pool, Inc.
Docket No. ER08–1359, Southwest Power Pool, Inc.
Docket No. ER08–1419, Southwest Power Pool, Inc.
Docket No. ER09–35, Tallgrass Transmission LLC.
Docket No. ER09–36, Prairie Wind Transmission LLC.
Docket No. ER09–1397, Southwest Power Pool, Inc.

Docket No. ER09–1562, Southwest Power Pool, Inc.
Docket No. ER09–659, Southwest Power Pool, Inc.
Docket No. ER09–1050, Southwest Power Pool, Inc.
Docket No. ER09–1254, Southwest Power Pool, Inc.
Docket No. ER09–1255, Southwest Power Pool, Inc.
Docket No. ER09–1397, Southwest Power Pool, Inc.
Docket No. ER09–1716, Southwest Power Pool, Inc.
Docket No. ER09–1740, Southwest Power Pool, Inc.
Docket No. ER10–144, Southwest Power Pool, Inc.
Docket No. ER10–181, Southwest Power Pool, Inc.
Docket No. ER10–195, Southwest Power Pool, Inc.
Docket No. ER10–196, Southwest Power Pool, Inc.
Docket No. ER10–197, Southwest Power Pool, Inc.
Docket No. ER10–215, Southwest Power Pool, Inc.
Docket No. ER10–242, Southwest Power Pool, Inc.
Docket No. ER10–261, Southwest Power Pool, Inc.
Docket No. ER10–267, Southwest Power Pool, Inc.
Docket No. ER10–273–000, Southwest Power Pool, Inc.
Docket No. ER10–329, Southwest Power Pool, Inc.
Docket No. ER10–330, Southwest Power Pool, Inc.
Docket No. ER10–331, Southwest Power Pool, Inc.
Docket No. ER10–333, Southwest Power Pool, Inc.
Docket No. ER10–334, Southwest Power Pool, Inc.
Docket No. ER10–335, Southwest Power Pool, Inc.
Docket No. ER10–336, Southwest Power Pool, Inc.
Docket No. ER10–337, Southwest Power Pool, Inc.
Docket No. ER10–338, Southwest Power Pool, Inc.
Docket No. ER10–339, Southwest Power Pool, Inc.
Docket No. ER10–341, Southwest Power Pool, Inc.
Docket No. ER10–353, Southwest Power Pool, Inc.
Docket No. ER10–368, Southwest Power Pool, Inc.
Docket No. ER10–370, Southwest Power Pool, Inc.
Docket No. ER10–376, Southwest Power Pool, Inc.
Docket No. ER10–380, Southwest Power Pool, Inc.
Docket No. ER10–368, Southwest Power Pool, Inc.
Docket No. ER09–342, Southwest Power Pool, Inc.
Docket No. ER10–352, Southwest Power Pool, Inc.
Docket No. ER10–364, Southwest Power Pool, Inc.
Docket No. ER10–365, Southwest Power Pool, Inc.
Docket No. OA08–5, Southwest Power Pool, Inc.
Docket No. OA08–60, Southwest Power Pool, Inc.
Docket No. OA08–61, Southwest Power Pool, Inc.
Docket No. OA08–104, Southwest Power Pool, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30817 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Markets and Operations Policy Committee Meetings

December 22, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool (SPP) Markets and Operations Policy Committee, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Markets and Operation Policy Committee Meetings

January 12, 2010 (1 p.m.–5 p.m. CST), January 13, 2010 (8 a.m.–3 p.m. CST).
Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, LA 70130, 504–525–2500.

The discussions may address matters at issue in the following proceedings:

Docket No. EL09–40, Southwest Power Pool, Inc.
Docket No. ER06–451, Southwest Power Pool, Inc.
Docket No. ER08–923, Xcel Energy Services, Inc.
Docket No. ER08–1307, Southwest Power Pool, Inc.
Docket No. ER08–1308, Southwest Power Pool, Inc.
Docket No. ER08–1357, Southwest Power Pool, Inc.
Docket No. ER08–1358, Southwest Power Pool, Inc.
Docket No. ER08–1359, Southwest Power Pool, Inc.
Docket No. ER08–1419, Southwest Power Pool, Inc.
Docket No. ER09–35, Tallgrass Transmission LLC.
Docket No. ER09–36, Prairie Wind Transmission LLC.
Docket No. ER09–1397, Southwest Power Pool, Inc.
Docket No. ER09–1562, Southwest Power Pool, Inc.
Docket No. ER09–659, Southwest Power Pool, Inc.
Docket No. ER09–1050, Southwest Power Pool, Inc.
Docket No. ER09–1254, Southwest Power Pool, Inc.
Docket No. ER09–1255, Southwest Power Pool, Inc.
Docket No. ER09–1397, Southwest Power Pool, Inc.
Docket No. ER09–1716, Southwest Power Pool, Inc.
Docket No. ER09–1740, Southwest Power Pool, Inc.
Docket No. ER10–144, Southwest Power Pool, Inc.
Docket No. ER10–181, Southwest Power Pool, Inc.
Docket No. ER10–195, Southwest Power Pool, Inc.
Docket No. ER10–196, Southwest Power Pool, Inc.
Docket No. ER10–197, Southwest Power Pool, Inc.
Docket No. ER10–215, Southwest Power Pool, Inc.
Docket No. ER10–242, Southwest Power Pool, Inc.
Docket No. ER10–261, Southwest Power Pool, Inc.
Docket No. ER10–267, Southwest Power Pool, Inc.
Docket No. ER10–273–000, Southwest Power Pool, Inc.
Docket No. ER10–329, Southwest Power Pool, Inc.
Docket No. ER10–330, Southwest Power Pool, Inc.
Docket No. ER10–331, Southwest Power Pool, Inc.
Docket No. ER10–333, Southwest Power Pool, Inc.
Docket No. ER10–334, Southwest Power Pool, Inc.
Docket No. ER10–335, Southwest Power Pool, Inc.
Docket No. ER10–336, Southwest Power Pool, Inc.
Docket No. ER10–337, Southwest Power Pool, Inc.
Docket No. ER10–338, Southwest Power Pool, Inc.
Docket No. ER10–339, Southwest Power Pool, Inc.
Docket No. ER10–341, Southwest Power Pool, Inc.

Docket No. ER10–353, Southwest Power Pool, Inc.
Docket No. ER10–368, Southwest Power Pool, Inc.
Docket No. ER10–370, Southwest Power Pool, Inc.
Docket No. ER10–376, Southwest Power Pool, Inc.
Docket No. ER10–380, Southwest Power Pool, Inc.
Docket No. ER10–368, Southwest Power Pool, Inc.
Docket No. ER09–342, Southwest Power Pool, Inc.
Docket No. ER10–352, Southwest Power Pool, Inc.
Docket No. ER10–364, Southwest Power Pool, Inc.
Docket No. ER10–365, Southwest Power Pool, Inc.
Docket No. OA08–5, Southwest Power Pool, Inc.
Docket No. OA08–60, Southwest Power Pool, Inc.
Docket No. OA08–61, Southwest Power Pool, Inc.
Docket No. OA08–104, Southwest Power Pool, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30816 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Southwest Power Pool ICT Stakeholder Policy Committee Meeting and the Entergy Regional State Committee Meeting

December 22, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholder Policy Committee Meeting

January 20, 2010 (8 a.m.—12 p.m. CST), Crowne Plaza Little Rock, 201 South Shackleford Rd,. Little Rock, AR 72211, 501–223–3000.

Entergy Regional State Committee Meeting

January 20, 2010 (1 p.m.—5 p.m. CST), Crowne Plaza Little Rock, 201 South Shackleford Rd,. Little Rock, AR 72211, 501–223–3000.

The discussions may address matters at issue in the following proceedings:

Docket No. OA08–59	Entergy Services, Inc.
Docket No. OA09–27	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL05–15	Arkansas Electric Cooperative Corp. v. Entergy Arkansas, Inc.
Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–59	ConocoPhillips v. Entergy Services, Inc.
Docket No. EL08–60	Ameren Services Co. v. Entergy Services, Inc.
Docket No. EL09–43	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–61	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–78	South Mississippi Electric Power Association v. Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER08–1057	Entergy Services, Inc.
Docket No. ER09–636	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–877	Entergy Services, Inc.
Docket No. ER09–882	Entergy Services, Inc.
Docket No. ER09–1180	Entergy Services, Inc.
Docket No. ER09–1214	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 4249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30815 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1048–000; Docket No.; ER09–1049–000; Docket Nos. ER09–1050–000; ER09–1192–000; Docket No. ER09–1051–000; Docket No. ER09–1063–000; Docket No. ER09–1142–000]

California Independent System Operator Corporation; Midwest Independent Transmission System Operator, Inc.; Southwest Power Pool, Inc.; ISO New England, Inc. and New England Power Pool; PJM Interconnection, LLC; New York Independent System Operator, Inc. Notice of Date of Technical Conference on RTO/ISO Responsiveness

December 18, 2009.

On November 13, 2009, the Commission issued a notice announcing that the Commission staff would hold a technical conference in the near future to address issues raised in the above-referenced Order No. 719 compliance proceedings.[1] The purpose of this notice is to announce that the technical conference will be held on Thursday, February 4, 2010, from 12:30 p.m. to 4:30 p.m. (EST) in the Commission Meeting Room at the Commission's Washington, DC headquarters, 888 First Street, NE.

The agenda will be provided in a subsequent notice. This conference will be webcast. All interested parties are invited, and there is no registration fee to attend.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

Questions about the technical conference may be directed to Kurt Longo at *kurt.longo@ferc.gov*, (202) 502–8048.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–30806 Filed 12–28–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Wholesale Competition in Regions with Organized Electric Market*, Order No. 719, 73 FR 64,100 (Oct. 28, 2008), FERC Stats & Regs. ¶ 31,281 (2008); *order on reh'g*, 74 FR 37,772 (July 29, 2009), 128 FERC ¶ 61,059 (2009) (Order No. 719–A).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8805–4]

Access to Confidential Business Information by ASRC Management Services, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized contractor, ASRC Management Services, Inc. (ASRC) of Greenbelt, MD, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than January 5, 2010.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal 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.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number EP-W-05-052, Task Order Number 117, contractor ASRC of 6301 Ivy Lane, Greenbelt, MD will assist the Office of Pollution Prevention and Toxics (OPPT) in managing the Confidential Business Information Center (CBIC), which is the centralized point of contact for TSCA CBI records and serves as the repository for these records. ASRC will also receive, enter data, copy, track, and distribute records in accordance with the TSCA Security Manual.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number EP-W-05-052, Task Order

Number 117, ASRC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ASRC personnel will be given access to information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ASRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until October 18, 2010. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

ASRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental Protection, Confidential Business Information.

Dated: December 23, 2009.

Todd S. Holderman,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–30820 Filed 12–28–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0408; FRL–9096–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Lime Manufacturing (Renewal), EPA ICR Number 2072.04, OMB Control Number 2060–0544

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 28, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0408, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0408, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Lime Manufacturing.

ICR Numbers: EPA ICR Number 2072.04, OMB Control Number 2060–0544.

ICR Status: This ICR is scheduled to expire on January 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart AAAAA. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 70 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Lime manufacturing plants.

Estimated Number of Respondents: 62.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 14,723.

Estimated Total Annual Cost: $1,509,024, which includes $1,384,616 in labor costs, $88,908 in capital/startup costs, and $35,500 in operation and maintenance (O&M) costs.

Changes in the Estimates: The increase in burden hours and number of responses from the most recently approved ICR is due to an increase in the number of respondents. This ICR based the number of respondents on the number of lime manufacturing plants identified during the rulemaking and accounted for the one additional respondent per year since the rule became final. The previous ICR had identified the number of respondents as the number of companies with plants subject to the rule, but each plant should be considered a separate respondent and this correction is reflected in this ICR. An increase in burden per response also occurred due to an incorrect calculation of the number of responses in the previous ICR. The decrease in capital and annual O&M costs reflects a change made to account for the fact that initial performance testing for Method 5 has been completed for existing sources, and the only units subject to initial testing is estimated to be one respondent per year. The existing 61 respondents are only subject to repeat performance testing every five years, or 12.2 respondents per year. The capital and O&M costs also changed to include the costs for bag leak detection monitors to be consistent with the costs presented in the 2004 final rulemaking notice.

Dated: December 18, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–30853 Filed 12–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9092–4]

Proposal Not To Reissue NPDES General Permit for Egg Production Operations in New Mexico, Oklahoma, and on Indian Lands in New Mexico and Oklahoma (NMG800000 and OKG800000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposal not to reissue NPDES General Permit.

SUMMARY: EPA Region 6 is providing notice that the Agency does not intend to reissue the National Pollutant Discharge Elimination System (NPDES) General Permit for Egg Production Operations (EPOs) in New Mexico and Oklahoma (NMG800000 and OKG800000) which was issued on July 18, 2002 (67 FR 47362). The permit expired on August 17, 2007 and was never reissued. Part I.G of the permit stipulates that the permit be administratively continued until the permit is reissued or EPA publishes a determination not to reissue the permit. With this notice, EPA provides notice of its determination not to reissue the permit. No facilities applied for or were granted coverage under this permit. At this time, any facility eligible for coverage under this general permit that is seeking NPDES permit coverage should submit an application for an individual permit.

FOR FURTHER INFORMATION CONTACT: Scott Stine, NPDES Permits and TMDL Branch (6WQ–PP), Environmental Protection Agency, 1445 Ross Ave., Suite 1200, Dallas, TX 75202; telephone number: (214) 665–7182; fax number: (214) 665–2191; e-mail address: *stine.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: At the time of permit issuance, the United Egg Producers (UEP), a farmer cooperative that represents egg producers nationwide, was in an XL project agreement with EPA to allow eligible facilities to obtain permit coverage under a general permit. Project XL was a national pilot program that allowed state and local governments, businesses and federal facilities to develop with EPA more cost-effective ways of achieving environmental and public health protection. With this notice not to reissue the general permit, EPA is closing out this XL project as it is no longer active.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 3, 2009.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E9–30841 Filed 12–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9097–3]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122 (h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Malone Service Company Superfund Site, Texas City, Galveston County, Texas.

The settlement requires the one-hundred twenty-two (122) settling parties to pay a total of $3,103,173 payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Sections 106 or 107 of CERCLA, 42, U.S.C. 9606 or 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before January 28, 2010.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Patrice Miller, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–3158. Comments should reference the Malone Service

Company Superfund Site, Texas City, Galveston County, Texas, and EPA Docket Number 06–17–07, and should be addressed to Patrice Miller at the address listed above.

FOR FURTHER INFORMATION CONTACT: Anne Foster, 1445 Ross Avenue; Dallas, Texas 75202–2733 or call (214) 665–2169 or I-Jung Chiang, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–2160.

Dated: December 14, 2009.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. E9–30819 Filed 12–28–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Economic Analysis of Nutrition Interventions: Methods, Research and Policy

Notice

Notice is hereby given of the National Institutes of Health (NIH) Office of Dietary Supplements (ODS) Economic Analysis of Nutrition Interventions Workshop to be held February 23–24, 2010 at the Bethesda North Marriott Hotel & Conference Center in Bethesda, Maryland, 20852.

Summary

In 2008, healthcare expenditures in the U.S. were estimated to be 17% of GDP, and these projected expenditures were largely associated with chronic disease. Medicare beneficiaries spent a median of 16% of their incomes on healthcare, and if current trends persist, a family earning $60,000 "gross wage base" will be spending more than 41% of wages on healthcare in 10 years time. Despite the rapid escalation of healthcare costs, research into healthcare economic solutions has not taken center stage. Nutrition is a foundation of preventive medicine in our healthcare system, and it is postulated that better health outcomes can be achieved for dollars spent by ensuring proper nutrition of the population.

Health economic issues in the U.S. healthcare delivery system have gained increased prominence with President Obama's expressed desire to "raise health care's quality and lower its costs." The National Institutes of Health Clinical and Translational Science Award Program has also recognized the importance of "enhancing the adoption of best practices in the community," including assessment of the costs and effectiveness of prevention and treatment strategies. The potential benefits of health economic analysis applied to health policy include: identifying important factors affecting resource allocation in the setting of increasingly complex, uncertainty-laden medical detection and treatment advances; specifying a basis for allocating resources among diseases and in prevention versus detection, versus treatment; reminding decision-makers about the reality of limited resources; and, offering a rational approach to decision-making when resources are limited.

In view of the current interest in health economics and the potential societal benefit of incorporating health economics as a part of translational science, the NIH/ODS will host this day-and-a-half long workshop to bring together U.S. and international academicians, researchers, policymakers and regulators to address the following key areas and questions specifically as applied to nutrition interventions:

- *State of the Science:* What are the health economic methods currently used to judge burden of illness, interventions or healthcare policies, and what new research methodologies are available (or are needed, *i.e.* what are critical knowledge or methodological gaps or barriers?)
- *Research Applications:* What are the current and planned evidence-based health economic research activities in nutrition at the NIH, CDC, AHRQ, USDA, FDA, CMS, OMAR, etc. and what are the activities in other countries?
- *Regulatory and Policy Maker Perspectives:* Once these research goals have been met, how can they assist regulatory and policy makers with nutrition policy decision-making?

The workshop will consist of three half-day sessions which will cover the key areas identified above. Sessions will feature focused podium presentations, with each session concluding with a panel discussion. The workshop will conclude with a summary of the discussions, identification of knowledge gaps, and suggestions for future research initiatives.

The current sponsors of this meeting are the NIH Office of Dietary Supplements and the National Center for Complementary and Alternative Medicine.

Registration

Space is limited and will be filled on a first-come first-served basis. There is no registration fee to attend the workshop. To register please forward your name and complete mailing address, including phone number, via e-mail to Mr. Mike Bykowski at *mbykowski@csionweb.com*. Mr. Bykowski will be coordinating the registration for this meeting. If you wish to make an oral presentation during the meeting, you must indicate this when you register and submit the following information: (1) A brief written statement of the general nature of the comments that you wish to present, (2) the name and address of the person(s) who will give the presentation, and (3) the approximate length of time that you are requesting for your presentation. Depending on the number of people who register to make presentations, we may have to limit the time allotted for each presentation. If you do not have access to e-mail please call Mr. Bykowski at 301–670–0270.

Dated: December 18, 2009.

Paul M. Coates,

Director, Office of Dietary Supplements, National Institutes of Health.

[FR Doc. E9–30683 Filed 12–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0591]

Guidance to Pharmacies on Advance Compounding of Tamiflu Oral Suspension to Provide for Multiple Prescriptions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Guidance to Pharmacies on Advance Compounding of Tamiflu Oral Suspension to Provide for Multiple Prescriptions." This guidance describes the circumstances in which FDA will not object to certain compounding of Tamiflu Oral Suspension in advance of receiving prescriptions.

DATES: Submit electronic or written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your

requests. Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Samia Nasr, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5370, Silver Spring, MD 20993–0002, 301–796–3409.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Guidance to Pharmacies on Advance Compounding of Tamiflu Oral Suspension to Provide for Multiple Prescriptions." The increasing prevalence of H1N1 infection and resultant increase in demand for Tamiflu for Oral Suspension has caused supply difficulties and spot shortages of the commercially manufactured Tamiflu for Oral Suspension product (12 milligrams (mg)/milliliter (mL)) throughout the country. Because of these shortages, compounding of Tamiflu Oral Suspension (15 mg/mL), as described in the FDA-approved labeling, can ensure that patients who have difficulty swallowing tablets have access to Tamiflu Oral Suspension when the commercially manufactured Tamiflu for Oral Suspension is unavailable.

This guidance describes the conditions in which FDA will not object to certain compounding of Tamiflu Oral Suspension (using Tamiflu capsules) in advance of receiving prescriptions. In circumstances where there is an actual shortage of commercially manufactured Tamiflu for Oral Suspension, FDA will not object if pharmacies compound oral suspension from Tamiflu capsules in advance of receiving prescriptions, if the amount compounded is commensurate with the number of valid prescriptions that the pharmacy can reasonably anticipate receiving within the next 24 hours.

In addition, the guidance provides detailed, step-by-step information for the preparation of pharmacy-compounded Tamiflu Oral Suspension (final concentration 15 mg/ml) from Tamiflu capsules in quantities that are based on patient weight. Information on proper storage and a dosing chart for pharmacy-compounded Tamiflu Oral Suspension are also provided.

This guidance is being issued as a Level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). It is being implemented immediately without prior public comment because of the shortage of the commercially manufactured Tamiflu for Oral Suspension and the potential hazard to the public health. However, the agency welcomes comments on the guidance and, if comments are submitted, the agency will review them and revise the guidance if appropriate. The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/DrugSafety/InformationbyDrugClass/ucm188629.htm*.

Dated: December 23, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–30750 Filed 12–28–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[CMS–2474–NC]

Medicaid and CHIP Programs; Initial Core Set of Children's Healthcare Quality Measures for Voluntary Use by Medicaid and CHIP Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Notice with comment period.

SUMMARY: This notice identifies and solicits public comments on the initial, recommended core set of children's health care quality measures for voluntary use by State programs administered under titles XIX and XXI of the Social Security Act, health insurance issuers and managed care entities that enter into contracts with Medicaid and Children's Health Insurance Programs, and providers of items and services under these programs, in accordance with the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3). This notice also discusses steps already underway to facilitate the programs' voluntary use of the children's health care quality measures. In addition, this notice solicits comments on how the steps might be enhanced, and recommendations for additional steps to facilitate use of the measures.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 1, 2010.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of two ways (please choose only one of the ways listed):

1. *Electronic Mail. CHIPRAquality measures@ahrq.hhs.gov.*

2. *Regular Mail.* Agency for Healthcare Research and Quality, Attention: Office of Extramural Research, Education, and Priority Populations—Public Comment, CHIPRA Core Measures, 540 Gaither Rd., Rockville, MD 20850.

Please note that all submissions may be posted without change to *http://www.AHRQ.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: *CHIPRAqualitymeasures@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 4, 2009, the Congress enacted the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Pub. L. 111–3). Section 401(a) of the legislation amended the Social Security Act (the Act), to establish section 1139A (42 U.S.C. 1320b-9a). This section requires the Secretary to identify and publish for general comment an initial, recommended core set of child health quality measures for use by State programs administered under titles XIX and XXI of the Act, health insurance issuers and managed care entities that enter into contracts with such programs, and providers of items and services under such programs. The statute requires that the

Secretary identify and publish these measures by January 1, 2010. The Secretary delegated this task to the Centers for Medicare & Medicaid Services (CMS). A "Memorandum of Understanding" was signed with the Agency for Healthcare Research and Quality (AHRQ), by which CMS and AHRQ would collaborate to make recommendations for the initial core set of children's health care quality measures to be posted for public comment. The initial core set is intended to be used voluntarily by Medicaid and the Children's Health Insurance Program (CHIP).

The initial core set of children's health care quality measures for voluntary use by Medicaid and CHIP programs was developed in consultation with organizations representing the stakeholder categories set out at section 1139A(b)(3) of the Act (including States; health care providers specializing in pediatric health and dentistry; health care providers that furnish primary health care to children and families who live in urban and rural medically underserved communities or who are members of distinct population subgroups at heightened risk for poor health outcomes; national organizations representing children and families; individuals and organizations with health care quality measurement expertise; and other organizations involved in the advancement of evidence-based measures of health care).

Measures for consideration for the initial core set were compiled from "existing quality of care measures for children that are in use under public and privately sponsored health care coverage arrangements, or that are part of reporting systems that measure both the presence and duration of health insurance coverage over time" as required by section 1139A(a)(2) of the Act.

The statute requires that the initial core set of child health quality measures include the following:

1. The duration of children's health insurance coverage over a 12-month time period.

2. The availability and effectiveness of a full range of preventive services, treatments, and services for acute conditions, including services to promote healthy birth, prevent and treat premature birth, and detect the presence or risk of physical or mental conditions that could adversely affect growth and development; and treatments to correct or ameliorate the effects of physical and mental conditions, including chronic conditions in infants, young children, school-age children, and adolescents.

3. The availability of care in a range of ambulatory and inpatient health care settings in which such care is furnished.

4. The types of measures that, taken together, can be used to estimate the overall national quality of health care for children, including children with special needs, and to perform comparative analyses of pediatric health care quality and racial, ethnic, and socioeconomic disparities in child health and health care for children.

To help facilitate an evidence-informed and transparent process for making recommendations, AHRQ's National Advisory Council on Healthcare Research and Quality created a Subcommittee on Children's Healthcare Quality Measures for Medicaid and CHIP programs (the "Subcommittee"). The Subcommittee held public meetings, and considered public comments and measure nominations throughout their deliberations. Subcommittee members were provided with standard definitions, criteria, and objective information to facilitate scoring of measures for validity, feasibility, and importance over several iterations of measure consideration. The Subcommittee's recommendations were reported to the Chair of AHRQ's National Advisory Council on Healthcare Research and Quality and subsequently considered further by Medicaid and CHIP officials, as well as staff in the Office of the Secretary of the Department of Health and Human Services (HHS) prior to this public posting. Extensive details regarding the process, the measures recommended, and other considerations regarding the initial core set can be found at *http://www.ahrq.gov/chip/corebackgrnd.htm*. We are now soliciting additional comments from the public to help determine which measures should remain in the core set, which measures may need further development to enhance their validity and feasibility, and the nature of technical assistance and other resources required before State Medicaid and CHIP programs and health care providers can be expected to implement and report on these measures. In submitting comments, it is important to consider the kinds of activities already under way at HHS to facilitate making the measures more feasible and valid for use by the States for reporting across all Medicaid and CHIP programs (for example, managed care, fee-for-service and enrollees).

HHS will be making improvements and enhancements to the core set of measures as a result of the following:

- Public comment on the initial, recommended core measure set.
- Products developed by a pediatric quality measures program of grants and contracts to begin in 2010 (section 1139A(b) of the Act).
- Products stimulated by CMS's CHIPRA Quality Demonstration Grants, including evaluation and experimentation with the measures and development of an electronic health record format for children's health care (section 1139A(d) of the Act).
- Other advancements and improvements to children's health care quality measures (such as annual quality reporting as required under section 1139A(a)(4) of the Act).

Section 1139A(b)(5) of the Act directs that an improved, evidence-based core measure set is to be available by January 1, 2013, to be feasible for use by a broad range of providers, payers, and programs, both public and private (42 U.S.C. 1320b-9a).

To further these efforts, AHRQ and CMS are currently working to continue or implement the following initiatives:

1. Establishing methodologies to create measure specifications that are applicable to all Medicaid and CHIP enrollees, and suitable for identifying disparities in quality by race, ethnicity, socioeconomic status, and special health care needs status, as required by CHIPRA.

2. Providing technical assistance to States to facilitate implementation of the initial, recommended core measure set.

3. Using a public process for the pediatric quality measures grants and contracts program to build on priorities identified during the 2009 identification of the initial, recommended core set. Priority topics already identified include quality measures for: mental health and substance abuse services for children, other specialty services, inpatient care, duration of enrollment and coverage, medical home and other integrated health care delivery mechanisms, and availability of services.

4. Considering ways to align State reporting requirements across CHIPRA provisions, with Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT) via CMS 416 reporting, and with annual reporting requirements for CHIP.

5. Coordinating quality measurement efforts with payment reform strategies, health information technology and electronic health record initiatives, and

6. Working with States to identify the best formats for sharing Medicaid and CHIP quality measurement data, including when and how state reports should be made publicly available.

7. Continuing to work with States and national stakeholders to develop

national intervention strategies for improving health care quality and outcomes for children (for example, Medicaid Transformation Grants and the CHIPRA Quality Demonstration Grants).

8. Continuing development and implementation of the Federal-State National Quality Framework in alignment with CHIPRA initiatives for improving the quality of care for children.

9. Due to the concurrent CHIPRA and American Recovery and Reinvestment Act (ARRA) HIT implementation activities, CMS will align the two programs and strive to create efficiencies for States and pediatric providers, where applicable, by prioritizing consistency in measure selection for pediatric providers.

II. Categories of the Initial, Recommended Core Set of Children's Healthcare Quality Measures

The basic categories of the initial, recommended core set of children's health care quality measures are set forth below. For full specifications of each measure and summaries of the rationales behind each recommended measure, see the background paper for this **Federal Register** notice at *http://www.ahrq.gov/chip/corebackgrnd.htm.* Measures that have received National Quality Forum (NQF) endorsement are indicated with the relevant number.

MEASURES RECOMMENDED FOR INITIAL CORE SET OF CHILDREN'S HEALTHCARE QUALITY FOR VOLUNTARY REPORTING BY MEDICAID AND CHIP PROGRAMS, MEASURE LABELS BY LEGISLATIVE CATEGORY

Measure number	Legislative measure topic/Subtopic/Current measure label
	PREVENTION AND HEALTH PROMOTION
	Prenatal/Perinatal
1	Frequency of ongoing prenatal care.
2	Timeliness of prenatal care—the percentage of deliveries that received a prenatal care visit as a member of the organization in the first trimester or within 42 days of enrollment in the organization.
3	Percent of live births weighing less than 2,500 grams.
4	Cesarean Rate for low-risk first birth women [NQF #0471].
	Immunizations
5	Childhood immunization status [NQF #0038].
6	Immunizations for adolescents.
	Screening
7	BMI documentation 2–18 year olds [NQF #0024].
8	Screening using standardized screening tools for potential delays in social and emotional development—Assuring Better Child Health and Development (ABCD) initiative measures.
9	Chlamydia screening for women [NQF #0033].
	Well-child Care Visits (WCV)
10	WCVs in the first 15 months of life.
11	WCVs in the third, fourth, fifth and sixth years of life.
12	WCV for 12–21 yrs of age—with PCP or OB–GYN.
	Dental
13	Total eligibles receiving preventive dental services (EPSDT measure Line 12B).
	MANAGEMENT OF ACUTE CONDITIONS
	Upper Respiratory—Appropriate Use of Antibiotics
14	Appropriate testing for children with pharyngitis [NQF #0002].
15	Otitis Media with Effusion—avoidance of inappropriate use of systemic antimicrobials—ages 2–12.
	Dental
16	Total EPSDT eligibles who received dental treatment services (EPSDT CMS Form 416, Line 12C).
	Emergency Department
17	Emergency Department (ED) Utilization—Average number of ED visits per member per reporting period.
	Inpatient Safety
18	Pediatric catheter-associated blood stream infection rates (PICU and NICU) [NQF #0139].
	MANAGEMENT OF CHRONIC CONDITIONS
	Asthma
19	Annual number of asthma patients (≥ 1 year old) with ≥ 1 asthma related ER visit (S/AL Medicaid Program).

MEASURES RECOMMENDED FOR INITIAL CORE SET OF CHILDREN'S HEALTHCARE QUALITY FOR VOLUNTARY REPORTING BY MEDICAID AND CHIP PROGRAMS, MEASURE LABELS BY LEGISLATIVE CATEGORY—Continued

Measure number	Legislative measure topic/Subtopic/Current measure label
	ADHD
20	Follow-up care for children prescribed attention-deficit/hyperactivity disorder (ADHD) medication (Continuation and Maintenance Phase) [NQF #108].
	Mental Health
21	Follow up after hospitalization for mental illness.
	Diabetes
22	Annual hemoglobin A1C testing (all children and adolescents diagnosed with diabetes).
	FAMILY EXPERIENCES OF CARE
23	CAHPS® Health Plan Survey 4.0, Child Version including Medicaid and Children with Chronic Conditions supplemental items.
	AVAILABILITY
24	Children and adolescents' access to primary care practitioners (PCP), by age and total.

Comments on the measures themselves are encouraged to:

- Specify which of the measures are being addressed with each comment.
- Explain views and reasoning clearly.

In addition, comments are invited on the AHRQ and CMS plans to enhance the initial, recommended core measure set so that they can be collected most efficiently and accurately across all Medicaid and CHIP programs, providers, and enrollees.

We strongly encourage comments to be as succinct as possible (250 words or less recommended, with additional supporting data allowed).

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Regulatory Impact Analysis

As this notice does not meet the significance criteria of Executive Order 12866, it was not reviewed by the Office of Management and Budget.

Authority: Section XIX and XXI of the Social Security Act (42 U.S.C. 13206 through 9a)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 22, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–30802 Filed 12–28–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Novel Technologies in Newborn Screening.

Date: January 14, 2010.

Time: 2 a.m. to 3:30 p.m.

Agenda: To review and evaluate concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30680 Filed 12–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Adoption of ANA Program Policies and Procedures

AGENCY: Administration for Native Americans (ANA), HHS.

ACTION: Notice of Public Comment on the Proposed Adoption of ANA Program Policies and Procedures.

SUMMARY: Pursuant to Section 814 of the Native American Programs Act of 1974 (NAPA), as amended, the Administration for Native Americans is

required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, general statements of policy, and rules of agency procedure or practice, and to give notice of the final adoption of such changes at least 30 days before the changes become effective. In accordance with notice requirements of NAPA, ANA herein describes its proposed interpretive rules, general statements of policy, and rules of agency procedure or practice as they relate to the Fiscal Year (FY) 2010 Funding Opportunity Announcements (FOA) for the following programs: Social and Economic Development Strategies (hereinafter referred to as SEDS), Social and Economic Development Strategies—Special Initiative (hereinafter referred to as SEDS-SI), Native Language Preservation and Maintenance (hereinafter referred to as Language Preservation), Native Language Preservation and Maintenance—Esther Martinez Initiative (hereinafter referred to as Language–EMI), and Environmental Regulatory Enhancement (hereinafter referred to as ERE). This notice also provides additional information about ANA's plan for administering the programs.

DATES: The deadline for receipt of comments is 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Comments in response to this notice should be addressed to Caroline Gary, Deputy Commissioner, Administration for Native Americans, 370 L'Enfant Promenade, SW., *Mail Stop:* Aerospace 2-West, Washington, DC 20447. Delays may occur in mail delivery to Federal offices; therefore, a copy of comments should be faxed to (202) 690–7441. Comments will be available for inspection by members of the public at the Administration for Native Americans, 901 D Street, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Caroline Gary, Deputy Commissioner, (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of NAPA, as amended, requires ANA to provide notice of its proposed interpretive rules, general statements of policy, and rules of agency organization, procedure or practice. The proposed clarifications, modifications, and new text will appear in the five FY 2010 FOAs: SEDS, SEDS-SI, Language Preservation, Language-EMI, and ERE. This notice serves to fulfill this requirement.

I. *Funding Opportunity Announcements.* In previous years, ANA and the Administration for Children and Families (ACF) referred to a grant funding announcement as a "Program Announcement." ACF and ANA now refer to these same grant funding announcements as "Funding Opportunity Announcements." In FY 2010, ANA will reduce the number of FOAs from nine (in FY 2009) to five. In doing so, ANA will allow greater flexibility in the project proposals to better meet the needs of Tribes and organizations. In FY 2009, each FOA had program areas of interest and funding parameters, which required applicants to differentiate between the FOAs in order to propose activities and objectives that could be awarded. If an applicant submitted its proposal under the wrong FOA or proposed activities that were outside of those allowed under the FOA, the applicant would be excluded from the competition. By combining programs, ANA has allowed for greater flexibility in project proposals. ANA expects that this will result in fewer applications being excluded from the grant competitions.

In FY 2010, SEDS and SEDS-SI will include program areas of interest for project proposals that address governance and economic and social development. In addition, SEDS and SEDS-SI will also incorporate the special initiatives formerly under the Family Preservation Assessment and Family Preservation Implementation announcements.

In FY 2010, SEDS-SI will replace SEDS-Alaska and extend the former program area to include proposals from Tribes and organizations with limited capacity and smaller project scopes throughout ANA's geographic service areas. (Legal authority: Section 803(a) of NAPA, as amended.)

The FY 2010 Language Preservation FOA will include program areas of interest formerly included in Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, and Native Language Preservation and Maintenance Implementation. Therefore, the program areas of interest for Language Preservation will include assessing the current status of the language, planning and implementing language programs, training teachers, and creating curriculum and teaching materials.

The FY 2010 Language-EMI FOA will only include project proposals for language survival schools, language nests, and restoration programs, as identified in the Esther Martinez Native American Languages Preservation Act of 2006.

(Legal authority: Section 803(a) and 803C of NAPA, as amended, 42 U.S.C. 2991b and § 2991b–3 and Pub. L. 109–394.)

The FY 2010 ERE FOA will continue to address environmental regulatory programs for Tribes and Native Alaskan Villages.

(Legal authority: Section 803(a) and (d) of NAPA, as amended.)

A. *Award Information:* In FY 2010, ANA will revise the length of project periods, funding floors, and funding ceilings to allow applicants greater flexibility in planning their projects. All FOAs, except Language-EMI, will allow 12-, 24-, and 36-month project periods. Language-EMI funding will only be awarded for 36-month projects, as per the requirements of the Esther Martinez Native American Languages Preservation Act of 2006, Public Law 109–394.

The funding ranges will be as follows:

SEDS—$150,000 to $500,000 per budget period.

SEDS-SI—$50,000 to $149,999 per budget period.

Language Preservation—$100,000 to $300,000 per budget period.

Language-EMI—$100,000 to $300,000 per budget period.

ERE—$100,000 to $300,000 per budget period.

B. *Disqualification Factors:* ANA will revise for clarification two factors that are specific to applications submitted for ANA funding. Applications that are submitted without this documentation will be considered non-responsive to the FOA and will not be considered for competition.

This first factor applies to all applicants for ANA funding. ANA will require documentation that demonstrates that the official governing body of the applicant approves the submission to ANA for the current grant competition. In addition, Tribally authorized components must also have documentation from the Tribal governing body demonstrating approval of the application submission. This requirement is broader and less restrictive than the Tribal resolution requirement in previous years.

The second factor applies only to applicants that are *not* Tribes or Native Alaska Villages. This factor requires documentation demonstrating that the majority of the governing body is representative of the community to be served.

(Legal authority: Section 803(a) and 814 of NAPA, as amended.)

C. *Definitions:* ANA added definitions for terms used in the FOA. A new definition is included for *Federal Share.* In addition, the Language-EMI FOA includes a definition for *Language Restoration Program.*

(Legal authority: Section 803(b) and 814 of NAPA, as amended and 42 U.S.C. 2991b–3(b)(7)(C).)

Federal Share: Financial assistance provided by ANA in the amount of 80 percent of the approved costs of the project. The Commissioner may approve assistance in excess of such percentage if such action is in furtherance of the purposes of NAPA.

Language Restoration Program: An educational program that operates at least one Native American language program for the community in which it serves; provides training programs for teachers of Native American languages; develops instructional materials for the programs; works towards a goal of increasing language proficiency and fluency in at least one Native American language; and provides instruction in at least one Native American language.

D. *ANA Application Evaluation Criteria:* ANA will revise the evaluation criteria throughout all FOAs to simplify what information is being requested from applicants and to allow greater flexibility in applicants' proposals. The evaluation criteria will be revised to include clear explanations as to how ANA will assess the information provided in the applications.

(Legal authority: Section 803(c) of NAPA, as amended.)

i. *Titles and Assigned Weight:* In FY 2010, ANA will reduce the number of evaluation criteria from six to four and adjust the weighted scores to focus on those elements that are important to project success and project monitoring. Weighted sub criteria scores are identified for *Criterion 2* only. ANA is proposing generic titles for the criterion to eliminate confusion between the titles of the project content categories and the evaluation criteria.

For FY 2010, the criteria will be weighted as follows:

Criterion 1—20 points;

Criterion 2—50 points;

Sub criterion—Project Strategy and Objective Work Plan (OWP)—40 points

Sub criterion—Contingency Planning and Sustainability—10 points

Criterion 3—15 points; and

Criterion 4—15 points.

ii. *ANA Evaluation Criteria:* ANA will simplify what is being evaluated to focus on elements of the proposed project that are important for project success or to monitoring progress. Included here is a summary of each criterion. Each FOA will more fully describe the evaluation criteria.

(a) *Criterion 1:* Under this criterion, applications will be evaluated on the applicant's connection and commitment to the target community and the need for assistance, as demonstrated by the stated problem. The applicant will be asked to identify a problem statement and project goal.

(b) *Criterion 2:* Under this criterion, applications will be evaluated on the strength of the project approach and the applicant's capacity to implement the project. The applicant will be asked to describe the project strategy, provide the OWP, identify challenges and contingency planning, and demonstrate sustainability of the project.

(c) *Criterion 3:* Under this criterion, the application will be evaluated on the three identified impact indicators, the target numbers and the tracking mechanisms. Two impact indicators, namely partnerships and leveraged resources, are standard for all applications. ANA requests that applicants identify a third impact indicator, which will be used to track how well the project addressed the problem statement. ANA will request baseline data, which is the existing situation at the time of the application, a target situation at the end of the project period, and a target for three years after the end of the project period.

(d) *Criterion 4:* Under this criterion, the application will be evaluated on the strength of the budget and how well it supports successful completion of the project objectives. ANA will request that the applicant present a line-item budget and budget justification for each budget period. The budget justification should tie the budget to the project strategy and should demonstrate the cost effectiveness of the budget.

II. *Panel Review Process.* In accordance with the Department of Health and Human Services Grants Policy Statement, revised in January 2007, applicants may receive a summary of the panel review comments after funding decisions have been made. The comment summaries will assist applicants in compiling improved applications for future funding competitions.

(Legal authority: Section 814 of NAPA, as amended.)

Dated: December 22, 2009.

Caroline Gary,

Deputy Commissioner, Administration for Native Americans.

[FR Doc. E9–30826 Filed 12–28–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0002; Disaster Assistance Registration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Extension, without change, of a currently approved information collection; OMB No. 1660–0002; FEMA Form 009–0–1 (Replaces 90–69), Application/Registration for Disaster Assistance; FEMA Form 009–0–2 (Replaces 90–69A), Solicitud/Registro Para Asistencia De Resastre; FEMA Form 009–0–3 (Replaces 90–69B), Declaration and Release; FEMA Form 009–0–4 (Replaces 90–69C), Declaración Y Autorización; FEMA Form 009–0–5 (Replaces 90–69D), Receipt for Government Property; FEMA Form 009–0–6 (Replaces 90–69E), Recibo de Propiedad del Gobierno.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the Disaster Assistance Registration process.

DATES: Comments must be submitted on or before March 1, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all

submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Scott Bowman, Individual Assistance Branch Chief, (540) 686–3340 for additional information. You may contact the Office of Records Management for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA–Information-Collections@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288) (the Stafford Act), as amended is the legal basis for FEMA to provide financial needs and services to individuals who apply for disaster assistance benefits in the event of a federally declared disaster. Regulations in title 44 CFR, Subpart D, "Federal Assistance to Individuals and Households", implement the policy and procedures set forth in section 408 of the Stafford Act, 42 U.S.C. 5174, as amended. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have uninsured or under-insured, damage, necessary expenses, and serious needs which are not covered through other means.

Individuals and households may apply for assistance under the Individuals and Households program via telephone, internet, or on paper using FEMA Form 009–0–1 Application/Registration for Disaster Assistance or FEMA Form 009–0–2, Solicitud/Registro Para Asistencia De Resastre. For housing assistance, FEMA provides direct assistance to eligible applicants pursuant to the requirements in 44 CFR 206.117. To receive direct assistance for housing (*e.g.*, mobile home or travel trailer) from FEMA, the applicant is required to acknowledge and accept the conditions for occupying government property. The form used is the Declaration and Release; FEMA Form 009–0–4, or the Declaración Y Autorización; FEMA Form 009–0–5.

In addition, the applicant is required to acknowledge that he or she has been informed of the conditions for continued direct housing assistance. To accomplish these notifications, FEMA uses the applicant's household composition date in NEMIS to prepare a Receipt for Government Property FEMA Form 009–0–6, or the Recibo de Propiedad del Gobierno FEMA Form 009–0–3.

Collection of Information

Title: Disaster Assistance Registration.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0002.

Form Titles and Numbers: FEMA Form 009–0–1 (Replaces 90–69), Application/Registration for Disaster Assistance; FEMA Form 009–0–2 (Replaces 90–69A), Solicitud/Registro Para Asistencia de Resastre; FEMA Form 009–0–3 (Replaces 90–69B), Declaration and Release; FEMA Form 009–0–4 (Replaces 90–69C), Declaración y Autorización; FEMA Form 009–0–5 (Replaces 90–69D), Receipt for Government Property; FEMA Form 009–0–6 (Replaces 90–69E), Recibo de Propiedad del Gobierno.

Abstract: Disaster Assistance Registration is a program used to provide financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster, have uninsured or under-insured necessary expenses and serious needs and are unable to meet such expenses or needs through other financial means.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 555,009 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
Individuals or Households.	Tele-registration Application for Disaster Assistance.	1,151,255	1	1,151,255	0.3	345,377	$31.78	$10,976,081
Individuals or Households.	Internet Application for Disaster Assistance.	515,487	1	515,487	0.3	154,646	31.78	4,914,650
Individuals or Households.	Paper Application for Disaster Assistance (English and Spanish)/FEMA Forms 009–0–1 and 009–0–2.	51,549	1	51,549	0.3	15,465	31.78	491,478

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/ form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
Individuals or Households.	Declaration and Release (English and Spanish)/FEMA Forms 009–0–3 and 009–0–4.	1,099,706	1	1,099,706	.033 (2 minutes)	36,657	31.78	1,164,959
Individuals or Households.	Receipt for Government Property (English and Spanish)/FEMA Form 009–0–5 and 009–0–6.	17,183	1	17,183	0.167	2,864	31.78	91,018
Total	.....	1,718,291		2,835,180		555,009		17,638,186

• Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully loaded wage rate.
• The total number of respondents is 1,718,291 as the respondents for the "Declaration and Release" and "Receipt for Government Property" collection instruments are a subset of the number of respondents for the "Application for Disaster Assistance (Tele-registration, Internet and Paper-based)" and are not counted separately.

Estimated Cost: There is no annual operation or maintenance cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Dated: December 22, 2009.

Alisa Turner,

Acting Director, Office of Records Management, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–30770 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, 1660–0081; National Flood Insurance Program (NFIP) Mapping Needs Update Support System (MNUSS) Data Worksheet

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0081; FEMA Form 146–0 (Replaces FEMA Form 81–108), National Flood Insurance Program—Mapping Needs Update Support System (MNUSS) Data Worksheet.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before January 28, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Office of Records Management, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Flood Insurance Program (NFIP) Mapping Needs Update Support System (MNUSS) Data Worksheet.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0081.

Form Titles and Numbers: FEMA Form 146–0 (Replaces FEMA Form 81–108), National Flood Insurance Program—Mapping Needs Update Support System (MNUSS) Data Worksheet.

Abstract: FEMA established the Mapping Needs Assessment process and the MNUSS database in order to effectively identify and document data regarding community flood hazard mapping needs. MNUSS is designed to store mapping needs at the community level. In order to facilitate the identification and collection of communities' current flood hazard mapping needs for input into MNUSS, FEMA developed the MNUSS Data Worksheet. This provides a method to notify FEMA of any revisions or updates required to flood maps. The information is also used to assist in the prioritization of the flood hazard mapping needs of all mapped communities participating in the NFIP.

Affected Public: State, local and Tribal Governments.

Estimated Number of Respondents: 460.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: 2.5 Hours.

Estimated Total Annual Burden Hours: 1,150 Hours.

Estimated Cost: $552. The estimated cost for operation or maintenance has changed since the publication of the 60-day **Federal Register** Notice at 74 FR 46614 (Sept. 10, 2009). The 60-day notice indicated that there was no annual operation and maintenance cost associated with this collection.

Dated: December 4, 2009.

Tammi Hines,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–30762 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No. 1615–0095]

Agency Information Collection Activities: Form I–290B; Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form I–290B, Notice of Appeal or Motion.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 29, 2009, at 74 FR 49886, allowing for a 60-day public comment period. USCIS received comments from one commenter.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 28, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 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 No. 1615–0095 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 agencies 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 submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Appeal or Motion.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–290B; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–290B is necessary for USCIS to make a determination that appeal or motion to reopen or reconsider meet eligibility requirements, and for the Administrative Appeals Office to adjudicate the merits of the appeal, or reopen the motion.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30,000 responses at 1 hour and 30 minutes (1.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 45,000 annual burden hours.

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 number 202–272–8377.

Dated: December 21, 2009.

Stephen Tarragon

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–30749 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No. 1615–0054]

Agency Information Collection Activities: Form N–445, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–445, Notice of Naturalization Oath Ceremony.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has

submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 22, 2009, at 74 FR 54591, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 28, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the 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, Clearance Office, 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 OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0054 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 agencies 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 submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–445. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The information furnished on form N–445 refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 650,000 responses at 10 minutes (.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 107,900 annual burden hours.

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: December 23, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–30748 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Secret Service

30-Day Notice and Request for Comments

SUMMARY: The Department of Homeland Security (DHS) has submitted the following information collection requests (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995: 1620–0002. This information collection was previously published in the **Federal Register** on October 23, 2009 at 74 FR 54839, allowing for OMB review and a 60-day public comment period. No comments were received. This notice allows for an additional 30 days for public comment.

DATES: Comments are encouraged and will be accepted until January 28, 2010. This process is conduced in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for United States Secret Service, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov;* or faxed to 202–395–5806.

The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to: United States Secret Service, Security Clearance Division, Attn: ASAIC Gary Moore, Communications Center (SCD), 345 Murray Lane, SW., Building T5, Washington, DC 20223. Telephone number: 202–406–6658.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires each Federal agency to provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The notice for this proposed information collection contains the following: (1) The name of the component of the U.S. Department of Homeland Security; (2) Type of review requested, *e.g.,* new,

revision, extension, existing or reinstatement; (3) OMB Control Number, if applicable; (4) Title; (5) Summary of the collection; (6) Description of the need for, and proposed use of, the information; (7) Respondents and frequency of collection; and (8) Reporting and/or recordkeeping burden.

The Department of Homeland Security invites public comment.

The Department of Homeland Security is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, including whether the information will have practical utility; (2) Is the estimate of burden for this information collection accurate; (3) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (4) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology. All comments will become a matter of public record. In this document the U.S. Secret Service is soliciting comments concerning the following information collection:

Title: Contractor Personnel Access Application.

OMB Number: 1620–0002.

Form Number: SSF 3237.

Abstract: Respondents are all Secret Service contractor personnel requiring access to Secret Service controlled facilities in performance of their contractual duties. These contractors, if approved for access, will require escorted, unescorted, and staff-like access to Secret Service controlled facilities. Responses to questions on the SSF 3237 yield information necessary for the adjudication of eligibility for facility access.

Agency: Department of Homeland Security, United States Secret Service.

Frequency: Occasionally.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households/Business.

Estimated Number of Respondents: 5000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1250 hours.

Estimated Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Dated: December 23, 2009.

Sharon Johnson,

Chief—Policy Analysis and Organizational Development Branch, U.S. Secret Service, U.S. Department of Homeland Security.

[FR Doc. E9–30777 Filed 12–28–09; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1003]

Certificate of Alternative Compliance for the Crew Boat SYBIL GRAHAM

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel SYBIL GRAHAM as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on November 10, 2009.

ADDRESSES: The docket for this notice is 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. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2009–1003 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel SYBIL GRAHAM will be used for offshore supply operations. Full compliance with 72 COLREGS and the Inland Rules Act would hinder the vessel's ability to maneuver within close proximity of offshore platforms. As a result, the forward masthead light may be located on the top forward portion of the pilothouse 17'–5 9/16" above the hull. Placing the forward masthead light at the height required by Annex I, paragraph 2(a) of the 72 COLREGS and Annex I, Section 84.03(a) of the Inland rules Act would result in a masthead light location highly susceptible to damage when working in close proximity to offshore platforms.

Furthermore, the horizontal distance between the forward and aft masthead lights may be 18'–5". Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act would result in an aft masthead light location directly over the aft cargo deck where it would interfere with loading and unloading operations.

A Certificate of Alternative Compliance, as allowed under Title 33 of the Code of Federal Regulations, Parts 81 and 89, has been issued for the offshore supply vessel SYBIL GRAHAM, O.N. 1222116. The Certificate of Alternative Compliance allows for the vertical placement of the forward masthead light to deviate from requirements set forth in Annex I, paragraph 2(a) of 72 COLREGS and Annex I, Section 84.03(a) of the Inland Rules Act. In addition, the Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: November 22, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–30930 Filed 12–28–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1051]

Certificate of Alternative Compliance for the Offshore Supply Vessel INFANT JESUS OF PRAGUE

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel INFANT JESUS OF PRAGUE as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternate Compliance was issued on November 18, 2009.

ADDRESSES: The docket for this notice is 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–1051 in the "Keyword" box, and then clicking on "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel INFANT JESUS OF PRAGUE will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 22′- 5″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: December 1, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–30932 Filed 12–28–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1026]

Certificate of Alternative Compliance for the Offshore Supply Vessel CHERAMIE BOTRUC NO. 41

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel CHERAMIE BOTRUC NO. 41 as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternate Compliance was issued on November 13, 2009.

ADDRESSES: The docket for this notice is 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–1026 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel CHERAMIE BOTRUC NO. 41 will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 22′–½″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: November 22, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–30933 Filed 12–28–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1049]

Certificate of Alternative Compliance for the Offshore Supply Vessel MICHAEL G MCCALL

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel MICHAEL G MCCALL as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on November 20, 2009.

ADDRESSES: The docket for this notice is 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–1049 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel MICHAEL G MCCALL will be used for offshore supply operations. Full compliance with 72 COLREGS and the Inland Rules Act would hinder the vessel's ability to maneuver within close proximity of offshore platforms. As a result, the forward masthead light may be located on the top forward portion of the

pilothouse 21.41′ above the hull. Placing the forward masthead light at the height required by Annex I, paragraph 2(a) of the 72 COLREGS and Annex I, Section 84.03(a) of the Inland Rules Act would result in a masthead light location highly susceptible to damage when working in close proximity to offshore platforms.

Furthermore, the horizontal distance between the forward and aft masthead lights may be 11.88′. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act would result in an aft masthead light location directly over the aft cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the vertical placement of the forward masthead light to deviate from requirements set forth in Annex I, paragraph 2(a) of 72 COLREGS and Annex I, Section 84.03(a) of the Inland Rules Act. In addition, the Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: December 1, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–30934 Filed 12–28–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1861–DR; Docket ID FEMA–2008–0018]

Arkansas; 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 Arkansas (FEMA–1861–DR), dated December 3, 2009, and related determinations.

DATES: *Effective Date:* November 8, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 8, 2009.

* * * * *

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. E9–30730 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1863–DR; Docket ID FEMA–2008–0018]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1863–DR), dated December 10, 2009, and related determinations.

DATES: *Effective Date:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 10, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from severe storms, tornadoes, and flooding during the period of October 29 to November 3, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

Beauregard, Bossier, Caldwell, Claiborne, De Soto, Natchitoches, Ouachita, Union, and Webster Parishes for Public Assistance.

All counties within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–30729 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1862–DR; Docket ID FEMA–2008–0018]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1862–DR), dated December 9, 2009, and related determinations.

DATES: *Effective Date:* December 9, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 9, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from severe storms and flooding associated with Tropical Depression Ida and a nor'easter beginning on November 11, 2009, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

The counties of Halifax, Isle of Wight, King and Queen, Northampton, and Surry and the independent cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, and Virginia Beach for Public Assistance.

All jurisdictions within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–30728 Filed 12–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–03]

Buy American Exceptions under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain individual exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the Chicago Housing Authority for the purchase and installation of a variable refrigerant flow (VRF) system, associated fan coils and rooftop units (RTUs) in the Kenmore Apartments project, and to the Metropolitan Development and Housing Agency, in Nashville, TN, for the purchase and installation of a variable refrigerant volume (VRV) Heating, Ventilation, and Air Conditioning (HVAC) system at the Edgefield Manor property.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act imposes a "Buy American" requirement on Recovery Act funds used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register.**

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that on the following dates, HUD granted the following two exceptions to the Buy American requirement:

1. *Metropolitan Development Housing Agency.* On December 10, 2009, upon request of the Metropolitan

Development and Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods (VRV HVAC systems) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

2. *Chicago Housing Authority.* On December 11, 2009, upon request of the Chicago Housing Authority, HUD granted an exception to the applicability of the Buy American requirements with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods (VRF system, fan coils and RTUs) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: December 18, 2009.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E9–30716 Filed 12–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Proposed Information Collection: State Water Resources Research Institute Program Annual Application and Reporting

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a new collection; request for comments.

SUMMARY: We (U.S. Geological Survey) will ask the Office of Management and Budget (OBM) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as a part of our continuing effort to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. We may not conduct or sponsor and a person is not required to respond to an information collection unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before March 1, 2010.

ADDRESSES: Send your comments to the IC to Phadrea Ponds, Information Collections Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, USGS–SWRIP in the subject line.

FOR FURTHER INFORMATION CONTACT: John E. Schefter, Chief, Office of External Research, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 424, Reston, Virginia 20192 (mail) at (703) 648–6800 (Phone); or *schefter@usgs.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 et seq.), authorizes a water resources research institute or center in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and American Samoa. There are currently 54 such institutes, one in each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The institute in Guam is a regional institute serving Guam, the Federated States of Micronesia, and the Commonwealth of the Northern Mariana Islands. The State Water Resources Research Institute Program issues an annual call for applications from the institutes to support plans to promote research, training, information dissemination, and other activities meeting the needs of the States and Nation. The program also encourages regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character. Each of the 54 institutes submits an annual application for an allotment grant and provides an annual report on its activities under the grant. The U.S. Geological Survey has been designated as the administrator of the provisions of the Act.

II. Data

OMB Control Number: None. This is a new collection.

Title: State Water Resources Research Institute Program Annual Application and Reporting.

Type of Request: New.

Affected Public: The state water resources research institutes authorized by the Water Resources Research Act of 1984, as amended, and listed at *http://water.usgs.gov/wrri/institutes.html.*

Respondent's Obligation: Mandatory (necessary to obtain benefits).

Frequency of Collection: Annually.

Estimated Number of Annual Respondents: We expect to receive 54 applications and award 54 grants per year.

Estimated Annual Total Responses: 54.

Estimated Time per Response: 160 hours. This includes 80 hours per applicant to prepare and submit the annual application; and 80 hours (total) per grantee to complete the annual reports.

Annual Burden Hours: 8,640.

III. Request for Comments

We invite comments concerning this IC on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 it will be done.

USGS Information Collection Clearance Officer: Phadrea D. Ponds 970–226–9445.

Dated: December 10, 2009.

John E. Schefter,

Water Resources Research Act Program Coordinator.

[FR Doc. E9–30727 Filed 12–28–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD0000, L14300000.DS0000]

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Tule Wind Project and the Proposed East County Substation Project, San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, the California Environmental Quality Act (CEQA), and the Federal Land Policy and Management Act of 1976, as

amended, the Bureau of Land Management (BLM) California Desert District (CDD), Moreno Valley, California, together with the California Public Utilities Commission (CPUC), San Diego County (County), the Bureau of Indian Affairs (BIA), and the California State Lands Commission (CSLC), intend to prepare an Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) for the proposed Tule Wind Project and the proposed East County Substation Project (ECO) and by this notice are announcing the beginning of the scoping process to solicit public comments and identify issues. The BLM will be the lead agency for NEPA compliance and the CPUC will be the lead agency for CEQA compliance.

DATES: This notice initiates the public scoping process for the EIS/EIR. Comments on issues may be submitted in writing until January 28, 2010. The dates and locations of any scoping meetings will be announced at least 15 days before the meeting through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/cdd.html.* In order to be considered in the Draft EIS/EIR, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS/EIR.

ADDRESSES: You may submit comments on issues and alternatives related to the Tule Wind Project and East County Transmission Line Project by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/cdd.html.*
- *E-mail: catulewind@blm.gov.*
- *Fax:* (951) 697–5299.
- *Mail or other delivery service: Attn:* Greg Thomsen, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046.

Documents pertinent to this proposal may be examined at the CDD Office at the address above or the BLM's California State Office, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Greg Thomsen, telephone (951) 697–5237; BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; e-mail *catulewind@blm.gov.*

SUPPLEMENTARY INFORMATION: Pacific Wind Development has submitted an application to construct, operate, and maintain an energy generation facility that would generate 200 megawatts of renewable power. The project, known as the Tule Wind Project, would include the construction of new roads, turbines, a transmission line, and other facilities.

The proposed project would be constructed on approximately 15,500 acres, comprised of lands administered by the BLM and the CSLC, lands of the Ewiiaapaayp Indian Reservation, and privately-owned property under the jurisdiction of San Diego County. The BLM lands comprise 12,124.9 acres. The proposed project is located in unincorporated San Diego County, approximately 60 miles east of San Diego, California. The San Diego Gas and Electric Company (SDG&E) has filed an application with the CPUC for the proposed ECO project. The ECO project will include the following: Construction of a new 500/230/138 kilovolt (kV) substation (ECO Substation); a loop-in of the existing 500 kV Southwest Powerlink transmission line; construction of an approximately 13.3-mile-long, 138 kV transmission line from the ECO Substation to the Boulevard Substation; upgrading of the existing Boulevard Substation; dismantling and removal of the existing 69/12 kV substation; and upgrading of the existing SDG&E communication facility at White Star.

As part of the ECO Project, SDG&E has filed an application with the BLM for a right-of-way grant for an approximately 1.5-mile long, 100-foot wide area to construct a 138 kV transmission line within a designated utility corridor.

The purpose of the public scoping process is to determine relevant issues that may influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS/EIR. At present, the BLM and the CPUC have identified the following preliminary issues: Special status species, cultural resources, visual resources, and areas of high potential for renewable energy development.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested or affected by the BLM's, the CPUC's, the CSLC's, the BIA's, or the County's decision on this project are invited to participate in the scoping process and may request or be requested to participate as a cooperating agency. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Thomas Pogacnik,

Deputy State Director, California.

[FR Doc. E9–30779 Filed 12–23–09; 4:15 pm]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2009–N160; 80230–1265–0000–S3]

Humboldt Bay National Wildlife Refuge Complex, Humboldt and Del Norte Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; final comprehensive conservation plan/final environmental assessment and finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final Comprehensive Conservation Plan/Final Environmental Assessment (CCP/EA) and Finding of No Significant Impact (FONSI) for Humboldt Bay National Wildlife Refuge Complex. The Humboldt Bay National Wildlife Refuge Complex is composed of Humboldt Bay National Wildlife Refuge (NWR) and Castle Rock NWR. The CCP, prepared under the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the Refuges for the next 15 years.

DATES: The CCP/EA and FONSI are available now. The FONSI was signed on September 24, 2009. Implementation of the CCP may begin immediately.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI/EA by any of the following methods. You may request a hard copy or CD–ROM.

Agency Web Site: Download a copy of the document(s) at *http://www.fws.gov/humboldtbay/ccp.html.*

E-mail: fw8plancomments@fws.gov. Include "Humboldt Bay CCP" in the subject line.

Mail: U.S. Fish and Wildlife Service, Attn: Sandy Osborn, Refuge Planner, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846.

In-Person Viewing or Pickup: Call 707–733–5406 to make an appointment during regular business hours at Humboldt Bay National Wildlife Refuge Complex, 1020 Ranch Road, Loleta, CA 95551–9633.

Local Library or Libraries: The document(s) are also available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Eric T. Nelson, Project Leader, Humboldt Bay National Wildlife Refuge Complex, P.O. Box 576, Loleta, CA 95551–9633, phone (707) 733–5406 or Sandy Osborn, Refuge Planner, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–1832, Sacramento, CA, 95825, phone (916) 414–6503.

SUPPLEMENTARY INFORMATION:

Background

Humboldt Bay NWR is located on Humboldt Bay on California's north coast near Eureka and Arcata. In 1971, the Humboldt Bay NWR was established to conserve coastal habitats for a great diversity of animals and plants, especially migratory birds. The Refuge Complex also includes Castle Rock NWR, a 14-acre island located in Del Norte County, less than a mile offshore, northwest of Crescent City. This refuge hosts one of the largest and most diverse colonies of breeding seabirds on the Pacific coast and provides a roost for approximately 20,000 Aleutian cackling geese during their migration.

The Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA) were available for a 45-day public review and comment period, which was announced via several methods including news releases; updates to constituents; and in the **Federal Register** (74 FR 6301 February 6, 2009). The Draft CCP/EA identified and evaluated three alternatives for managing Humboldt Bay and Castle Rock Refuges for the next 15 years.

The Service received 35 comment letters on the Draft CCP/EA during the review period. The comments received were incorporated into the CCP, when possible, and responses are included in an appendix to the CCP. In the FONSI, Alternative C for both Humboldt Bay and Castle Rock NWRs was selected for implementation and is the basis for the CCP. The FONSI documents the decision of the Service based on the information and analysis contained in the EA.

Under the selected alternative, the Refuges would achieve an optimal balance of biological resource objectives and visitor services opportunities. Habitat management and associated biological resources monitoring would be improved. For Humboldt Bay NWR, environmental education, interpretation, wildlife observation, photography, and hunting programs would be improved or expanded. For Castle Rock NWR, a recommendation for wilderness designation, if approved by the Service's Director, would afford additional protections. The selected alternative best meets the Refuges' purposes, vision and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Public Availability of Documents

In addition to the methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- *Our Web site: http://www.fws.gov/humboldtbay/ccp.html.*
- *Public Libraries:* during regular library hours, at the following libraries:

Library	Address	Phone number
Arcata Library	500 7th Street, Arcata, CA 95521	707–822–5954
College of the Redwoods Library	7351 Tompkins Hill Road, Arcata, CA 95501	707–476–426
Del Norte County Public Library	190 Price Mall, Crescent City, CA 95331	707–464–9793
Fortuna Library	753 14th Street, Fortuna, CA 95540	707 725–3460
Humboldt County Library	1313 3rd Street, Eureka, CA 95501	707–269–1900
Humboldt State University Library	1 Harpst Street, Arcata, CA 95521	707–826–3441
Conservation Library	USFWS–NCTC, 698 Conservation Way, Shepherdstown, WV 25443	304–876–7304

Dated: December 16, 2009.

Ren Lohoefener,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. E9–30563 Filed 12–28–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO240LL11100000]

Notice of Intent To Revise the 1997 Programmatic Agreement With the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) announces its intent to revise the 1997 National Programmatic Agreement (PA) with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) regarding the manner in which the BLM meets its responsibilities under the National Historic Preservation Act.

DATES: You may submit written comments to help inform the PA revision process by January 28, 2010.

ADDRESSES: Send written comments to: Robin Burgess, BLM Preservation Officer, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Mail Stop 204–LS, Washington, DC 20240 or *robin_burgess@blm.gov.* Copies of the existing PA, the addendum to the PA, and draft revision strategy are available upon request from this address and are also available at *http://www.blm.gov/wo/st/en/prog/more/CRM/historic_preservationx.html.*

FOR FURTHER INFORMATION CONTACT: Robin Burgess, BLM Preservation Officer, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Mail Stop 204–LS, Washington, DC 20240, telephone: (202) 912–7241, or e-mail: *robin_burgess@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM 1997 National PA authorizes the BLM to follow an alternative to the process in the ACHP's regulations, 36 CFR part 800, for meeting its responsibilities under Section 106 of the National

Historic Preservation Act (Pub. L. 89–665, October 15, 1966; 16 U.S.C. 470 *et seq.*) (NHPA) for consulting with State Historic Preservation Officers (SHPOs) and the ACHP. Development of such alternative processes are provided for in 36 CFR part 800.14. The key goals of the PA are to make the process under Section 106 more efficient, and to strengthen the partnerships between the BLM and the states, especially those states in which public lands represent a high percentage of land within the state, to facilitate and conduct preservation activities of mutual interest. The PA does not apply to tribal lands and does not alter the BLM's tribal consultation policies and procedures outlined in BLM Manual Section 8120 and BLM Handbook Section H–8120–1, as revised in December 2004.

The PA provides that signatories are to review its implementation biennially and meet to resolve objections. The signatories may revise or amend the PA by mutual agreement, or terminate the PA following 90 days notice. The NCSHPO, its BLM task force, and the BLM have worked closely to identify ideas for improved implementation of the PA. A joint working group developed a list of recommendations, which the BLM Preservation Board endorsed and the BLM is in the process of implementing those recommendations.

The ACHP, its Native American Advisory Group, the National Congress of American Indians, and others believe that tribes would benefit from playing a greater role in the PA. In response, the BLM wrote to tribal leaders and held a series of eight regional listening sessions to discuss its tribal consultation guidance and the PA. Tribes were asked to share their ideas on how to improve the BLM's relationship with their tribes and how to make tribal consultation more effective, including specific revisions to the PA, protocols, or agency policies. The final result of this outreach will be used to develop a series of recommendations for BLM leadership to improve tribal consultation generally and revise the PA.

On February 4, 2009, the BLM, ACHP, and NCSHPO executed an addendum to the PA (dated January 5, 2009) that outlined a series of major milestones for completing the BLM's ongoing tribal consultation outreach effort, consolidating the results of that effort, and developing revisions to the PA as informed by the results of this outreach to Native Americans. This notice fulfills one of those milestones—formal initiation of the public notification process for revising the PA.

In addition to this notice, the BLM has mailed a summary report on the BLM 2008–09 listening sessions and a draft strategy revising the PA, taking into account the results of the BLM's tribal consultation outreach initiative. The draft strategy identifies the following key goals for a revised PA:

- Ensure terminology is consistent with definitions in 36 CFR 800.16 (definitions section);
- Elaborate what the tribal role in the NHPA Section 106 process is;
- Specify alternative procedures for undertakings excepted from the normal alternative process;
- Incorporate a process for partnering with tribes through individual protocols between a tribe and the BLM state office(s). BLM–SHPO protocols authorized by the current PA streamline BLM–SHPO consultation to allow individualized arrangements, but do not alter the BLM's tribal consultation requirements;
- Clarify the roles of consulting parties and expectations for public outreach processes;
- Integrate the concept of phased Section 106 compliance into the PA to clarify how the BLM meets its compliance obligations for large scale projects and programs;
- Provide clear guidance on when new alternative procedures require ACHP involvement;
- Incorporate communication processes for collaborating on NHPA Section 110 and other proactive work, including coordination with state preservation plans and priorities;
- Include a process for using the 36 CFR part 800 procedures as an alternative to the PA;
- Review the process for development of BLM policy affecting Section 106 activities and general management, as outlined in Component 5.f of the 1997 PA, and clarify the role of the BLM Preservation Board;
- Establish PA monitoring milestones and processes, including periodic tribal consultation; clarification of field office certification process; and standardized annual reports to states and PA signatories;
- Identify opportunities for participation of tribes, states, and the ACHP in BLM training related to cultural resources planning, compliance, and management;
- Develop a schedule for review and revision of state protocols; and
- Increase the efficiency of the annual reporting process by aligning it with other reporting requirements, such as the Secretary of the Interior's Report to Congress on Federal Archaeological Activities.

Written comments on the BLM's plan to revise the PA should be specific and confined to the PA revision. Where possible, comments should reference the specific section or paragraph of the draft strategy that the commenter is addressing.

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.

Richard C. Hanes,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. E9–30771 Filed 12–28–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from October 5, to October 9, 2009.

For further information, please contact Edson Beall via; United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St. NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: December 16, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

KEY: State, County, Property Name, Address/ Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ARKANSAS

Faulkner County

Hardy Cemetery, 722 AR 225 E., Centerville, 09000798, LISTED, 10/08/09

Woodruff County

Morris, Dr. John William, Clinic, 118 W. Main St., McCrory, 09000801, LISTED, 10/05/09

CALIFORNIA

El Dorado County

Wakamatsu Tea and Silk Colony Farm, 941 Cold Springs Rd., Gold Hill vicinity, 09000397, LISTED, 10/09/09

Nevada County

Commercial Row—Brickelltown Historic District, Roughly the N. side of Donner Pass Rd. from Bridge St. westwards approx. 1,700 ft., Truckee, 09000803, LISTED, 10/08/09

San Bernardino County

Shady Point, 778 Shelter Cove Dr., Lake Arrowhead, 09000804, LISTED, 10/05/09

San Francisco County

Roos House, 3500 Jackson St., San Francisco, 09000805, LISTED, 10/08/09
Tobin House, 1969 California St., San Francisco, 09000806, LISTED, 10/05/09

Tuolumne County

Sonora Youth Center, 732 S. Barretta St., Sonora, 09000807, LISTED, 10/08/09

FLORIDA

Orange County

Warlow, Thomas Picton, Sr., House, 701 Driver Ave., Winter Park vicinity, 09000808, LISTED, 10/08/09

KANSAS

Leavenworth County

Helmers Manufacturing Company Building, 300 Santa Fe St./2500 2nd St., Leavenworth, 09000809, LISTED, 10/08/09

Republic County

Cuba Blacksmith Shop, 1/2 block W. of Baird St. on the Lynn St., Cuba, 09000810, LISTED, 10/08/09

Sedgwick County

Wichita High School, 324 N. Emporia, Wichita, 09000811, LISTED, 10/08/09 (Public Schools of Kansas MPS)

MISSOURI

Greene County

Pythian Home of Missouri, 1451 E. Pythian St., Springfield, 09000812, LISTED, 10/07/09

Jefferson County

Central School Campus, 221 S. 3rd. St., De Soto, 09000813, LISTED, 10/08/09

Madison County

Fredericktown United States Post Office, 155 S. Main St., Fredericktown, 09000814, LISTED, 10/08/09

MONTANA

Petroleum County

Winnett Block, 301 E. Main St., Winnett, 09000815, LISTED, 10/08/09

NEW HAMPSHIRE

Rockingham County

Portsmouth Harbor Light, .3 mi. E. of Rt. 1B jct. with Wentworth Rd., Ft. Constitution SE corner, New Castle, 09000816, LISTED, 10/08/09 (Light Stations of the United States MPS)

NEW MEXICO

Cibola County

Acoma Curio Shop, 1090 NM 124, San Fidel, 09000817, LISTED, 10/07/09 (Route 66 through New Mexico MPS)

SOUTH CAROLINA

Richland County

Benson, Florence C., Elementary School, 226 Bull St., Columbia, 09000819, LISTED, 10/07/09 (Equalization Schools in South Carolina, 1951–1960 MPS)

WISCONSIN

Kenosha County

Wisconsin shipwreck (iron steamer), Address Restricted, Kenosha vicinity, 09000820, LISTED, 10/07/09 (Great Lakes Shipwreck Sites of Wisconsin MPS)

Oneida County

Sutliff, Solon and Mathilda, House, 306 Dahl St., Rhinelander, 09000821, LISTED, 10/07/09

[FR Doc. E9–30734 Filed 12–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 5, 2009. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 13, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

California

Los Angeles County

Pegfair Estates Historic District, (Cultural Resources of the Recent Past, City of Pasadena) 1525–1645 Pegfair Estates Dr.; 1335–1345 Carnarvon Dr., Pasadena, 09001223

Idaho

Bingham County

Aviator's Cave, Address Restricted, Arco, 09001224

Illinois

Cook County

Berger Park, (Chicago Park District MPS) 6205–47 N. Sheridan Rd., Chicago, 09001225

Minnesota

Blue Earth County

Dodd Ford Bridge, Co. Rd. 147 over Blue Earth River Shelby, 09001070

Missouri

St. Louis Independent city

Federal Cold Storage Company Building, 1800–28 N. Broadway, St. Louis, 09001226

New York

Dutchess County

Trinity Methodist Church, 8 Mattie Cooper Square, Beacon, 09001227

Herkimer County

Masonic Temple—Newport Lodge No. 445 F. & A.M., 7408 NY 28, Newport, 09001228

Onondaga County

Dock Hill Road Extension Stone Arch Bridge, Dock Hill Rd. Extension, Cornwall-on-Hudson, 09001230

Rockland County

Balmville Cemetery, Albany Post Rd., Balmville, 09001229

Rhode Island

Providence County

Central Diner, 777 Elmwood Ave., Providence, 09001231

Virginia

Alexandria Independent city Uptown-Parker-Gray Historic District, Roughly Cameron St. N. to 1st St. and N. Columbus St. W. to the following sts forming W. line, Buchanan, N. West, Alexandria, 09001232

Washington

King County

University of Washington Faculty Center, 4020 E. Stevens Way, Univ. of Washington, Seattle, 09001233

Klickitat County

Homesteads of the Dalles Mountain Ranch Historic District, 340 Dalles Mountain Rd., beginning approx. 2.8 mi. N. of WA 14 jct., Dallesport, 09001234

Pierce County

Blue Mouse Theatre, 2611 N. Proctor St., Tacoma, 09001235

Request for REMOVAL has been made for the following resources:

Colorado

Denver County

Wheeler House, 1917 W. 32nd Ave., Denver, 00000105

Fremont County

Fourth Street Bridge, 4th St., Canon City, 85000207

[FR Doc. E9–30733 Filed 12–28–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–696]

In the Matter of Certain Restraining Systems for Transport Containers, Components Thereof, and Methods of Using Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 24, 2009 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Matthew Bullock of McLean, Virginia and Walnut Industries, Inc. of Bensalem, Pennsylvania. Supplements to the complaint were filed on December 9 and 11, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain restraining systems for transport containers and components thereof by reason of (1) infringement of certain claims of U.S. Patent Nos. 6,089,802; 6,227,779; and 6,981,827; (2) infringement of U.S. Copyright Registration Nos. TX–6–990–095 and TX6–996–765; and (3) false advertising and misrepresentation. The complaint further alleges that an industry in the United States exists as required by subsections (a)(1)(A) and (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Kecia J. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 22, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain restraining systems for transport containers or components thereof that infringe one or more of claims 1, 15, 16, and 22 of U.S. Patent No. 6,089,802; claims 1 and 7 of U.S. Patent No. 6,227,779; and claims 1, 5, 7, and 12 of U.S. Patent No. 6,981,827, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain restraining systems for transport containers or components thereof by reason of infringement of U.S. Copyright Registration No. TX–6–990–095 or U.S. Copyright Registration No. TX–6–996–765, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(c) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain restraining systems for transport containers or components thereof by reason of false advertising and misrepresentation, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Matthew Bullock, 6314 Georgetown Pike, McLean, VA 22101,

Walnut Industries, Inc., 1356 Adams Road, Bensalem, PA 19020.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Qingdao Auront Industry & Trade Co., Ltd., Columbia Village, Shazikou, Laoshan District, Qingdao 266102, Shandong, China.

(c) The Commission investigative attorney, party to this investigation, is Kecia J. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the

allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 22, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30756 Filed 12–28–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of the "Cinergy" Proposed Partial Consent Decree under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on December 22, 2009, a proposed partial Consent Decree ("Consent Decree") in *United States of America, et al.* v. *Cinergy Corporation, et al.*, Civil Action No. 1:99–cv–01693–LJM–JMS, was lodged with the United States District Court for the Southern District of Indiana.

In this civil enforcement action under the Federal Clean Air Act ("Act"), PSI Energy, Inc. (now Duke Energy Indiana ("Duke")), was found to have modified Units 1 and 3 at the Gallagher Generating Station ("Gallagher") in New Albany, Indiana in violation of the sulfur dioxide ("SO_2") New Source Review requirements of the Act. The Consent Decree lodged with the Court requires Duke to reduce SO_2 emissions from Gallagher Units 1 and 3, culminating in the repowering or shutdown of the units. The Decree further requires substantial reductions in SO_2 emissions from Units 2 and 4 at Gallagher. Other relief includes $6.25 million in environmental mitigation projects and a $1.75 million civil penalty. The States of Connecticut, New Jersey, and New York have joined the settlement as co-plaintiffs, as have two citizens groups, Hoosier Environmental Council and Ohio Environmental Council.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America, et al.* v. *Cinergy Corporation, et al.*, D.J. Ref. 90–5–2–1–06965.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, located at 10 West Market Street, Suite 2100, Indianapolis, Indiana 46204–3048; or at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604–4590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–30723 Filed 12–28–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of the "Cinergy" Proposed Partial Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on December 22, 2009, a proposed partial Consent Decree ("Consent Decree") in *United States of America, et al.* v. *Cinergy Corporation, et al.*, Civil Action No. 1:99–cv–01693–LJM–JMS, was lodged with the United States District Court for the Southern District of Indiana.

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The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America, et al.* v. *Cinergy Corporation, et al.*, D.J. Ref. 90–5–2–1–06965.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, located at 10 West Market Street, Suite 2100, Indianapolis, Indiana 46204–3048; or at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604–4590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–30634 Filed 12–28–09; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[*Notice:* (09—112)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, Mail Code JF, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., Mail Code JF, Washington, DC 20546, (202) 358–1351, *lori.parker-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting extension of an existing collection, NASA Mentor-Protege Program Small Business and Small Disadvantaged Business Concerns Report, that is used to help NASA monitor mentor-protégé performance and progress in accordance with the mentor-protégé agreement. Respondents will be for—profit small disadvantaged businesses. The NASA Mentor-Protégé Program is designed to provide incentives for NASA prime contractors to assist small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small business (WOSB) concerns, in enhancing their capabilities to perform NASA contracts and subcontracts.

II. Method of Collection

NASA uses electronic methods to collect information from collection respondents.

III. Data

Title: NASA Mentor-Protege Program-Small Business and Small Disadvantaged Business Concerns Report.

OMB Number: 2700–0078.

Type of review: Extension of a currently approved collection.

Number of respondents: 20.

Affected Public: Business or other for-profit: 10.

Estimated Time Per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 30.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. E9–30747 Filed 12–28–09; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0567]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from December 3, 2009, to December 16, 2009. The last biweekly notice was published on December 15, 2009 (74 FR 66381).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–

B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web

site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has ootained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from December 29, 2009. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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 at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 30, 2009.

Description of amendment request: The proposed amendment would relocate selected Surveillance Requirement frequencies from the Oyster Creek Nuclear Generating Station (Oyster Creek) Technical Specifications (TSs) to a licensee-controlled program. This change is based on the NRC-approved Industry Technical Specifications Task Force (TSTF) change TSTF–425, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b," Revision 3, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090850642). Plant-specific deviations from TSTF–425 are proposed to accommodate differences between the Oyster Creek TSs and the model TSs originally used to develop TSTF–425.

The NRC staff issued a Notice of Availability for TSTF–425 in the **Federal Register** on July 6, 2009 (74 FR 31996). The notice included a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination. In its application dated October 30, 2009, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Exelon will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–01, Rev. 1[. The] methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: June 25, 2009.

Description of amendment request: Florida Power & Light proposes to revise the Turkey Point Units 3 and 4 licensing bases to adopt the alternative source term (AST) as allowed in Title 10 of the *Code of Federal Regulations,* Section 50.67.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. AST calculations have been performed for Turkey Point Units 3 and 4 which demonstrate that the dose consequences remain below limits specified in RG 1.183 and 10 CFR 50.67. For the Spent Fuel Cask Drop and the Waste Gas Decay Tank Rupture Events which are not addressed by RG [Regulatory Guide] 1.183, the AST methodology has demonstrated that the dose consequences remain below the limits identified above. The AST calculations are based on the current plant design and operation as modified by the installation of a passive post-LOCA [loss-of-coolant accident] recirculation pH control system, relocation and redesign of the control room emergency ventilation intakes, the replacement of the aluminum normal containment cooler fins with copper fins, and for certain events, manual operator actions for initiation of control room emergency ventilation system. These proposed changes to the plant configuration are not accident precursors for any previously evaluated accidents and support mitigation of the dose consequences of previously evaluated accidents. The proposed modification to the plant configuration will be fully qualified to the appropriate design requirements to assure their required function is available for accident mitigation and to assure the function of other equipment required for accident mitigation are not adversely impacted. The use of the AST changes the regulatory assumptions regarding the analytical treatment of the design basis accidents and has no direct effect on the probability of any accident. The AST has been utilized in the analysis of the limiting design basis accidents listed above. The results of the analyses, which include the proposed changes to the Technical Specifications (TS), and the installation of the modifications, demonstrate that the dose consequences of these limiting events are all within regulatory limits.

TS 3/4.6.3 Emergency Containment Filtering (ECF) System has been deleted since the dose consequence analyses are within regulatory limits. A new TS is being incorporated to ensure the operability of the Recirculation pH Control System. The remaining TS changes are consistent with, or more restrictive than, the current TS requirements or established precedent. None of the affected systems, components, or programs are related to accident initiators.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Turkey Point Units 3 and 4 only affect those systems described above. The proposed Recirculation pH Control System is a passive system that will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed modification to the plant configuration will be fully qualified to the appropriate design requirements to assure their required function is available for accident mitigation and to assure the function of other equipment required for accident mitigation are not adversely impacted. Neither implementation of the AST methodology, establishing more restrictive TS requirements, deleting TS 3/4.6.3, nor installing the modifications described above have the capability to introduce any new failure mechanisms or cause any analyzed accident to progress in a different manner.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed implementation of the AST methodology is consistent with NRC Regulatory Guide 1.183. For the Spent Fuel Cask Drop and the Waste Gas Decay Tank Rupture Events which are not addressed by RG 1.183, the AST methodology has demonstrated that the dose consequences remain below the limits identified above.

With the exception of the deletion of TS 3/4.6.3, and the addition of the recirculation pH sump control system, the proposed TS changes are consistent with, or more restrictive than, the current TS requirements or established precedent. The proposed TS requirements and plant modifications will support the AST revisions to the limiting design basis accidents. As such, the current plant margin of safety is preserved. Conservative methodologies, per the guidance of RG 1.183, have been used in performing the accident analyses. The radiological consequences of these accidents are all within the regulatory acceptance criteria associated with the use of the AST methodology.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries and in the Control Room are within the corresponding regulatory limits of RG 1.183 and 10 CFR 50.67. The margin of safety for the radiological limits is set at or below the 10 CFR 50.67 limits. An acceptable margin of safety is inherent in these limits.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 23, 2009.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to: (1) Delete TS 4.0.5, which pertains to surveillance requirements (SRs) for inservice inspection (ISI) and inservice testing (IST) of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Class 1, 2 and 3 components; (2) add a new TS for the IST Program to Section 6.0, "Administrative Controls," of the TSs; and (3) change TSs that currently reference TS 4.0.5 to reference the IST Program or ISI Program, as applicable. The new TS for the IST Program, TS 6.8.4.j, will indicate that the program will include testing frequencies applicable to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code), replacing the current reference to Section XI of the ASME Code specified in TS 4.0.5. In addition, TS 6.8.4.j would revise the requirements, currently contained in TS 4.0.5, regarding the applicability of the surveillance interval extension provisions of SR 4.0.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise TS 4.0.5, Surveillance Requirements for Inservice Inspections and Testing of ASME Code Components, for consistency with [ ] 10 CFR 50.55a(f)(4) requirements regarding inservice testing of pumps and valves. The proposed change incorporates revisions to the ASME OM Code and clarifies testing frequency requirements for testing pumps and valves. The proposed change also relocates the ISI and IST Programs consistent with NUREG–1431.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes do not involve a modification to the physical configuration of the plant (*i.e.*, no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed changes revises and relocates TS 4.0.5, Surveillance Requirements for Inservice Inspections and Testing of ASME Code Components, for consistency with (1) the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves and (2) NUREG–1431. The proposed change updates references to the ASME OM Code, clarifies testing frequency requirements for testing pumps and valves, and relocates the IST Program to Section 6.0 of TS, and the ISI Program to a licensee controlled document. The safety function of the affected pumps and valves will be maintained; the programs will continue to be implemented with the required regulations and codes.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 5, 2009, as supplemented by letters dated June 9, and September 2, 2009.

Brief description of amendment: The amendment modifies Technical Specification (TS) requirements for mode change limitations in accordance with Revision 9 of Nuclear Regulatory Commission-approved TS Task Force (TSTF) change TSTF–359, "Increase Flexibility in Mode Restraints."

Date of issuance: December 8, 2009.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 180.

Facility Operating License No. NPF–57: The amendment revised the TSs and the License.

Date of initial notice in ***Federal Register***: February 24, 2009 (74 FR 8286).

The letters dated June 9, and September 2, 2009, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 2009.

No significant hazards consideration comments received: No.

Southern California Edison Company, *et al.*, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: January 30, 2009, as supplemented by letters dated March 16 and September 29, 2009.

Brief description of amendments: The amendments revised Technical Specification 5.7.1.5, "Core Operating Limits Report (COLR)," to allow the use of the CASMO–4 methodology to perform nuclear design calculations.

Date of issuance: December 15, 2009.

Effective date: Upon issuance; to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2–222; Unit 3–215.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: September 22, 2009 (74 FR 48320). The supplemental letters dated March 16 and September 29, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 15, 2009.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 29, 2008, as supplemented by letter dated June 18, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.8.4, "DC [Direct Current] Sources—Operating," and TS 3.8.5, "DC Sources—Shutdown." Specifically, the amendment revised the battery connection resistance verification limits in Surveillance Requirement (SR) 3.8.4.2 and SR 3.8.4.5, by lowering the acceptance criteria for cell-to-cell (*i.e.*, inter-cell) and terminal battery connection resistances from 150 micro-ohms to 69 micro-ohms.

Date of issuance: December 9, 2009.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 194.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 21, 2009 (74 FR 18257). The supplemental letter dated June 18, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 17th day of December, 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–30675 Filed 12–28–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0568]

NUREG–1934, Nuclear Power Plant Fire Modeling Application Guide (NPP FIRE MAG), Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of issuance for public comment, availability.

SUMMARY: The Nuclear Regulatory Commission has issued for public comment a document entitled: "NUREG–1934 (EPRI 1019195), Nuclear Power Plant Fire Modeling Application Guide (NPP FIRE MAG), Draft Report for Comment."

DATES: Please submit comments by March 10, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0568 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0568. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

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

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. NUREG–1934 "Nuclear Power Plant Fire Modeling Application Guide (NPP FIRE MAG)" is available electronically under ADAMS Accession Number ML093500187.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0568.

FOR FURTHER INFORMATION CONTACT: David Stroup, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* 301–251–7609, *e-mail: David.Stroup@nrc.gov.*

SUPPLEMENTARY INFORMATION: There is a movement to introduce risk-informed and performance-based (RI/PB) analyses into fire protection engineering practice. This movement exists in both the general fire protection and the nuclear power plant (NPP) fire protection communities. The U.S. Nuclear Regulatory Commission (NRC) has used risk-informed insights as a part of its regulatory decision making since the 1990s. In 2002, the National Fire Protection Association developed NFPA 805, Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants. In July 2004, the NRC amended its fire protection requirements in Title 10, Section 50.48, of the Code of Federal Regulations to permit existing reactor licensees to voluntarily adopt fire protection requirements contained in NFPA 805 as an alternative to the existing deterministic requirements. NUREG–1934 (EPRI 1019195), "Nuclear Power Plant Fire Modeling Application Guide, Draft Report for Comment" was written as a collaborative effort by the U.S. Nuclear Regulatory Commission (NRC) Office of Nuclear Regulatory Research (RES), the Electric Power Research Institute (EPRI), and the National Institute of Standards and Technology (NIST) to provide guidance on using fire modeling for nuclear power plant applications. The features and limitations of the five fire models documented in NUREG–1824 (EPRI 1011999), Verification & Validation of Selected Fire Models for Nuclear Power Plant Applications are discussed relative to NPP applications. Finally, the report describes the implications of the of verified and validated (V&V) fire models that can reliably predict the consequences of fires.

Dated at Rockville, Maryland, this 17 day of December, 2009.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. E9–30823 Filed 12–28–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–458 and 50–271; License Nos. NPF–47 and DPR–28; NRC–2009–0572]

Entergy Operations, Inc.; Entergy Nuclear Operations, Inc.; Entergy Gulf States Louisiana, LLC; Entergy Nuclear Vermont Yankee, LLC; River Bend Station, Unit 1; Vermont Yankee Nuclear Power Station; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated August 22, 2009, Mr. Sherwood Martinelli, the Petitioner, has requested that the U.S. Nuclear Regulatory Commission (NRC) suspend the operating license of any Entergy nuclear power plant with a decommissioning trust fund shortfall, that the NRC take action to ensure that any shortfalls in the decommissioning trust funds be rectified, and that the NRC take certain other actions to ensure the integrity of the decommissioning trust funds.

The request is being evaluated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). The NRC is accepting for review, pursuant to 10 CFR 2.206, those concerns identified in the petition associated with Entergy's Vermont Yankee and River Bend Nuclear Power Plants. The NRC staff's ongoing review indicates that only the decommissioning trust funds for Entergy's Vermont Yankee and River Bend Nuclear Power Plants do not currently meet the funding levels of 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning." As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time.

A copy of the petition is available for inspection at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the NRC's Web site, *http://www.nrc.gov/reading-rm/adams.html*, under Accession No. ML092400492. 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 800–397–4209 or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 17th day of December 2009.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E9–30822 Filed 12–28–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE Wednesday, January 6, 2010 at 11 a.m.

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: PORTIONS OPEN TO THE PUBLIC:

1. Review of postal-related legislative activity.
2. Reports on international activities.
3. Review of active cases.
4. Report on recent activities of Joint Periodical Task Force and status of report to the Congress pursuant to section 708 of the Postal Accountability and Enhancement Act (PAEA) of 2006.
5. Review of an internal assessment of Public Representative functions under the PAEA.

PORTIONS CLOSED TO THE PUBLIC:

6. Status of pending litigation (*USPS v. PRC*)
7. Personnel matters—consideration of Commission staff vacancies.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, 202–789–6820 or *stephen.sharfman@prc.gov.*

Dated: December 23, 2009.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–30879 Filed 12–24–09; 11:15 am]

BILLING CODE 7710–FW–S

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11982 and #11983]

Nebraska Disaster #NE–00032

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–1864–DR), dated 12/16/2009.

Incident: Severe Winter Storm.

Incident Period: 11/16/2009 Through 11/17/2009.

Effective Date: 12/16/2009.

Physical Loan Application Deadline Date: 02/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 09/16/2010.

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 President's major disaster declaration on 12/16/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications 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: Gage, Jefferson, Johnson, Nemaha, Pawnee, Richardson, Thayer.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 11982B and for economic injury is 11983B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–30697 Filed 12–28–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11960 and # 11961]

Arkansas Disaster Number AR–00038

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–1861–DR), dated 12/03/2009.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 10/29/2009 through 11/08/2009.

DATES: *Effective Date:* 12/16/2009.

Physical Loan Application Deadline Date: 02/01/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 09/03/2010.

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 notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Arkansas, dated 12/03/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Drew.

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. E9–30699 Filed 12–28–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11978 and #11979]

Pennsylvania Disaster #PA–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 12/17/2009.

Incident: Apartment Building Fire in Millcreek Township.

Incident Period: 12/06/2009.

Effective Date: 12/17/2009.

Physical Loan Application Deadline Date: 02/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 09/17/2010.

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: Erie.

Contiguous Counties:

Pennsylvania: Crawford, Warren.

New York: Chautauqua.

Ohio: Ashtabula.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.125
Homeowners Without Credit Available Elsewhere:	2.562
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 11978 5 and for economic injury is 11979 0.

The States which received an EIDL Declaration # are Pennsylvania, New York, Ohio.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 17, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–30701 Filed 12–28–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11966 and #11967]

Puerto Rico Disaster #PR–00006

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Puerto Rico dated 12/17/2009.

Incident: Severe Storms, Flooding and High Winds.

Incident Period: 11/15/2009 through 11/16/2009.

Effective Date: 12/17/2009.

Physical Loan Application Deadline Date: 02/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 09/17/2010.

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 Municipality: San Juan.

Contiguous Municipalities: Puerto Rico Aguas Buenas, Caguas, Carolina, Catano, Guaynabo, Trujillo Alto.

The Interest Rates are:

	Percent
For Physical Damage	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.562
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 11966 B and for economic injury is 11967 0.

The Commonwealth which received an EIDL Declaration # is Puerto Rico.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 12, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–30706 Filed 12–28–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11958 and #11959]

Arkansas Disaster Number AR–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of disaster for the State of Arkansas, dated 12/04/2009.

Incident: Severe Storms, Tornadoes and Flooding.

Incident Period: 10/29/2009 through 11/08/2009.

Effective Date: 12/17/2009.

Physical Loan Application Deadline Date: 02/02/2010.

EIDL Loan Application Deadline Date: 09/04/2010.

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 notice of the Administrative disaster declaration for the State of Arkansas, dated 12/04/2009 is hereby amended to establish the incident period for this disaster as beginning 10/29/2009 and continuing through 11/08/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 17, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–30708 Filed 12–28–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11980 and #11981]

Pennsylvania Disaster #PA–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of PENNSYLVANIA dated 12/17/2009.

Incident: Apartment Building Fire in Stroudsburg Borough

Incident Period: 12/05/2009.

DATES: *Effective Date:* 12/17/2009.

Physical Loan Application Deadline Date: 02/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 09/17/2010.

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: Monroe.

Contiguous Counties:

Pennsylvania: Carbon, Lackawanna, Luzerne, Northampton, Pike, Wayne.

New Jersey: Sussex, Warren.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere:	5.125
Homeowners without Credit Available Elsewhere:	2.562
Businesses with Credit Available Elsewhere:	6.000

	Percent
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 11980 5 and for economic injury is 11981 0.

The States which received an EIDL Declaration # are Pennsylvania; New Jersey.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 17, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–30703 Filed 12–28–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 3.750 (3¾) percent for the January–March quarter of FY 2010.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Grady B Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. E9–30858 Filed 12–28–09; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 9099; Release No. 61212]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2010

Securities Act of 1933, Release No. 9099/ December 22, 2009.

Securities Exchange Act of 1934, Release No. 61212/December 22, 2009.

The Sarbanes-Oxley Act of 2002 (the "Act") established the Public Company Accounting Oversight Board ("PCAOB") to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act. Under Section 109(f), the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate "recoverable budget expenses," which may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Securities and Exchange Commission (the "Commission").

On July 18, 2006, the Commission amended its Rules of Practice related to its Informal and Other Procedures to add a rule to facilitate the Commission's review and approval of PCAOB budgets and accounting support fees.[1] This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2009 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2010 budget year. In response, the Commission staff provided to the PCAOB staff economic assumptions and budgetary guidance for the 2010 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Offices of the Chief Accountant and Executive Director dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates; reviewed the PCAOB's estimates of 2009 actual spending; and attended several meetings with management and staff of the PCAOB to develop an understanding of the PCAOB's budget and operations. During the course of the Commission's review, the Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this comprehensive review, the Commission issued a "pass back" letter to the PCAOB. The PCAOB approved its 2010 budget on November 30, 2009 and submitted that budget for Commission approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2010 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2010 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2010. The Commission looks forward to the PCAOB's annual updating of its strategic plan and the opportunity for the Commission to review and provide views to the PCAOB on a draft of the updated plan.

As part of its review of the 2010 PCAOB budget, the Commission notes that there are certain budget-related matters that should be addressed or more closely monitored during 2010. These matters relate to: (1) The PCAOB's inspections program; (2) its information technology programs; and (3) potential legislative actions that could impact the PCAOB. Because of the importance of each of these matters, the Commission deems it necessary to set forth the following specific measures.

[1] 17 CFR 202.11. *See* Release No. 33–8724 (July 18, 2006) [71 FR 41998 (July 24, 2006)].

Accordingly, with respect to the PCAOB's 2011 budget cycle, the PCAOB will:

(1) Continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information will include (a) statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2010, including by location and by year the inspections are required to be conducted in accordance with the Act and PCAOB rules, (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections, and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

(2) Continue to include detailed information about the state of the PCAOB's information technology in its quarterly reports to the Commission, including planned, estimated, and actual costs for information technology projects, including the annual and special reporting system and the inspections information system.

(3) Consult with the Commission about the PCAOB's plans for implementing any changes in response to legislative actions.

The Commission has determined that the PCAOB's 2010 budget and annual accounting support fee are consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2010 are approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–30726 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[500–1]

In the Matter of: GH3 International, Inc.; Order of Suspension of Trading

December 24, 2009.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of GH3 International, Inc. Questions have arisen concerning the adequacy of publicly available information concerning the entity's corporate and operational status and its financial condition. GH3 International, Inc. is quoted on the Pink Sheets under the ticker symbol GHTI.

The Commission is of the opinion that the public interest and the protection of the investors require a suspension of trading in securities of the above-listed entity.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed entity is suspended for the period from 9:30 a.m. EST, December 24, 2009, through 11:59 p.m. EST, on January 8, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–30943 Filed 12–24–09; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–61216; File No. SR–DTC–2009–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding the Depository Trust Company's Board of Directors Election Process

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 16, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order 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

DTC's parent company, The Depository Trust & Clearing Corporation ("DTCC") intends in the future to consider nominating for election, to its Board of Directors candidates that are not participants of its clearing agency subsidiaries ("non-participant candidates").[2] Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of DTC, in the future DTC's Board of Directors ("DTC Board") may include directors who are not employees of its participants ("non-participant directors").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTCC has in the past nominated for election to its Board of Directors employees of its clearing corporation subsidiaries' participants. In the future, DTCC intends to consider nominating for election to its Board of Directors people who are not employees of its clearing corporation subsidiaries' ("non-participant candidates"). Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of DTC, in the future DTC's Board may include directors who are not employees of its clearing corporation subsidiaries' ("non-participant directors"). DTC believes that non-participant directors may bring additional skills and expertise and introduce different perspectives to the Board. This change will conform DTC's Board of Directors election process to those of DTCC's other clearing corporation subsidiaries—National Securities Clearing Corporation and Fixed Income Clearing Corporation.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because DTC's rules will continue to provide for a fair representation of its participants in the selection of its directors and in the administration of its affairs.

[1] 15 U.S.C. 78s(b)(1).

[2] DTCC's clearing corporation subsidiary participants include The Depository Trust Company, National Securities Clearing Corporation, and Fixed Income Clearing Corporation.

[3] The Commission has modified parts of these statements.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission has previously found that DTC's participants are fairly represented in the selection of its Board and in the administration of its affairs.[4] This rule change should not have any adverse effect on DTC's participants' representation in the selection of NSCC's Board or in the administration of NSCC's affairs. The Commission also recognizes that it may benefit DTC to have non-participants directors on the Board because such directors may provide skills or perspectives not possessed by participant directors. Therefore, the Commission finds that DTC's proposed rule change to have non-participant directors serve on its Board should provide benefits while continuing to provide for the fair representation of DTC's participants in the selection of its directors and administration of its affairs.

DTC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving DTC will be able to implement the rule change in time to include non-participant directors on its Board for the 2010 Board term.

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–DTC–2009–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2009–16. 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/legal/rule_filings/dtc/2009-16.pdf*. 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–DTC–2009–16 and should be submitted on or before January 19, 2010.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2009–16) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30783 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

[4] *See, e.g.*, Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070 (December 14, 2005) (File Nos. SR–DTC–2005–16, SR FICC–2005–19, and SR–NSCC–2005–14).

[5] In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61205; File No. SR–NASDAQ–2009–105]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IM–1002–1 To Reflect Changes to a Corresponding FINRA Rule

December 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2009, the NASDAQ Stock Market LLC (the "Exchange" or "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 the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal 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 the [sic] Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ IM–1002–1 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). The Exchange will implement the proposed rule change thirty days after the date of the filing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also has initiated a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it is not possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ IM–1002–1, which prohibits members and associated persons from filing with NASDAQ misleading information relating to membership or registration, and which formerly corresponded to NASD IM–1000–1. In SR–FINRA–2009–009,[4] FINRA redesignated that rule as FINRA Rule 1122 and made amendments to clarify and simplify the rule. NASD IM–1000–1 provided that the filing of membership or registration information as a Registered Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action.

FINRA's rule change clarified the rule's applicability to members and persons associated with members by specifying that "no member or person associated with a member" shall file incomplete or misleading membership or registration information. FINRA also eliminated the reference to the filing of registration information "as a Registered Representative" to clarify that the rule applies to the filing of registration information regarding any category of registration. In addition, FINRA deleted the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the adoption of the NASD IM as a stand-alone FINRA rule. Likewise, NASDAQ is proposing to make changes to the text of IM–1002–1 that virtually mirror the changes made by FINRA to NASD IM–1000–1 so that the rules remain consistent for regulatory purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections [sic] 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform NASDAQ IM–1002–1 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2009–105 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–NASDAQ–2009–105. 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

[4] Securities Exchange Act Release No. 59789 (April 20, 2009), 74 FR 18767 (April 24, 2009) (SR–FINRA–2009–009).

[5] 15 U.S.C. 78f.

[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).

submission,[9] 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2009–105 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30782 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61198; File No. SR–CBOE–2009–078]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders

December 17, 2009.

I. Introduction

On October 20, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to amend its order execution rules to give certain non-broker-dealer orders the same priority as broker-dealer orders. On November 3, 2009, the Exchange filed Amendment No. 1 to the proposal.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 12, 2009.[4] The Commission received three comment letters on the proposal.[5] This order approves the proposal, as modified by Amendment No. 1.

II. Description of CBOE's Proposal

CBOE proposes to adopt a new term, "Professional," which would be defined in proposed CBOE Rule 1.1(ggg) as a 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).[6] The definition would state that a Professional will be treated in the same manner as a broker or dealer in securities for purposes of specified order execution rules of CBOE.[7]

The use of this new term for purposes of these rules would result in Professionals participating in CBOE's allocation process on equal terms with broker-dealers—*i.e.*, Professionals would not receive priority over broker-dealers in the allocation of orders on the Exchange. CBOE states that the proposal would not otherwise affect non-broker-dealer individuals or entities under CBOE rules, and that, in particular, all public customer orders would continue to be treated equally for purposes of rules relating to options exchange linkage.[8]

In addition, CBOE intends to require members to indicate whether public customer orders are "Professional" orders to assure that orders entered on the Exchange are properly represented.[9] To comply with this requirement, members would be required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker or dealer should be represented as public customer orders or as Professional orders.[10]

The Exchange states that it intends to establish, in a separate rule filing, transaction fees applicable to Professionals, and that it would not commence the implementation of the instant proposal until such fees are in place.[11]

III. Commission Findings and Order Granting Approval of the Proposed Rule Change as Modified by Amendment No. 1

After careful consideration of the proposed rule change and the comments received, the Commission finds that the proposed rule change is consistent with the Act. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)[12] of the Act and the rules thereunder,[13] and in particular with:

Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised a paragraph in the Purpose section of the proposal relating to the application of Section 11(a) of the Act.

[4] See Securities Exchange Act Release No. 60931 (November 4, 2009), 74 FR 58355 (November 12, 2009) ("Notice").

[5] See letters from Charles B. Cox, dated November 11, 2009 ("Cox Letter"); Richard Weinstock, dated November 24, 2009 ("Weinstock Letter I"); and Richard Weinstock, dated December 3, 2009 ("Weinstock Letter II").

[6] The Professional designation would not be available in Hybrid 3.0 classes.

[7] Specifically, the orders of Professionals would be treated like broker-dealer orders for the purposes of CBOE Rules 6.2A (Rapid Opening System), 6.2B (Hybrid Opening System), 6.8C (Prohibition Against Members Functioning as Market-Makers), 6.9 (Solicited Transactions), 6.13A (Simple Auction Liaison), 6.13B (Penny Price Improvement), 6.45 (Priority of Bids and Offers—Allocation of Trades), 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.53C(c)(ii) and (d)(v) and 6.53C.06(b) and (c) (Complex Orders on the Hybrid System), 6.74 (Crossing Orders) (except that Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A (Automated Improvement Mechanism) (except Professional orders may be considered customer Agency Orders or solicited orders eligible for customer-to-customer immediate crosses under Interpretation and Policy .09), 6.74B (Solicitation Auction Mechanism), 8.13 (Preferred Market-Maker Program), 8.15B (Participation Entitlement of LMMs), 8.87 (Participation Entitlement of DPMs and e-DPMs), 24.19 (Multi-Class Broad-Based Index Option Spread Orders), 43.1 (Matching Algorithm/Priority), 44.4 (Obligations of SBT Market-Makers), and 44.14 (SBT DPM Obligations).

[8] See CBOE Rules 6.14A and 6.80–6.82, which relate to routing of orders and linkage. These rules are not included by the proposed rule change in the list of rules, *supra*, for which the Professional designation would apply.

[9] CBOE has issued a regulatory circular outlining the procedures for the implementation of the proposal. See CBOE Regulatory Circular RG09–123 (November 6, 2009).

[10] *Id.*

[11] See Notice, *supra* note 4.

[12] 15 U.S.C. 78f(b).

[13] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [14] and

Section 6(b)(8) of the Act, which requires the rules of an exchange not to impose any burden on competition not necessary or appropriate in furtherance of the Act.[15]

In addition, the Commission finds that the proposed rule change is consistent with Section 11(a) of the Act.[16]

Under the proposed rule change, public customers would be deemed "Professional" and would no longer receive the priority treatment currently granted to all public customers, if they place orders on the level of frequency specified in proposed Rule 1.1(ggg). In January 2009, the Commission approved a similar rule proposed by the International Securities Exchange, LLC ("ISE") to create the category of "Professional Orders," and to include in that category—in addition to the orders of broker-dealers—the orders of public customers who place on average more than 390 orders per day in a calendar month. Under the ISE rule, public customer orders that satisfied the criteria for Professional Orders were no longer to be accorded the priority granted to the orders of other public customers (*i.e.*, "Priority Customers").[17] While the proposed CBOE rule differs somewhat from the format of the ISE rule, the Commission believes that the CBOE proposal is comparable to the ISE rule pertaining to Professional Orders, which the Commission found to be consistent with the Act.

In the ISE Approval Order, the Commission reviewed the background and history of customer order priority rules on national securities exchanges, and analyzed the role played in the shaping of these rules by various considerations and principles. In this regard, the Commission discussed the requirement of Section 6(b)(5) of the Act that the rules of an exchange be designed to protect investors and the public interest; traditional notions of customer priority in exchange trading; the agency obligations of exchange specialists; and the requirements of Section 11(a) of the Act.[18] In approving the ISE proposal, the Commission articulated its view that priority for public customer orders is not an essential attribute of an exchange,[19] and noted that in the past it has approved trading rules at options exchanges that do not give priority to orders of public customers that are priced no better than the orders of other market participants.[20]

The Commission concluded in the ISE Approval Order that Section 6(b)(5) of the Act does not require an exchange to treat the orders of public customers who place orders at the frequency of more than 390 orders per day on average identically to the orders of public customers who do not meet that threshold. For the same reason, the Commission believes that the CBOE's proposed rule change is consistent with Section 6(b)(5) of the Act.

With regard to Section 11(a) of the Act,[21] the Exchange states that it does not believe that the proposal would affect the availability of the exceptions to Section 11(a) of the Act, including the exceptions in subparagraph (G) of Section 11(a) and in Rules 11a1–1(T) and 11a2–2(T), as are currently available.[22] The Commission concurs. For this reason, the Commission believes that the proposed rule change, which would permit orders of CBOE members to be executed under certain circumstances even if an order of a Professional is on CBOE's book, is consistent with the requirements of Section 11(a) of the Act.

As noted above, the Commission received three comment letters from two commenters regarding the proposed rule change, both of whom opposed the proposal.[23] The commenters believed, among other things, that the proposal would thwart competition [24] and that the proposal was designed for that purpose.[25] They further believed that the proposal would discourage and impede customers who provide valuable liquidity to the market and whose participation promotes price discovery.[26] In addition, they argued that it is unfair to treat public customers in the same manner as members of the Exchange are treated, because public customers do not have the same marketplace advantages as members.[27] One of the commenters added that the threshold of 390 orders per day was arbitrary and capricious and that the proposal does not make clear that orders placed at other exchanges are to be included in determining whether the 390-order threshold has been reached.[28]

The arguments and concerns raised by the commenters are similar to the arguments and concerns that were raised by commenters on the ISE proposal. The Commission believes, as it stated with respect to the ISE proposal, that these arguments and concerns do not support the conclusion that the proposal is inconsistent with the Act.

The Commission believes that its views with respect to the ISE proposal are equally applicable to the CBOE proposal. In this regard, the Commission does not believe that the Act requires that the order of a public customer or any other market participant be granted priority. Historically, in developing their trading and business models, exchanges have adopted rules, with Commission approval, that grant priority to certain participants over others, in order to attract order flow or to create more competitive markets. However, the Act does not entitle any participant to priority as a right. The requirement of Section 6(b)(8) of the Act that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition does not necessarily mandate that a Professional (as defined in the CBOE proposal) be granted priority at a time that a broker-dealer is not granted the same right. The CBOE proposal simply restores the treatment of persons who would be deemed Professionals to a base line where no special priority benefits are granted.

The Commission agrees that public customers provide valuable liquidity to

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78k(a).

[17] See Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) ("ISE Approval Order").

[18] ISE Approval Order, *supra* note 17. For a brief synopsis of the requirements of Section 11(a), *see infra*, note 21.

[19] *See* ISE Approval Order, *supra* note 17, at 5697.

[20] ISE Approval Order, *supra* note 17, at 5697, n. 41–44.

[21] Section 11(a) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies. Section 11(a)(1) and the rules thereunder contain a number of exceptions for principal transactions by members and their associated persons, including the exceptions in subparagraph (G) of Section 11(a)(1) and in Rule 11a1–1(T), as well as Rule 11a2–2(T) under the Act, 17 CFR 240.11a2–2(T).

[22] *See* Notice, *supra* note 4 at n.17 and accompanying text. *See also* Securities Exchange Act Release No. 59546 (March 10, 2009), 74 FR 11144 (March 16, 2009) (SR–CBOE–2009–016) and related CBOE regulatory circular, RG09–35, in which CBOE provides its members with information on compliance with Section 11(a)(1) when trading on CBOE's Hybrid System.

[23] *See supra* note 5.

[24] See Cox Letter, Weinstock Letters I and II.

[25] See Weinstock Letters I and II.

[26] *See* Weinstock Letters I and II. Both Weinstock Letters and the Cox Letter maintained that the additional liquidity provided by customers improves price discovery when such customers receive priority, particularly in the context of penny pricing.

[27] *See*, in particular, Weinstock Letter I, which pointed to advantages of time and place, different capital requirements, and the ability of market makers to quote on both sides of the market.

[28] *See* Weinstock Letter I.

the options markets and compete with market makers. However, the contribution of these participants to the market does not mean that their orders are entitled to priority treatment, even if—as the commenters argue—they would not be able to supply this liquidity without being granted such advantage. Market makers and broker-dealers also provide valuable liquidity to the marketplace and do not have priority.

With respect to the contention that broker-dealers have substantial marketplace advantages over public customers, it should be noted that broker-dealers, unlike public customers, pay significant sums for registration and membership in self-regulatory organizations ("SROs"), and incur significant costs to comply, and to ensure that their associated persons comply, with the Act, the rules thereunder, and SRO rules. Moreover, persons who place options orders on the scale contemplated by the proposal could choose to become registered broker-dealers and receive the same advantages.

Regarding the contention of one commenter that the numerical threshold is arbitrary, the Commission believes that it is reasonable to establish the placement of one order every minute on average as a threshold to establish the level of activity, at a minimum, at which the Exchange believes that the incentive of priority is not warranted. For the same reason, the Commission does not believe that such a threshold is capricious.

Finally, the Commission believes that the proposed rule change is clear in not distinguishing between orders placed on the CBOE and those placed on any other exchange, and CBOE stated that "basing the standard on the number of orders that are entered in listed options for a beneficial account(s) assures that Professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges." [29]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–CBOE–2009–078), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30781 Filed 12–28–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61206; File No. SR–NYSEArca-2009–111]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.31 To Establish the "Market To Limit" Order Type

December 18, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 4, 2009, NYSE Arca, Inc. ("NYSE Arca" 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 self-regulatory organization. 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 Rule 7.31 to establish the "Market to Limit" order type. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form and is available on the Commission's Web site at *http://www.sec.gov*. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 proposed rule change is to establish a new order type, the Market to Limit Order ("MTL"). The MTL Order aims to provide market participants with greater control over the execution price of an order.

An MTL Order is an un-priced order that, upon receipt by the NYSE Arca matching engine, is immediately assigned a limit price equal to the contra National Best Bid Offer ("NBBO") price. Buy MTL Orders are converted to buy orders with a limit price equal to the National Best Offer. Sell MTL Orders are converted to sell orders with a limit price equal to the National Best Bid. If there is no contra NBBO at the time of entry, the order will be rejected. The order will also be rejected if the market is closed, the symbol is closed or halted, or the MTL Order is received outside of the Core Trading Session.

After the MTL Order is received by the NYSE Arca matching engine and assigned a limit price it will be behave exactly like a Limit Order as defined by NYSE Arca Equities Rule 7.31(b). The MTL Order will also follow the same standard execution, routing, ranking and display logic that a Limit Order follows pursuant to NYSE Arca Equities Rules 7.36 and 7.37.

The MTL Order combines two existing order types, the Market Order and the Limit Order into one new order type that aims to provide market participants with benefits from both existing order types. The Exchange plans to introduce the MTL Order in conjunction with the completion of the Universal Trading Platform ("UTP") rollout, currently scheduled to be completed in mid-December.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[3] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by providing investors with an additional order type that allows greater control in

[29] *See* Notice, *supra* note 4.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(5).

managing the circumstances in which their orders are executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) thereunder.[5]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2009–111 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–NYSEArca–2009–111. 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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–111 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

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[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61214; File No. SR–FICC–2009–10]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Fixed Income Clearing Corporation's Board of Directors Election Process and Delegation Authority

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 16, 2009, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by FICC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant approval on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC's parent company, The Depository Trust & Clearing Corporation ("DTCC") intends in the future to consider nominating for election to its Board of Directors candidates that are not participants of its clearing agency subsidiaries ("non-participant candidates").[2] Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of FICC, in the future FICC's Board of Directors may include directors who are not employees of its participants ("non-participant directors").

In addition, the rules of FICC's Government Securities Division ("GSD") and FICC's Mortgage-Backed Securities Division ("MBSD") are being revised to allow the Board to delegate certain responsibilities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] DTCC's clearing corporation subsidiary participants include The Depository Trust Company, National Securities Clearing Corporation, and Fixed Income Clearing Corporation.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTCC has in the past nominated for election to its Board of Directors employees of its clearing corporation subsidiaries' participants. In the future, DTCC intends to consider nominating for election to its Board of Directors people who are not employees of its clearing corporation subsidiaries' participants ("non-participant candidates"). Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of FICC, in the future FICC's Board may include directors who are not employees of its participants ("non-participant directors"). FICC believes that non-participant directors may bring additional skills and expertise and introduce different perspectives to its Board.

In addition, the rules of FICC's Government Securities Division ("GSD") and FICC's Mortgage-Backed Securities Division ("MBSD") assign to FICC's Board certain administrative responsibilities, including, for example, responsibilities related to approving membership applications and other related matters. These rules are being revised to allow the Board to delegate these responsibilities.[4]

These changes will conform FICC's rules and practices to the rules and practices of DTCC's other clearing corporation subsidiaries—The Depository Trust Company and National Securities Clearing Corporation.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to FICC because FICC's rules will continue to provide for a fair representation of its participants in the selection of its directors and in the administration of its affairs and will enable FICC to act in a more expedient manner and therefore, to better promote the prompt and accurate clearing and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission has previously found that FICC's participants are fairly represented in the selection of its Board and in the administration of its affairs.[5] This rule change should not have any adverse effect on FICC's participants' representation in the selection of FICC's Board or in the administration of FICC's affairs. The Commission also recognizes that it may benefit FICC to have non-participants directors on its Board because such directors may provide skills or perspectives not possessed by participant directors. Therefore, the Commission finds that FICC's proposed rule change to have non-participant directors serve on its Board should provide benefits while continuing to provide for the fair representation of FICC's participants in the selection of its directors and administration of its affairs.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency are designed to promote the prompt and accurate clearing and settlement of securities transactions. The Commission finds that by providing its Board with additional authority to delegate certain of its responsibilities, such as, for example, responsibilities related to approving membership applications and other related matters, FICC will be able to act in a more expedient manner and therefore, better able to promote the prompt and accurate clearing and settlement of securities transactions.

FICC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving FICC will be able to implement the rule change in time to include non-participant directors on its Board for the 2010 Board term.

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–FICC–2009–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2009–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-10.pdf*. All comments received

[3] The Commission has modified parts of these statements.

[4] The text of the proposed rule change can be found at *http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-10.pdf*.

[5] *See, e.g.*, Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070 (December 14, 2005) (File Nos. SR–DTC–2005–16, SR FICC–2005–19, and SR–NSCC–2005–14).

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–FICC–2009–10 and should be submitted on or before January 19, 2010.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2009–10) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30785 Filed 12–28–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61225; File No. SR–ISE–2009–104]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Conforming ISE Rule 622 With Comparable NASD Rule 11870

December 22, 2009.

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 December 14, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 ISE Rule 622 (Transfer of Accounts) to conform it to the corresponding rule of the Financial Industry Regulatory Authority ("FINRA"), formerly the National Association of Securities Dealers ("NASD"), for the purposes of the 17d–2 Agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 622 (Transfer of Accounts) to conform it to corresponding NASD Rule 11870 (Customer Account Transfer Contracts) for the purposes of the agreement between the parties pursuant to Rule 17d–2[3] under the Securities Exchange Act of 1934 (the "Exchange Act") (that agreement, the "17d–2 Agreement") and the related certification by the Exchange which states that the requirements contained in certain ISE rules are identical to, or substantially similar to, certain NASD rules that have been identified as comparable (that certification, the "Common Rule Certification").[4]

Specifically, the Exchange proposes to amend ISE Rule 622(b)(1) by reducing the number of days from five (5) business days to one (1) business day that the Carrying Member (as defined in Rule 622(a)) must (i) validate and return the transfer instruction (with an attachment reflecting all positions and money balances as shown on its books) to the Receiving Member (as defined in Rule 622(a)), or (ii) take exception to the transfer instruction for reasons other than securities positions or money balance discrepancies and advise the Receiving Member of the exception taken. Additionally, the Exchange proposes to add rule text that will allow for the time frame set forth in paragraph (b)(1) to change from time-to-time when such time frame is changed in any publication, relating to the ACATS facility, by the National Securities Clearing Corporation. The changes discussed above are identical to the requirements set forth in NASD Rule 11870. By making these changes, the Exchange is ensuring that FINRA will retain regulatory responsibility for this rule under the 17d–2 Agreement because ISE Rule 622 will remain identical to NASD rule 11870, as specified in the Common Rule Certification.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule filing is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system by creating consistency between the requirements contained in rules of the ISE and NASD that are covered by an agreement approved by the Commission under Rule 17d–2.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[6] In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.17d–2.

[4] *See* SEC Release No. 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (Order approving and declaring effective a plan for the allocation of regulatory responsibilities between ISE and NASD).

of the Act[5] and Rule 19b–4(f)(6)[6] thereunder.

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. This proposal amends ISE Rule 622 to conform the language to comparable NASD Rule 11870 for the purpose an agreement that was recently approved by the Commission under Rule 17d–2. The Exchange requests that the Commission waive the 30-day operative delay period for "non-controversial" proposals under Exchange Act Rule 19b–4(f)(6) and make the proposed rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will help foster consistency between the rulebooks of the self-regulatory organizations.[7] Application of the new rules should promote clarity for market participants relying upon the rules. For these reasons, the Commission designates that the proposed rule change become immediately operative.

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–ISE–2009–104 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–ISE–2009–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission[8], all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2009–104 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30791 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/*.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61219; File No. SR–NYSEArca–2009–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading Shares of the ETFS Platinum Trust

December 22, 2009.

I. Introduction

On October 20, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the ETFS Platinum Trust (the "Trust"). The proposed rule change was published for comment in the **Federal Register** on November 17, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares. The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.

The Shares represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of platinum, less the expenses of the Trust's operations.[4]

The Exchange deems the Shares to be equity securities, which subjects trading in the Shares to the Exchange's existing rules governing the trading of equity securities, and has represented that trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has also represented that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Additional details regarding the Shares and Trust including, among

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60970 (November 9, 2009), 74 FR 59319 ("Notice").

[4] Amendment No. 2 to the Registration Statement for the ETFS Platinum Trust on Form S–1, filed with the Commission on October 20, 2009 (No. 333–15831) ("Registration Statement").

other things, creations and redemptions of the Shares, the organization and structure of the Trust, custody of the Trust's holdings, Trust expenses, Trust termination events, the international market for platinum, the platinum futures market, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin can be found in the Notice and/or the Registration Statement.[5]

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[7] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[8] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association CQ High-Speed Lines. The Trust's Web site will provide the following information: (1) An intraday indicative value ("IIV") per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 AM to 4:00 PM, Eastern Standard Time); (2) the net asset value ("NAV") of the Trust as calculated each business day by the Sponsor; (3) the NAV, on a per Share basis, as of the close of the prior business day; (4) the mid-point of the bid-ask price[9] at the close of trading in relation to such NAV ("Bid/Ask Price"); (5) a calculation of the premium or discount of such price against such NAV; (6) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the per Share NAV, within appropriate ranges, for each of the four previous calendar quarters; (7) the Creation Basket Deposit; (8) the Trust's prospectus; (9) the two most recent reports to stockholders; and (10) the last sale price of the Shares as traded in the US market.[10] In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured.

Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading in on NYSE Arca Marketplace until such time as the NAV is available to all market participants. The Commission notes that the Exchange will obtain a representation from the Trust that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time.[11] Additionally, if the IIV[12] is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[13] Further, the Exchange will consider the suspension of trading in or removal from listing of the Shares pursuant to NYSE Arca Rule 8.201(e)(2) if: (1) the value of platinum is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) the IIV is no longer made available on at least a 15-second delayed basis. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying platinum market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.

In addition, NYSE Arca Equities Rule 8.201 sets forth certain requirements for ETP Holders acting as registered Market Makers in the Shares. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in platinum, related futures or options on futures, or any other related derivatives, which the Market Maker may have or over which it may exercise investment discretion. NYSE Arca Equities Rule 8.201(i) also prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in platinum, related futures or options on futures or any other related commodity derivatives.

In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares

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[5] *See supra* notes 3 and 4.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[9] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[10] The Exchange will provide on its Web site (*http://www.nyx.com*) a link to the Trust's Web site.

[11] See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated December 10, 2009.

[12] For the Shares, the Exchange uses IIV and ITV interchangeably. See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 22, 2009.

[13] See *id.*

in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying platinum, platinum futures contracts, options on platinum futures, or any other platinum derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of platinum trading during the Core and Late Trading Sessions after the close of the major world platinum markets; and (f) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [14] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSEArca–2009–95), be, and it hereby is, approved.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30789 Filed 12–28–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61215; File No. SR–NSCC–2009–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding National Securities Clearing Corporation's Board of Directors Election Process and Delegation Authority

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 16, 2009, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant approval on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC's parent company, The Depository Trust & Clearing Corporation ("DTCC") intends in the future to consider nominating for election to its Board of Directors candidates that are not participants of its clearing agency subsidiaries ("non-participant candidates").[2] Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of NSCC, in the future NSCC's Board of Directors may include directors who are not employees of its participants ("non-participant directors").

In addition, the rules of NSCC are being revised to allow the Board to delegate certain responsibilities.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] DTCC's clearing corporation subsidiary participants include The Depository Trust Company, National Securities Clearing Corporation, and Fixed Income Clearing Corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTCC has in the past nominated for election to its Board of Directors employees of its clearing corporation subsidiaries' participants. In the future, DTCC intends to consider nominating for election to its Board of Directors people who are not employees of its clearing corporation subsidiaries' participants ("non-participant candidates"). Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of NSCC, in the future NSCC's Board may include directors who are not employees of its participants ("non-participant directors"). NSCC believes that non-participant directors may bring additional skills and expertise and introduce different perspectives to its Board.

In addition, the rules of NSCC currently assign to its Board certain responsibilities such as, for example, responsibilities related to approving membership applications and other related matters. NSCC is revising its rules to allow its Board to delegate such responsibilities.[4]

These changes will conform NSCC's rules and practices to the rules and practices of DTCC's other clearing corporation subsidiaries—The Depository Trust Company and Fixed Income Clearing Corporation.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to NSCC because NSCC's rules will continue to provide for a fair representation of its participants in the selection of its

[3] The Commission has modified parts of these statements.

[4] The text of the proposed rule change can be found at *http://www.dtcc.com/downloads/legal/rule_filings/2009/nscc/2009-10.pdf.*

directors and in the administration of its affairs and will enable NSCC to act in a more expedient manner and therefore, to better promote the prompt and accurate clearing and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission has previously found that NSCC's participants are fairly represented in the selection of its Board and in the administration of its affairs.[5] This rule change should not have any adverse effect on NSCC's participants' representation in the selection of NSCC's Board or in the administration of NSCC's affairs. The Commission also recognizes that it may benefit NSCC to have non-participants directors on its Board because such directors may provide skills or perspectives not possessed by participant directors. Therefore, the Commission finds that NSCC's proposed rule change to have non-participant directors serve on its Board should provide benefits while continuing to provide for the fair representation of NSCC's participants in the selection of its directors and administration of its affairs.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency are designed to promote the prompt and accurate clearing and settlement of securities transactions. The Commission finds that by providing its Board with additional authority to delegate certain of its responsibilities, such as, for example, responsibilities related to approving membership applications and other related matters, NSCC will be able to act in a more expedient manner and therefore, better able to promote the prompt and accurate clearing and settlement of securities transactions.

NSCC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving NSCC will be able to implement the rule change in time to include non-participant directors on its Board for the 2010 Board term.

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–NSCC–2009–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2009–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2009/nscc/2009–10.pdf*. 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–NSCC–2009–10 and should be submitted on or before January 19, 2010.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2009–10) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30786 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61211; File No. SR–FINRA–2009–087]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Repeal NASD Rules 2760 and 2780, Incorporated NYSE Rules 2B and 411, and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as Part of the Process of Developing the Consolidated FINRA Rulebook

December 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2009, Financial Industry Regulatory

[5] *See, e.g.*, Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070 (December 14, 2005) (File Nos. SR–DTC–2005–16, SR FICC–2005–19, and SR–NSCC–2005–14).

[6] In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to repeal NASD Rule 2760 (Offerings "At the Market"), NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities), Incorporated NYSE Rule 2B (No Affiliation between Exchange and any Member Organization), Incorporated NYSE Rule 411 (Erroneous Reports) and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as part of the process of developing a consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA 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, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to repeal NASD Rule 2760 (Offerings "At the Market"), NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities), Incorporated NYSE Rule 2B (No Affiliation between Exchange and any Member Organization), Incorporated NYSE Rule 411 (Erroneous Reports) and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5).[4] The proposed rule change is described in detail below.

NASD Rule 2760 (Offerings "At the Market")

NASD Rule 2760 provides that a member who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange shall make no representation that such security is being offered to a customer "at the market" or at a price related to the market price, unless the member knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by the member, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling or under common control with the member.

When Rule 2760 was adopted,[5] its requirements duplicated those set forth in the SEC's early version of SEA Rule 15c1–8 (designated at the time of its adoption as Rule MC8).[6] Today, SEA Rule 15c1–8 is identical to its predecessor Rule MC8 except that it also applies to municipal securities dealers.[7] NASD Rule 2760 remains unchanged since its inception.

FINRA is proposing to delete NASD Rule 2760 from the FINRA rulebook because it duplicates SEA Rule 15c1–8. SEA Rule 15c1–8 explicitly makes it a manipulative, deceptive, or other fraudulent device or contrivance under Section 15(c) of the Exchange Act for a broker or dealer or municipal securities dealer who is participating or otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange to make a representation to a customer that a security is being offered "at the market" unless certain conditions (identical to those required by NASD Rule 2760) are satisfied. FINRA believes the SEA rule appropriately protects investors without duplication by NASD Rule 2760. Therefore, FINRA considers the transfer of NASD Rule 2760 to the Consolidated FINRA Rulebook to be unnecessary.

NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities)

NASD Rule 2780 became effective in 1939, and its text has not been changed since its adoption. The rule essentially incorporated verbatim into the NASD rulebook SEA Rule 10b–2 (formerly Rule GB2), which was adopted by the SEC in 1937 to "eliminate the practice of stimulating exchange activity in securities which are the subject of distribution."[8]

The rule prohibits a member that participates or is otherwise financially interested in a primary or secondary distribution of a security from paying or offering to pay compensation to another person for soliciting a purchase of any security of the issuer on a national securities exchange or for purchasing any such security for an account other than that of the member. The rule further prohibits a member from (1) selling or offering to sell or deliver such security where the member engaged in the aforementioned prohibited conduct or (2) causing the purchase or sale of such security by engaging in the prohibited conduct. Finally, the rule does not apply to any salary paid by a member to a person whose ordinary duties include the solicitation of orders on a national securities exchange, as long as the salary represents ordinary compensation and is not paid in whole or in part for the inducement of a purchase or sale of the security that is subject to the distribution of which the member is participating or financially interested.

The SEC rescinded SEA Rule 10b–2 in 1993 finding, among other things, that it was duplicative of other provisions of the federal securities laws that more effectively address manipulative practices. More specifically, the SEC noted that the general antifraud provisions, including Section 17(a) of the Securities Act and Sections 9(a), 10(b) and 15(c) of the Exchange Act and

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[4] For convenience, Incorporated NYSE Rules generally are referred to as NYSE Rules.

[5] Rule 2760, formerly designated as Section 16 in Article III of the Rules of Fair Practice, was adopted in 1939 as part of FINRA's original rulebook. *See* Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939).

[6] See Securities Exchange Act Release No. 1330 (August 4, 1937).

[7] See Securities Exchange Act Release No. 12468 (May 20, 1976), 41 FR 22820 (June 7, 1976) (Regulation of Municipal Securities Professionals and Transactions in Municipal Securities). FINRA Rule 0150(b) (Application of Rules to Exempted Securities Except Municipal Securities) provides that FINRA's rules do not apply to transactions in, and business activities relating to, municipal securities.

[8] See Securities Exchange Act Release No. 1330 (August 4, 1937).

Rule 10b–5 thereunder proscribe manipulative practices effected on and off exchanges, and had been found to apply to the practices covered by SEA Rule 10b–2.[9] The SEC also noted in particular that SEA Rule 10b–6 addressed the manipulative activity covered by SEA Rule 10b–2. SEA Rule 10b–6 was the predecessor to current Regulation M. That regulation, among other things, prohibits underwriters, broker-dealers and other distribution participants, during a restricted period prior to the completion of their participation in a distribution of securities, from directly or indirectly bidding for, purchasing, or attempting to induce any person to bid for or purchase the offered security absent an available exception. Regulation M is designed to prohibit activities that could artificially influence the market for the offered security, including for example, supporting an IPO price by creating the perception of scarcity of IPO stock or creating the perception of aftermarket demand. Thus, FINRA believes that the conduct covered by Regulation M and NASD Rule 2780 are very similar.

In considering the provisions of NASD Rule 2780 today, FINRA sees no significant utility to the rule in light of the applicable federal securities laws and FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade) and 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices). Because the manipulative conduct contemplated by NASD Rule 2780 can be reached by Regulation M, the federal securities laws referenced above and FINRA Rules 2010 and 2020, FINRA proposes that the provisions of NASD Rule 2780 not be adopted into the Consolidated FINRA Rulebook and be deleted. NYSE Rule 2B (No Affiliation between Exchange and any Member Organization)

NYSE Rule 2B was adopted as part of the merger between the NYSE and Archipelago Holdings, Inc. The rule provides that, without prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, the rule states that a member organization shall not be or become an affiliate [10] of the Exchange, or an affiliate of any affiliate of the Exchange; provided, however, that, if a director of an affiliate of a member organization serves as a director of NYSE Euronext, this fact shall not cause such member organization to be an affiliate of the Exchange, or an affiliate of an affiliate of the Exchange. The rule further provides that nothing in the rule shall prohibit a member organization from acquiring or holding an equity interest in NYSE Euronext that is permitted by the ownership limitations contained in the certificate of incorporation of NYSE Euronext.[11] There is no comparable NASD rule.

The rule was adopted to address concerns by the SEC regarding the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[12]

The NYSE has subsequently amended its version of Rule 2B in response to concerns by the SEC regarding certain other of its affiliate relationships.[13] FINRA did not make conforming amendments to its version of Rule 2B since the NYSE's changes addressed specific arrangements between the NYSE and its affiliates in its capacity as an exchange.

FINRA is proposing to delete NYSE Rule 2B from the FINRA rulebook. This rule specifically addresses relationships between the Exchange and its affiliates. The SEC's concerns regarding potential conflicts of interest and unfair competitive advantage in affiliate relationships between an exchange and a member are not applicable to FINRA because it does not operate as an exchange. As such, FINRA considers the transfer of NYSE Rule 2B to the Consolidated FINRA Rulebook to be unnecessary. NYSE Rule 411 (Erroneous Reports)

NYSE Rule 411 addresses three separate issues. First, paragraph (a) of the rule addresses situations where a member has rendered a report that differs from the terms of an executed trade. Second, paragraph (b)(1) sets forth a member's obligations when handling separate odd-lot orders. Third, paragraph (b)(2) requires members to record securities transactions in accounts no later than settlement date. Each of these provisions is discussed separately below.

(1) NYSE Rule 411(a): Erroneous Reports

NYSE Rule 411(a)(i) provides that the price and size of an "actual auction market trade" are binding, notwithstanding that the customer has received an erroneous report with respect to the terms of the trade.[14] Because some customers may not want corrected reports offered by a member that has rendered an erroneous report, the rule includes two alternative approaches in cases where the wrong price and/or size has been reported to the customer.[15] Under the first alternative, the customer may take the actual terms of the auction market trade, and the trade clears and settles in accordance with the terms of the auction market trade. Under the second alternative, the customer may treat the terms of the erroneous report as though they were the terms of the actual auction market trade, provided certain conditions are met, and the member may treat the erroneous report as an erroneous trade, assuming any losses or paying any profit to the New York Stock Exchange Foundation.[16] NYSE Rule 411(a)(iii) provides that a report is not binding and must be rescinded if an order was not actually executed but was erroneously reported as having been executed. An order that was executed, but was erroneously reported as not having been executed, is binding. Finally, NYSE Rule 411(a)(iv) includes a provision addressing erroneous reports by floor brokers involving "not held" orders.

(2) NYSE Rule 411(b)(1): "Bunching" Odd-Lot Orders

NYSE Rule 411(b)(1) includes two separate provisions regarding the

[9] *See* Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

[10] The rule provides that the term "affiliate" shall have the meaning specified in SEA Rule 12b–2. *See* 17 CFR 240.12b–2.

[11] *See* Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (Approval Order; File No. NYSE–2006–120) (Amendments to Rule 2B relating to the combination of NYSE Group, Inc. and Euronext N.V.).

[12] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (Approval Order; File No. SR–NYSE–2005–77).

[13] *See* Securities Exchange Act Release No. 59011 (November 24, 2008), 73 FR 73360 (December 2, 2008) (Approval Order; File No. SR–NYSE–2008–122). *See also e.g.*, Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (Approval Order; File No. SR–NYSE–2008–120).

[14] See NYSE *Information Memo* 01–38 (November 6, 2001).

[15] NYSE members and member organizations must always accept a corrected report. *See* NYSE *Information Memo* 02–07 (February 5, 2002).

[16] The NYSE has adopted an Interpretation to paragraph (a)(ii)(5) regarding the calculation of profits in these circumstances. Although the interpretation relates to NYSE Rule 411(a)(ii)(5), this Interpretation appears in the Transitional Rulebook and in NYSE's Rulebook under NYSE Rule 410. FINRA is proposing to delete the Interpretation and not include it in the Consolidated FINRA Rulebook.

aggregation of multiple odd-lot orders. First, the rule prohibits a member from combining orders given by different customers to buy or sell odd-lots of the same stock into a round-lot order without the prior approval of the customers. Second, the rule states that when a customer "gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders which aggregate 100 shares or more," the member may not accept the orders unless they are, as far as possible, consolidated into round lots, except that orders marked "long" need not be consolidated with selling orders marked "short." An exception from the consolidation requirement is available once per trading day by a person exercising investment discretion over multiple accounts if the odd-lot orders, in the aggregate, total fewer than 300 shares.

(3) NYSE Rule 411(b)(2): Recording of Transactions in Accounts

NYSE Rule 411(b)(2) requires that transactions in securities be recorded in accounts no later than settlement date. The rule originally was intended to ensure that interest was properly posted for each transaction and required that transactions be recorded and interest be computed as of settlement date.[17] The NYSE amended the rule into its current form in 1982 to remove the language regarding the calculation of interest and to permit firms to record securities transactions at any time prior to settlement date.[18]

FINRA is proposing not to incorporate NYSE Rule 411 or the Interpretation to NYSE Rule 411(a)(ii)(5) into the Consolidated FINRA Rulebook. The provisions in the rule related to erroneous reports are specific to the NYSE marketplace, and certain of the provisions relate solely to transactions by floor brokers. Paragraph (b)(1), which is related to the "bunching" of odd-lot orders, is similarly focused on the NYSE marketplace, which maintains a separate system for the execution of odd-lot orders.[19] Because FINRA does not maintain a marketplace, a rule addressing the aggregation of orders for execution is unnecessary.[20] Finally, FINRA is proposing that NYSE Rule 411(b)(2) not be included in the Consolidated FINRA Rulebook because the rule is duplicative of existing SEC recordkeeping requirements and longstanding SEC guidance.[21]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would streamline and improve FINRA's rulebook by eliminating rules that are duplicative of federal rules and regulations and provisions that are specific to the NYSE and its marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number SR–FINRA–2009–087 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–FINRA–2009–087*. 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,[23] 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 inspection and copying 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

[17] *See* Securities Exchange Act Release No. 18644 (April 14, 1982), 47 FR 17701 (April 23, 1982) (Notice of Filing; File No. SR–NYSE–82–7).

[18] *See* Securities Exchange Act Release No. 18778 (May 28, 1982), 47 FR 24900 (June 8, 1982) (Approval Order; File No. SR–NYSE–82–7).

[19] *See* NYSE Rule 124 (Odd-Lot Orders). FINRA did not incorporate NYSE Rule 124 into the Transitional Rulebook because it is solely concerned with the NYSE marketplace.

[20] Although FINRA does not have a rule addressing the bunching of odd-lot orders, FINRA's trade reporting rules have separate reporting requirements for round-lot and odd-lot transactions. In addition, the aggregation of individual executions (both round-lot and odd-lot executions) for trade reporting purposes is prohibited. *See, e.g.*, FINRA Rules 6282(f), 6380A(f), 6380B(h).

[21] *See* 17 CFR 240.17a–3(a)(3); *see also* Securities Exchange Act Release No. 10756 (April 26, 1974) ("Transactions involving the purchase and sale of securities should be posted to the customer's ledger accounts * * * no later than settlement date.").

[22] 15 U.S.C. 78*o*–3(b)(6).

[23] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/*.

information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–087 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30784 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61226; File No. SR–CTA/CQ–2009–02]

Consolidated Tape Association; Order Approving the Thirteenth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and Seventh Charges Amendment to the Restated Consolidated Quotation Plan

December 22, 2009.

I. Introduction

On October 19, 2009, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan participants ("Participants")[1] filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 608 thereunder,[3] proposals[4] to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the "Plans").[5] The proposals would: (1) delete all program classification charges from the schedules of Network A and Network B computer input charges; and (2) replace the current combined Network A/Network B high speed line access charges with separate high speed line access charges for Network A and Network B. The proposed amendments to the Plans were published for comment in the **Federal Register** on November 19, 2009.[6] No comment letters were received in response to the Notice. This order approves the proposed amendments to the Plans.

II. Description of the Proposal

The Plans currently divide the different means of using market data into eight "program classifications." The program classification fees payable by vendors and end-users depend on the category of use the vendor or end-user makes of the data and whether the vendor or end-user is using Network A market data or Network B market data, or both. Through the amendments to the Plans, the Participants proposed to eliminate program classification charges and set separate fees for the receipt of Network A market data and Network B market data.

The Participants stated that over time, new technologies and new and innovative ways to use market data have made it increasingly difficult to fit the data uses into the existing program classifications in a manner that is consistent and equitable for all. Therefore, the Participants concluded that it is more equitable to charge vendors and end-users for the method of access to the data and the quantity of usage, rather than for the specific purposes (*i.e.*, by program classification) to which vendors and end-users put market data. The elimination of program classification charges means that vendors will no longer need to provide detailed explanations of how they use the data or to update Exhibit A to their agreements with the Participants each time they use data in a new way.

Additionally, the Participants proposed to revise the access fees by setting separate fees for the receipt of Network A market data and Network B market data. Therefore, if a vendor or end-user wishes to receive Network A last sale prices (or quotation information), but not Network B last sale prices (or quotation information), the vendor or end-user would be allowed to pay only for Network A last sale prices, without also having to pay for Network B last sale prices and vice versa.

In addition to establishing separate access fees for Network A and Network B, the Participants stated that they intend to set the new access fees at levels that will offset the revenues that the Participants anticipate losing as a result of eliminating the program classification fees.

III. Discussion

After careful review, the Commission finds that the proposed amendments to the Plans are consistent with the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that the amendments are consistent with Rule 608(b)(2)[8] of the Act in that they are necessary for the protection of investors, the maintenance of fair and orderly markets, and to remove impediments to a national market system. The Commission believes that eliminating program classification charges and replacing them with separate fees for the receipt of Network A and Network B market data are fair and reasonable and provide for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons using CTA Network A and Network B facilities. The Commission agrees that charging users of data based on their method of access to the data and the amount of data they use rather than basing charges on the way vendors or end users use the data should simplify the rate schedule, remove subjectivity from the billing process, simplify and reduce the costs of data administration, and give choice to data vendors and end-users who prefer to receive data from one network only. Further, according to the Participants' estimates, the vast majority of vendors and end-users would realize net monthly increases or decreases of less than $1,000.[9] Thus, the proposed amendment is consistent with, and would further, one of the principal objectives for the national market system set forth in Section 11A(a)(1)(C)(iii)[10] of the Act—increasing the availability of market information to broker-dealers and investors.

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[24] 17 CFR 200.30–3(a)(12).

[1] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange, LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex LLC; and NYSE Arca, Inc.

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 242.608.

[4] On November 6, 2009, the Consolidated Tape Association sent a revised transmittal letter correcting the number of the proposed amendment ("Transmittal Letter").

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 60985 (November 10, 2009), 74 FR 59999 ("Notice").

[7] In approving this amendment, the Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 242.608(b)(2).

[9] *See* the Transmittal Letter.

[10] 15 U.S.C. 78k–1(a)(1)(C)(iii).

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[11] and the rules thereunder, that the proposed amendments to the CTA and CQ Plans (SR–CTA/CQ–2009–02) are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30790 Filed 12–28–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61218; File No. SR–NYSEAmex-2009–90]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 16, 2009, NYSE Amex LLC ("NYSE Amex" or "Exchange") 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at NYSE Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently introduced automated complex order trading for all market participants on NYSE Amex. In conjunction with that functionality, the Exchange introduced new transaction fees specific to Complex Order executions. Pursuant to this filing, the Exchange proposes to clarify the Schedule by deleting language that states, "Complex Orders in Penny Pilot Issues, executed against individual orders in the Consolidated Book will be subject to "Take Liquidity" rate per contract for that issue." This language was inadvertently included as part of a prior fee filing and is not applicable to the current NYSE Amex fee structure. NYSE Amex does not offer a post/take pricing structure, so reference to a "Take Liquidity" rate is inapplicable and misleading. Consistent with the current practice, complex orders in Penny Pilot issues, like all other issues, will be subject to the standard execution rate per contract pricing.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. Under this proposal, all similarly situated Exchange participants will be charged the same reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2009–90. 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 inspection and copying in the Commission's Public Reference

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR–NYSEAmex–2009–90 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30788 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61220; File No. SR–NYSEArca–2009–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of the ETFS Palladium Trust

December 22, 2009.

I. Introduction

On October 20, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the ETFS Palladium Trust (the "Trust"). The proposed rule change was published for comment in the **Federal Register** on November 17, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares. The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.

The Shares represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of palladium, less the expenses of the Trust's operations.[4]

The Exchange deems the Shares to be equity securities, which subjects trading in the Shares to the Exchange's existing rules governing the trading of equity securities, and has represented that trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has also represented that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Additional details regarding the Shares and Trust including, among other things, creations and redemptions of the Shares, the organization and structure of the Trust, custody of the Trust's holdings, Trust expenses, Trust termination events, the international market for palladium, the palladium futures market, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin can be found in the Notice and/or the Registration Statement.[5]

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[7] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[8] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association CQ High-Speed Lines. The Trust's Web site will provide the following information: (1) An intraday indicative value ("IIV") per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 AM to 4:00 PM, Eastern Standard Time); (2) the net asset value ("NAV") of the Trust as calculated each business day by the Sponsor; (3) the NAV, on a per Share basis, as of the close of the prior business day; (4) the mid-point of the bid-ask price[9] at the close of trading in relation to such NAV ("Bid/Ask Price"); (5) a calculation of the premium or discount of such price against such NAV; (6) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the per Share NAV, within appropriate ranges, for each of the four previous calendar quarters; (7) the Creation Basket Deposit; (8) the Trust's prospectus; (9) the two most recent reports to stockholders; and (10) the last sale price of the Shares as traded in the U.S. market.[10] In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured.

Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 60971 (November 9, 2009), 74 FR 59283 ("Notice").

[4] Amendment No. 2 to the Registration Statement for the ETFS Palladium Trust on Form S–1, filed with the Commission on October 20, 2009 (No. 333–15830) ("Registration Statement").

[5] *See supra* notes 3 and 4.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k-l(a)(1)(C)(iii).

[9] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[10] The Exchange will provide on its Web site (*http://www.nyx.com*) a link to the Trust's Web site.

disseminated to all market participants at the same time, it must halt trading in on NYSE Arca Marketplace until such time as the NAV is available to all market participants. The Commission notes that the Exchange will obtain a representation from the Trust that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time.[11] Additionally, if the IIV[12] is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[13] Further, the Exchange will consider the suspension of trading in or removal from listing of the Shares pursuant to NYSE Arca Rule 8.201(e)(2) if: (1) The value of palladium is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) the IIV is no longer made available on at least a 15-second delayed basis. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying palladium market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.

In addition, NYSE Arca Equities Rule 8.201 sets forth certain requirements for ETP Holders acting as registered Market Makers in the Shares. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in palladium, related futures or options on futures, or any other related derivatives, which the Market Maker may have or over which it may exercise investment discretion. NYSE Arca Equities Rule 8.201(i) also prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in palladium, related futures or options on futures or any other related commodity derivatives.

In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying palladium, palladium futures contracts, options on palladium futures, or any other palladium derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of palladium trading during the Core and Late Trading Sessions after the close of the major world palladium markets; and (f) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[14] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSEArca–2009–94), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30787 Filed 12–28–09; 8:45 am]

BILLING CODE 8011–01–P

[11] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated December 10, 2009.

[12] For the Shares, the Exchange uses IIV and ITV interchangeably. *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 22, 2009.

[13] *See id.*

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0091]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of upcoming quarterly panel meeting.

DATES: January 20, 2010, 1 p.m.–4:30 p.m. (CST); January 21, 2010, 8:30 a.m.–4:30 p.m. (CST); January 22, 2010, 8:30 a.m. to 11:30 a.m. (CST).

Location: Hilton Dallas Lincoln Centre.

ADDRESSES: 5410 LBJ Freeway, Dallas, Texas.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will provide independent advice and recommendations on plans and activities to replace the Dictionary of Occupational Titles used in the Social Security Administration's (SSA) disability determination process. The Panel will advise the Agency on creating an occupational information

system tailored specifically for SSA's disability programs and adjudicative needs. Advice and recommendations will relate to SSA's disability programs in the following areas: Medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that would enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The Panel will meet on Wednesday, January 20, 2010, from 1 p.m. until 4:30 p.m. (CST); Thursday, January 21, 2010, from 8:30 a.m. until 4:30 p.m. (CST) and Friday, January 22, 2010, from 8:30 a.m. until 11:30 a.m. (CST). The agenda will be available on the Internet at *http://www.socialsecurity.gov/oidap/* one week prior to the meeting.

The tentative agenda for this meeting includes: Presentations from invited stakeholder organizations for the purpose of receiving feedback on the Panel's recommendations identified in the report entitled *Content Model and Classification Recommendations for the Social Security Administration Occupational Information System (September 2009)* and related issues of concern in areas where additional or new occupational information is needed; an overview of the project work plan and the Panel's focus for FY2010; discussion of user feedback; review of the panel structure; subcommittee chair reports; receive a presentation summarizing the user needs analysis final report findings and hold an administrative business meeting.

The Panel will hear public comment during the January Quarterly Meeting on Wednesday, January 20, 2010 from 3:30 p.m. to 4:30 p.m. (CST) and Thursday, January 21, 2010 from 8:45 a.m. to 9:45 a.m. (CST). Members of the public must schedule a time slot—assigned on a first come, first served basis—in order to comment. In the event public comment does not take the entire time allotted, the Panel may use any remaining time to deliberate or conduct other Panel business.

Persons interested in providing testimony in person at the meeting or via teleconference should contact the Panel staff by e-mail to *OIDAP@ssa.gov*. Individuals are limited to a maximum five-minute verbal presentation. Organizational representatives will be allotted a maximum ten-minute verbal presentation. Written testimony, no longer than five (5) pages, may be submitted at any time either in person, or by mail, fax or e-mail to *OIDAP@ssa.gov* for Panel consideration.

Persons interested in providing feedback on the Panel report entitled *Content Model and Classification Recommendations for the Social Security Administration Occupational Information System (September 2009)* may do so no later than February 15, 2010, by mail, fax or e-mail to the staff. Please include your complete contact information (full name, mailing and e-mail address) with the submission.

Seating is limited. Individuals who need special accommodation in order to attend or participate in the meeting (e.g., sign language interpretation, assistive listening devices, or materials in alternative formats, such as large print or CD) should notify Debra Tidwell-Peters via e-mail to *debra.tidwell-peters@ssa.gov* or by telephone at 410–965–9617, no later than January 15, 2010. SSA will attempt to meet requests made but cannot guarantee availability of services. All meeting locations are barrier free.

If you want to access the meeting by teleconference, please send your name and contact information to *OIDAP@ssa.gov* one week prior to the start date of the meeting.

Contact Information: Records of all public Panel proceedings are maintained and available for inspection. Anyone requiring further information should contact the Panel staff at: Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Operations, Baltimore, MD 21235–0001. Telephone: 410–965–9617. Fax: 202–410–597–0825. E-mail to *OIDAP@ssa.gov*. For additional information, please visit the Panel Web site at *http://www.ssa.gov/oidap*.

Dated: December 22, 2009.

Debra Tidwell-Peters,

Designoted Federal Officer, Occupotional Informotion Development Advisory Ponel.

[FR Doc. E9–30759 Filed 12–28–09; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0090]

Rate for Assessment on Direct Payment Fees to Representatives in 2010

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are announcing that the assessment percentage rate under sections 206(d) and 1631(d)(2)(C) of the Social Security Act (Act), 42 U.S.C. 406 (d), and 1383(d)(2)(C), is 6.3 percent for 2010.

FOR FURTHER INFORMATION CONTACT: Gwen Jones Kelley, Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Phone: (410) 965–0495, e-mail *Gwen.Jones.Kelley@ssa.gov*.

SUPPLEMENTARY INFORMATION: Section 406 of Public Law No. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). That legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under sections 206(a)(4) or 206(b)(1) of the Act before the application of the assessment. For subsequent years, the legislation requires us to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. Beginning in 2005, sections 302 and 303 of Public Law No. 108–203, the Social Security Protection Act of 2004 (SSPA), extended the direct payment of fees to attorneys in cases under Title XVI of the Act and to eligible non-attorney representatives in cases under Title II or Title XVI of the Act. Fees directly paid under these provisions are subject to the same assessment. In addition, sections 301 and 302 of the SSPA imposed a dollar cap (i.e., currently $83) on the amount of the assessment so that the assessment may not exceed the lesser of that dollar cap or the amount determined using the assessment percentage rate.

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2010. We will continue to review our costs for these services on a yearly basis.

Dated: December 18, 2009.

Michael G. Gallagher,

Deputy Commissioner for Budget, Finonce and Management.

[FR Doc. E9–30757 Filed 12–28–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6857]

60-Day Notice of Proposed Information Collection: DS–4048, Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act; OMB Control Number 1405–0156

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act.

OMB Control Number: 1405–0156.

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Political Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.

Form Number: DS–4048.

Respondents: Business organizations.

Estimated Number of Respondents: 25 (total).

Estimated Number of Responses: 25 (per year).

Average Hours Per Response: 60 hours.

Total Estimated Burden: 1,500 hours (per year).

Frequency: Once a Year.

Obligation to Respond: Voluntary.

DATES: The Department will accept comments from the public up to 60 days from December 29, 2009.

ADDRESSES: Comments and questions should be directed to Mary F. Sweeney, Office of Defense Trade Controls Policy, Department of State, who may be reached via the following methods:

E-mail: Sweeneymf@state.gov.

Mail: Mary F. Sweeney, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

Fax: 202–261–8199.

You must include the information collection title in the subject line of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including a copy of the supporting document, to Mary F. Sweeney, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2865, or via e-mail at *sweeneymf@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.

Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

Enhance the quality, utility, and clarity of the information to be collected.

Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Section 25(a)(1) of the Arms Export Control Act requires an annual report to Congress on projected sales of major weapons and weapons-related defense equipment (if $7M or more) and non-major weapons or weapons-related defense equipment (if $25M or more). In order to prepare this report, the Directorate of Defense Trade Controls (DDTC) requests information from major defense companies by publishing a **Federal Register** notice and by placing a notice on its Web site. DDTC is requesting relevant projected sales that include the foreign country to which the item is to be sold, a description of the item, the item's quantity, and its value. Methodology: This information collection is collected electronically.

Dated: December 14, 2009.

Robert S. Kovac,

Acting Deputy Assistant Secretary for Defense Trade, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E9–30685 Filed 12–28–09; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 6856]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals (RFGP): International Sports Programming Initiative

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/SU–10–26.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates:

Application Deadline: Friday, March 12, 2010.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the International Sports Programming Initiative. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for projects designed to reach out to youth and promote mutual understanding by increasing the professional capacity of those who design and manage youth sports programs in select countries in Africa, East Asia and the Pacific, the Near East and North Africa, South and Central Asia, Europe, and the Western Hemisphere. The focus of all programs must be on reaching out to both male and female youth ages 7–17 and/or their coaches/administrators. Programs designed to train elite athletes or coaches will not be considered. Eligible countries and territories in each region are: *Africa:* Malawi, Mozambique, Uganda, and Zambia; *East Asia and the Pacific:* Timor Leste, Papua New Guinea, Fiji, Laos, Cambodia, Burma, Brunei, Thailand, Vietnam, Malaysia, Indonesia, Philippines, China, Taiwan, Korea, Japan, Mongolia, Australia, and New Zealand; *Near East and North Africa:* Lebanon, Syria, Jordan, West Bank/Gaza, and Israel; *South and Central Asia:* Afghanistan, Pakistan, Kazakhstan, Tajikistan, Turkmenistan, Kyrgyzstan, India, Nepal, Sri Lanka, Maldives, and Bangladesh; *Europe:* Armenia, Azerbaijan, Cyprus, Turkey, and France (Marseille) NOTE: Programs submitted for France MUST focus on the culturally diverse southern part of the country, specifically the region around Marseille. During the two-way exchange, participants selected for the U.S. portion must come from the Marseille area and be representative of the multi-cultural population. The in-country portion must take place in the Marseille region.; and the *Western Hemisphere:* Costa Rica, El Salvador, Brazil, Ecuador, Bolivia, Venezuela, Colombia, Panama, Barbados, Peru, Dominican Republic, Guatemala, Argentina, Chile, Nicaragua, Trinidad and Tobago, Honduras, Jamaica, Mexico, Haiti, Paraguay, and Uruguay.

Proposals may address multiple countries, but all the countries must then be in the same region. Proposals for countries that are not designated in the RFGP, that address more than one region, or address themes outside of those listed in the RFGP, will be deemed technically ineligible and will receive no further consideration in the

review process. Applicants may not submit more than one (1) proposal for this competition. Organizations that submit proposals that exceed these limits will result in having all of their proposals declared technically ineligible, and none of the submissions will be reviewed by a U.S. Department of State panel.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The Office of Citizen Exchanges welcomes proposals for two-way exchanges (one component in the United States and the other in the chosen country) that directly respond to the thematic areas outlined below. Given budgetary limitations, projects for themes not listed below will not be eligible for consideration under the FY 2010 International Sports Program Initiative Competition, and will be deemed technically ineligible and receive no further consideration in the review process.

Themes:

(1) Training Sports Coaches

Exchanges funded under this theme will aim at aiding youth and secondary school coaches in the target countries in the development and implementation of appropriate training methodologies. The goal is to ensure the optimal technical proficiency among the coaches participating in the program while also emphasizing the role sports can play in the long-term well-being of youth.

(2) Youth Sports Management

Exchanges funded under this theme will enable American and foreign youth sport coaches, administrators, and sport association officials to share their experiences in managing and organizing youth sports activities. These exchanges should advance cross-cultural understanding of the role of sports as a significant factor in educational success. The pursuit of academic degrees from U.S. institutions is not an acceptable focus of this program. Proposals that have only an academic focus will be deemed technically ineligible and will receive no further consideration in the review process.

(3) Sport and Disability

Exchanges funded under this theme are designed to promote and sponsor sports, recreation, fitness, and leisure events for children and adults with disabilities. Project goals include improving the quality of life for people with disabilities by providing affordable, inclusive sports experiences that build self-esteem and confidence, enhancing active participation in community life, and making a significant contribution to the physical and psychological health of people with disabilities. Proposals under this theme aim to demonstrate that people with a disability can be included in sports opportunities in their communities, and will develop opportunities for them to do so.

(4) Sport and Health

Exchanges funded under this theme will focus on effective and practical ways to use sports personalities and sports health professionals to increase awareness among young people of the importance of following a healthy lifestyle to reduce illness, prevent injuries and speed rehabilitation and recovery. Emphasis will be on the responsibility of the broader community to support healthy behavior. The project goals are to promote and integrate scientific research, education, and practical applications of sports medicine and exercise science to maintain and enhance physical performance, fitness, health, and quality of life. (Actual medical training and dispensing of medications are outside the purview of this theme.)

No guarantee is made or implied that grants will be awarded in all themes or for all countries listed.

Audience: The intended audience is non-elite youth, coaches, community leaders, and non-governmental organizations.

Ideal Program Model: The following are suggested program structures:

- A U.S. grantee identifies U.S. citizens to conduct a multi-location, in-country program overseas that includes clinics and training sessions for: male and female athletes; government officials (Ministry of Sports and Ministry of Education); coaches (adult and youth); NGO representatives (including representatives from relevant sports federations); community officials (including local authorities associated with recreational facilities); youth audiences (equal numbers of boys and girls); and sports management professionals to support one of the themes listed.
- An in-country partner overseas (a local university, government agency or other appropriate organization, such as a relevant sports federation) co-hosts an activity with the U.S. grantee institution, and participates in the selection of participants for a U.S. program.
- A U.S. program that includes site visits designed to provide participants with exposure to American youth and coaches, sports education in the United States, background information on U.S. approaches to the themes listed in the announcement, relevant cultural activities, and a debriefing and evaluation.
- U.S. experts who worked with participants from overseas implement an in-country program.
- Participants in the U.S. program design in-country projects and serve as co-presenters.
- Materials are translated into the relevant language for use in future projects.
- Small grants are dispersed for projects designed to expand the exchange experience.
- All participants are encouraged to enroll in the Bureau of Education and Cultural Affairs' alumni Web site *https://alumni.state.gov*.

U.S. Embassy Involvement: Applicants are strongly encouraged to consult with Public Affairs Officers at U.S. Embassies in relevant countries as they develop proposals responding to this RFGP. It is important that the proposal narrative clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. Embassy in the relevant country/countries to develop plans for project implementation, to select project participants, and to publicize the program through the media. Proposals should acknowledge U.S. Embassy involvement in the final selection of all participants.

Media: Proposals should include specific strategies for publicizing the project, both in the United States and overseas, as applicable. Sample materials can be included in the appendix. In any contact with the media (print, television, Web, *etc.*) applicants must acknowledge the SportsUnited Division of the Bureau of Educational and Cultural Affairs of the U.S. Department of State funding for the

program. Prior to information being released to the media, the ECA Program Office(r) must approve the document. All grantees are required to submit photos, highlights, and/or media clips for posting on the ECA Web site: *http://exchanges.state.gov/sports/.*

Participant Selection: Proposals should clearly describe the types of persons that will participate in the program, as well as the participant recruitment and selection processes. It is a priority of the office to include female participants in all of its programs. In the selection of foreign participants, the Bureau and U.S. Embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When U.S. participants are selected, grantee institutions must provide their names and biographical data to the Program Officer at the SportsUnited Office. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2010.

Approximate Total Funding: $1,500,000.

Approximate Number of Awards: 6–8.

Approximate Average Award: $225,000.

Ceiling of Award Range: $225,000.

Floor of Award Range: $60,000.

Anticipated Award Date: Pending availability of funds, August 31, 2010.

Anticipated Project Completion Date: September 30, 2011—June 30, 2013.

Projects under this competition may range in length from one to three years depending on the number of project components, the country/region targeted and the extent of the evaluation plan proposed by the applicant. The Office of Citizen Exchanges strongly encourages applicant organizations to plan enough time after project activities are completed to measure project outcomes. Please refer to the Program Monitoring and Evaluation section, item IV.3d.3 below, for further guidance on evaluation.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: (a.) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations that only qualify for the $60,000 level may choose to conduct a one-way exchange, but must explain how the objectives of Americans interacting with foreign participants will still be achieved.

(b.) *Technical Eligibility:* It is imperative that all proposals follow the requirements outlined in the Proposal Submission Instructions (PSI) technical format and instructions document. Additionally, all proposals must comply with the following or they will result in your proposal being declared technically ineligible and given no further consideration in the review process:

- Applicants may not submit more than one (1) proposal for this competition. Organizations that submit proposals that exceed these limits will result in having all of their proposals declared technically ineligible, and none of the submissions will be reviewed by a U.S. Department of State panel.
- Proposals for countries that are not designated in the RFGP, that address more than one region, or address themes outside of those listed in the RFGP, will be deemed technically ineligible and will receive no further consideration in the review process.
- The Office of Citizen Exchanges does not support proposals limited to conferences or seminars (*i.e.*, one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition. No funding is available exclusively to send U.S. citizens to conferences or conference type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.
- The Office of Citizen Exchanges does not support academic research or faculty or student fellowships.
- If your organization is a private non-profit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received non-profit status from the IRS within the past four years, you must submit the necessary documentation to verify non-profit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.
- Printed applications shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition.
- Printed applications shipped after the established deadlines are ineligible for consideration under this competition.
- Electronic applications uploaded to the Grants.gov website after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.

IV. Application and Submission Information

Before submitting a proposal, all applicants are strongly encouraged to consult with the Washington, DC—based Department of State contact for the themes/regions listed in this solicitation.

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact: Ryan Murphy, U.S. Department of State, Bureau of Educational and Cultural Affairs, SportsUnited Division, ECA/PE/C/SU, SA–5, Floor 3, 2200 C Street, NW., Washington, DC 20522–0503, tel: (202) 632–6058, fax: (202) 632–6492, *MurphyRM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/SU–10–26 located at the top of this

announcement when making your request.

Alternatively, an electronic application package may be obtained from *http://www.grants.gov*. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Ryan Murphy and refer to the Funding Opportunity Number ECA/PE/C/SU–10–26 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet:

The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/sports/index/sports-grant-competition.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative, detailed timeline and detailed budget. Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private non-profit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received non-profit status from the IRS within the past four years, you must submit the necessary documentation to verify non-profit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and

democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change.

Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes. Overall, the quality of your monitoring and evaluation plan will be judged on how well it: (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria).

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Department of State Acknowledgement

All recipients of ECA grants or cooperative agreements should be prepared to state in any announcement or publicity where it is not inappropriate that activities are assisted financially by the Bureau of Educational and Cultural Affairs of the U.S. Department of State under the authority of the Fulbright-Hays Act of 1961; as amended. In any contact with the media (print, television, web, etc.) applicants must acknowledge the SportsUnited Division of the Bureau of Educational and Cultural Affairs of the U.S. Department of State funding for the program.

Alumni Outreach/Follow-on Programming and Engagement

Please refer to the Proposal Submissions Instruction (PSI) document for additional guidance.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. For this competition, requests should not exceed $225,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please note that the Bureau of Educational and Cultural Affairs does not fund programs that involve building of structures of any kind, including playing fields, recreation centers, or stadiums.

IV.3e.2. Allowable costs for the program include the following:

1. *Travel.* International and domestic airfare; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://www.gsa.gov/perdiem.* ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://aoprals.state.gov/content.asp?content_id=184&menu_id=78.*

3. *Interpreters.* For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both "lodging" and "M&IE") and "home-program-home" transportation

in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

4. *Book and Cultural Allowances.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. *Room Rental.* The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. *Materials.* Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. *Equipment.* Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

9. *Working Meal.* Normally, no more than one working meal may be provided during the program. Per capita costs may not exceed $15–$25 for lunch and $20–$35 for dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered "participants."

10. *Return Travel Allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered during their participation in the U.S. program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE). The grantee must notify the program office to enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire Transfer Fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. *In-country Travel Costs for visa processing purposes.* Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: Friday, March 12, 2010

Reference Number: ECA/PE/C/SU–10–26

Methods of Submission:

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2.) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight (8) copies of the application should be sent to: U.S. Department of State, Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/SU–10–26, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. Embassy/ies for their review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please follow the instructions available in the "Get Started" portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several

weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* 800–518–4726, *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time, *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.* Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation.

Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section of the relevant Embassy, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:*

Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of proposed in-country partners should be clearly described. A discussion of how the applicant intends to address language issues should be included, if needed.

2. *Institutional Capacity:* Proposals should include: (1) The institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards—U.S. government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. *Proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau will be deemed more competitive under this criterion.* Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive in this category.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the PSI and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

5. *Post-Grant Activities:* Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for

these activities must not appear in the proposal budget, but should be outlined in the narrative.

6. *Program Monitoring and Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, and proposals should include draft data collection instruments (surveys, questionnaires, etc) in Tab E. See the "Program Monitoring/Evaluation" section, item IV.3d.3 above for more information on the components of a competitive evaluation plan. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant. Please refer to the "Program Management/ Evaluation" section, item IV.3d.3 above for more guidance.

VI. Award Administration Information

VI.1a. Award Notices:

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

For assistance awards involving the Palestinian Authority, West Bank, and Gaza:

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact (Ryan Murphy, ECA/PE/C/SU, tel: (202) 632–6058, *MurphyRM@state.gov*) for additional information.

VI.2. *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.
http://fa.statebuy.state.gov.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports which should include the activities completed during that quarter, information about any participants of the activities, and any adjustments in the program timeline.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements:

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three weeks prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Ryan Murphy, U.S. Department of State, Bureau of Educational and Cultural Affairs, SportsUnited Division, ECA/PE/C/SU, SA–5, Floor 3, 2200 C Street, NW., Washington, DC 20522–0503, tel: (202) 632–6058, fax: (202) 632–6492, *MurphyRM@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and reference number ECA/PE/C/SU–10–26.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 17, 2009.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–30667 Filed 12–28–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6854]

Certification Concerning the Bolivian Military and Police Under the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8)

Pursuant to the authority vested in the Secretary of State, including under the heading "International Narcotics Control and Law Enforcement" of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8), I hereby certify that the Bolivian military and police are respecting internationally recognized human rights and cooperating fully with investigations and prosecutions by civilian judicial authorities of military and police personnel who have been credibly alleged to have violated such rights.

This Determination shall be transmitted to the Congress and published in the **Federal Register.**

Dated: December 16, 2009.

Hillary Rodham Clinton,

Secretary of State, Department of State.

[FR Doc. E9–30686 Filed 12–28–09; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 6843]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice of renewal of the Advisory Committee charter.

Renewal of Advisory Committee: The Secretary of State announces the renewal of the charter of the Advisory Committee on International Postal and Delivery Services 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. A copy of the renewed charter is available at the following link: *http://www.state.gov/documents/organization/133108.pdf.*

Purpose: The purpose of the Advisory Committee is to serve the Department of State in an advisory capacity with respect to the formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services. The Committee provides a forum for government employees, representatives of the industry sector and members of the public to present their advice and views directly to the Department of State.

For further information, please contact Dennis Delehanty, Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–4197.

Dated: December 10, 2009.

Dennis M. Delehanty,

Foreign Affairs Officer, Department of State.

[FR Doc. E9–30832 Filed 12–28–09; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 6855]

Notice of Availability of the Draft Environmental Assessment for Proposed San Diego-Tijuana Airport Cross Border Facility

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: On October 2, 2009, the Department of State published in the **Federal Register** (74 FR 50997) a Notice of Receipt of Application for a Presidential Permit for an International Pedestrian Bridge on the U.S.-Mexico Border near San Diego, California and Tijuana, Baja California, Mexico. This notice requested comment on Otay-Tijuana Venture, L.L.C.'s application for a Presidential permit to authorize the construction, operation, and maintenance of a new international pedestrian bridge called the San Diego-Tijuana Airport Cross Border Facility (CBF) on the U.S.-Mexico border near San Diego, California and Tijuana, Baja California, Mexico. The Department now gives notice of the availability of, and requests comment on, the draft environmental assessment (EA) that the project sponsor prepared under the Department's guidance.

The Department's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application and the draft environmental assessment to relevant Federal and State agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether issuance of a Presidential permit for this proposed bridge would be in the U.S. national interest.

DATES: Interested members of the public are invited to submit written comments regarding this draft environmental assessment on or before February 12, 2010 to Elizabeth Orlando (NEPA Program Manager) and Rob Allison (Office of Mexican Affairs), via e-mails to *orlandoea2@state.gov* and *WHA-BorderAffairs@state.gov* or by mail to WHA/MEX—Room 3909, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Elizabeth Orlando (NEPA Program Manager) and/or Rob Allison (Office of Mexican Affairs), via e-mails to *orlandoea2@state.gov* and *WHA-BorderAffairs@state.gov*; by phone at 202–647–9894; or by mail at WHA/MEX—Room 3909, Department of State, Washington, DC 20520. General information about Presidential Permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

SUPPLEMENTARY INFORMATION: The application and draft environmental assessment (EA) are available for review in the Office of Mexican Affairs during normal business hours. The draft EA is also available at the City of San Diego Otay-Nestor Branch Library located at 3003 Coronado Ave, San Diego, California 92154–1521.

In accordance with Section 102(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and implementing regulations promulgated by the Council on Environmental Quality (40 CFR parts 1500–1508) and the Department of State (22 CFR part 161), including in particular 22 CFR 161.7(c)(1), a draft EA was prepared by Otay-Tijuana Venture, L.L.C. on behalf of the Department of State to determine if there are any potential significant impacts from, and to address alternatives to, the proposed action.

The draft EA addresses the potential environmental effects of the construction and operation of the United States portion of the Cross Border Facility (CBF). According to the application and draft EA, the CBF would enable ticketed airline passengers to travel between Mexico's Tijuana International Airport (TIJ) and San Diego, California, via an enclosed, elevated pedestrian bridge. The CBF will consist of: a main building on the U.S. side of the border housing U.S. Customs and Border Protection (CBP) inspection facilities along with shops and services to accommodate travelers; an approximately 525-foot pedestrian bridge from the main building on the

U.S. side connecting into TIJ's passenger terminal on the Mexican side; and parking facilities and areas for car rentals and potentially bus service on the U.S. side. According to the application, the CBF would allow passengers to bypass San Diego's congestion-prone ports of entry and avoid driving through the City of Tijuana.

Dated: December 18, 2009.

Alex Lee,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. E9–30688 Filed 12–28–09; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 6845]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, January 21, 2010, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the fifty-third Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE) to be held at the IMO Headquarters, United Kingdom, from February 22 to February 26, 2010.

The primary matters to be considered include:

—Adoption of the agenda.
—Decisions of other IMO bodies.
—Measures to prevent accidents with lifeboats.
—Compatibility of life-saving appliances.
—Revision of resolution A.760(18).
—Performance standards for recovery systems.
—Cargo oil tank coating and corrosion protection.
—Development of a new framework of requirements for life-saving appliances.
—Guidance to ensure consistent policy for determining the need for watertight doors to remain open during navigation.
—Protection against noise on board ships.
—Thermal performance of immersion suits.
—Alternative arrangements for the bottom inspection requirements for passenger ships other than ro-ro passenger ships.
—Amendments to the Revised recommendation on testing of life-saving appliances.
—Safety provisions applicable to tenders operating from passenger ships.
—Classification of offshore industry vessels and consideration of the need for a code for offshore construction support vessels.
—Interpretation on application of SOLAS, MARPOL and Load Line requirements for major conversions of oil tankers.
—Consideration of IACS unified interpretations.
—Development of a mandatory Code for ships operating in polar waters.
—Application of amendments to SOLAS chapter III and the LSA Code.
—Guidelines for a visible element to general alarm systems on passenger ships.
—Improvement of existing pollution prevention equipment.
—Development of guidelines for a shipboard oil waste pollution prevention plan.
—Manually operated alternatives in the event of prevention pollution equipment malfunctions.
—Work programme and agenda for DE 54.
—Any other business.
—Report to the Maritime Safety Committee.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator, Mr. Wayne Lundy, by e-mail at *Wayne.M.Lundy@uscg.mil*, by phone at (202) 372–1379, by fax at (202) 372–1925, or in writing at Commandant (CG–5213), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than 72 hours before the meeting. A member of the public requesting reasonable accommodation should make such request prior to January 14th, 2010. Requests made after that time might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo.*

Dated: December 22, 2009.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–30833 Filed 12–28–09; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of the Trade Agreements Act of 1979

AGENCY: Office of the United States Trade Representative.

ACTION: Determination of procurement thresholds under the World Trade Organization Agreement on Government Procurement, the United States-Australia Free Trade Agreement, the United States-Bahrain Free Trade Agreement, the United States-Chile Free Trade Agreement, the Dominican Republic-Central American-United States Free Trade Agreement, the United States-Morocco Free Trade Agreement, the North American Free Trade Agreement, the United States-Oman Free Trade Agreement, the United States-Peru Trade Promotion Agreement, and the United States-Singapore Free Trade Agreement.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476 or *Jean_Grier@ustr.eop.gov.*

SUMMARY: Executive Order 12260 requires the United States Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), which implements U.S. trade agreement obligations, including those under the World Trade Organization (WTO) Agreement on Government Procurement, Chapter 15 of the United States-Australia Free Trade Agreement (U.S.-Australia FTA), Chapter 9 of the United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA), Chapter 9 of the United States-Chile Free Trade Agreement (U.S.-Chile FTA), Chapter 9 of the Dominican Republic-Central American-United States (DR–CAFTA), Chapter 9 of the United States-Morocco Free Trade Agreement (U.S.-Morocco FTA), Chapter 10 of the North American Free Trade Agreement (NAFTA), Chapter 9 of the United States-Oman Free Trade Agreement (U.S.-Oman FTA), Chapter 9 of the United States-Peru Trade Promotion Agreement (U.S.-Peru TPA), and Chapter 13 of the United States-Singapore Free Trade Agreement

(U.S.-Singapore FTA). These obligations apply to covered procurements valued at or above specified U.S. dollar thresholds.

Now, therefore, I, Ronald Kirk, United States Trade Representative, in conformity with the provisions of Executive Order 12260, and in order to carry out U.S. trade agreement obligations under the WTO Agreement on Government Procurement, Chapter 15 of the U.S.-Australia FTA, Chapter 9 of the U.S.-Bahrain FTA, Chapter 9 of the U.S.-Chile FTA, Chapter 9 of DR–CAFTA, Chapter 9 of the U.S.-Morocco FTA, Chapter 10 of NAFTA, Chapter 9 of the U.S.-Oman FTA, Chapter 9 of the U.S.-Peru TPA, and Chapter 13 of the U.S.-Singapore FTA, do hereby determine, effective on January 1, 2010:

For the calendar years 2010–2011, the thresholds are as follows:

I. WTO Agreement on Government Procurement

A. *Central Government Entities listed in U.S. Annex 1:*

(1) Procurement of goods and services—$203,000; and

(2) Procurement of construction services—$7,804,000.

B. *Sub-Central Government Entities listed in U.S. Annex 2:*

(1) Procurement of goods and services—$554,000; and

(2) Procurement of construction services—$7,804,000.

C. *Other Entities listed in U.S. Annex 3:*

(1) Procurement of goods and services—$624,000; and

(2) Procurement of construction services—$7,804,000.

II. U.S.-Australia FTA, Chapter 15

A. *Central Government Entities listed in the U.S. Schedule to Annex 15–A, Section 1:*

(1) Procurement of goods and services—$70,079; and

(2) Procurement of construction services—$7,804,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 15–A, Section 2:*

(1) Procurement of goods and services—$554,000; and

(2) Procurement of construction services—$7,804,000.

C. *Other Entities listed in the U.S. Schedule to Annex 15–A, Section 3:*

(1) Procurement of goods and services for List A Entities— $350,396;

(2) Procurement of goods and services for List B Entities— $624,000;

(3) Procurement of construction services—$7,804,000.

III. U.S.-Bahrain FTA, Chapter 9

A. *Central Government Entities listed in the U.S. Schedule to Annex 15–A, Section 1:*

(1) Procurement of goods and services—$203,000; and

(2) Procurement of construction services—$9,110,318.

B. *Other Entities listed in the U.S. Schedule to Annex 9–A, Section 3:*

(1) Procurement of goods and services for List B entities—$624,000; and

(2) Procurement of construction services—$11,213,223.

IV. U.S.-Chile FTA, Chapter 9

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*

(1) Procurement of goods and services—$70,079; and

(2) Procurement of construction services—$7,804,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*

(1) Procurement of goods and services—$554,000; and

(2) Procurement of construction services—$7,804,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*

(1) Procurement of goods and services for List A Entities— $350,396;

(2) Procurement of goods and services for List B Entities— $624,000;

(3) Procurement of construction services—$7,804,000.

V. DR–CAFTA, Chapter 9

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*

(1) Procurement of goods and services—$70,079; and

(2) Procurement of construction services—$7,804,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*

(1) Procurement of goods and services—$554,000; and

(2) Procurement of construction services—$7,804,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*

(1) Procurement of goods and services for List B Entities— $624,000;

(2) Procurement of construction services—$7,804,000.

VI. U.S.-Morocco FTA, Chapter 9

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*

(1) Procurement of goods and services—$203,000; and

(2) Procurement of construction services—$7,804,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*

(1) Procurement of goods and services—$554,000; and

(2) Procurement of construction services—$7,804,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*

(1) Procurement of goods and services for List B Entities— $624,000;

(2) Procurement of construction services—$7,804,000.

VII. NAFTA, Chapter 10

A. *Federal Government Entities listed in the U.S. Schedule to Annex 1001.1a–1:*

(1) Procurement of goods and services—$70,079; and

(2) Procurement of construction services—$9,110,318.

B. *Government Enterprises listed in the U.S. Schedule to Annex 1001.1a–2:*

(1) Procurement of goods and services—$350,396; and

(2) Procurement of construction services—$11,213,223.

VIII. U.S.-Oman FTA, Chapter 9

A. *Central Level Government Entities listed in the U.S. Schedule to Annex 9, Section A:*

(1) Procurement of goods and services—$203,000; and

(2) Procurement of construction services—$9,110,318.

B. *Other Covered Entities listed in the U.S. Schedule to Annex 9, Section B:*

(1) Procurement of goods and services for List B Entities— $624,000;

(2) Procurement of construction services—$11,213,223.

IX. U.S.-Peru TPA, Chapter 9

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*

(1) Procurement of goods and services—$203,000; and

(2) Procurement of construction services—$7,804,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*

(1) Procurement of goods and services—$554,000; and

(2) Procurement of construction services—$7,804,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*

(1) Procurement of goods and services for List B Entities—$624,000;

(2) Procurement of construction services—$7,804,000.

X. U.S.-Singapore FTA, Chapter 13

A. *Central Government Entities listed in the U.S. Schedule to Annex 13A, Schedule 1, Section A:*

(1) Procurement of goods and services—$70,079; and

(2) Procurement of construction services—$7,804,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 13A; Schedule 1, Section B:*

(1) Procurement of goods and services—$554,000; and

(2) Procurement of construction services—$7,804,000.

C. *Other Entities listed in the U.S. Schedule to Annex 13A, Schedule 1, Section C:*

(1) Procurement of goods and services—$624,000;

(2) Procurement of construction services—$7,804,000.

Ronald Kirk,

United States Trade Representative.

[FR Doc. E9–30676 Filed 12–28–09; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35314]

Massachusetts Coastal Railroad, LLC—Acquisition—CSXT Transportation, Inc.

A decision was served in this proceeding on December 21, 2009, and was published in the **Federal Register** on December 23, 2009. Appendix A to the decision set forth the procedural schedule for this proceeding. The eighth date listed in Appendix A (referring to Responses to comments, etc.) inadvertently referenced "March 13, 2010." The correct date is February 12, 2010.

Please correct your copies of the decision accordingly. All other information remains unchanged. A corrected copy of Appendix A follows this notice.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 23, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

APPENDIX A: PROCEDURAL SCHEDULE

November 24, 2009	Application, Motion for Protective Order, and Petition Suggesting Procedural Schedule filed.
December 8, 2009	Protective Order Issued.
December 23, 2009	Board notice of acceptance of application published in the FEDERAL REGISTER.
January 6, 2010	Notices of intent to participate in this proceeding due.
January 11, 2010	Discovery requests due to Applicants.
January 18, 2010	Responses to discovery due.
January 25, 2010	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
February 12, 2010	Responses to comments, protests, requests for conditions, and other opposition due. Applicants' rebuttal in support of the application due.
TBD	A public hearing or oral argument may be held.
March 29, 2010	Final decision to be served.
April 28, 2010	Final decision to become effective.

[FR Doc. E9–30830 Filed 12–28–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[DOCKET NO. MARAD–2009–0147]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Ann Thomas, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2646 or E-mail: *patricia.thomas@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title of Collection: Merchant Marine Medals and Awards.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0506.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This information collection of information provides a method of awarding merchant marine medals and decorations to masters, officers, and crew members of U.S. ships in recognition of their service in areas of danger during the operations by the Armed Forces of the United States in World War II, Korea, Vietnam, and Operation Desert Storm.

Need and Use of the Information: This information is used by MARAD personnel to process and verify requests for service awards.

Description of Respondents: Master, officers and crew members of U.S. ships.

Annual Responses: 700 responses.

Annual Burden: 700 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for

examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

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

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E9–30752 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[U.S. DOT Docket No. FHWA–2009–0054]

Agency Information Collection Activities: Request for Comments for a New Information Collection, Titled: Reports, Forms and Recordkeeping Requirements

AGENCY: Federal Highway Administration, DOT.

ACTION: Request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We published a **Federal Register** Notice with a 60-day public comment period on this information collection on February 26, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 28, 2010.

ADDRESSES: You may submit comments identified by Docket ID Number FHWA–2009–0054 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ray Krammes, Ph.D, PE, Acting Director, Office of Safety Research and Development, HRDS–07, Turner-Fairbank Highway Research Center, Federal Highway Administration, 6300 Georgetown Pike, McLean, VA 22101, tel. 202–493–3365 between 8 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays, or Paul J. Tremont, PhD (same address) at 202–493–3338.

SUPPLEMENTARY INFORMATION:

Title: Reports, Forms and Recordkeeping Requirements.

The FHWA invites public comments on our intention to request the Office of Management and Budget (OMB) to approve a total of 30 field and laboratory research studies that will include collections of information from the general public. These studies will be conducted over a period not to exceed 3 years with an *annual* burden of approximately 2000 hours and a grand total burden of approximately 6000 hours. These collections are integral to the performance of various analytical, field, and laboratory human factors research projects that FHWA intends to conduct in support of its mission of improving safety and increasing mobility on our Nation's highways through National Leadership, Innovation, and Program Delivery. The laboratory and field research FHWA conducts usually involves observations of driver behavior in controlled experimental settings. In the field and laboratory, these studies are non-intrusive, as most data are driver performance data and are automatically acquired.

Research Areas and Associated Collections

The FHWA Office of Safety Research and Development intends to conduct analytical, field, and laboratory research projects focused on highway safety that will require acquisition of human performance data from small samples of the driving public. This research is directed at human factors issues within the following broad program areas: (A) Infrastructure design including innovative intersection configurations and signage and roadway markings; (B) highway operations; (C) older and younger driver issues; and (D) pedestrian and bicyclist concerns. Given that the focus of the research in the above areas is on human factors issues, it will require that data be collected on a few key demographic variables such as age, gender, and driving experience, however such data will not be linked to personal identifying information. Before any study is conducted under this approval request, a thorough review will be undertaken to ensure such data is not currently available, and that the proposed study does not duplicate other work.

Situations That Require Collections of Information—Examples From Each Category

Category A (Infrastructure Design). An example from Category A would be a study designed to test an innovative intersection design such as a Double Crossover Diamond Interchange (DCD). This is a highly efficient intersection design, but if not properly implemented, it could potentially cause confusion. In a DCD, drivers cross over to the left side of the highway, with the result that opposing traffic is placed on their right side. When testing DCD implementations, FHWA needs to know whether drivers perceive any ambiguity in the signage, and if they have any orientation problems seeing opposing traffic on their right side. Other innovative intersection designs would also benefit from similar information acquired from drivers. Roadway departure is another problem area that could benefit from individual driver data. For example, it would be helpful to observe drivers' interactions with roadway geometry and signage so that such information can be applied to design decisions that can lead to reductions in roadway departures.

Category B (Highway Operations). One of the many challenges confronting highway engineers is designing a signal system that maximizes throughput and minimizes delay. Excess delay can have the unintended consequence of encouraging drivers to run red lights. This problem can be examined by observing drivers' behavior under differing signaling conditions. However, direct verbal reports of drivers are often needed to determine why drivers are making their decisions. For example FHWA may learn from questioning drivers that they would be less likely to speed up when approaching a signal if they knew the signal system would recognize this behavior and respond

accordingly. One way this might happen is by advising the motorist earlier of the impending signal change. Driver interviews performed under this study area can provide information on many key issues including behavioral adaptation, decision making, and reaction times to signal phases and changes. This kind of information could lead to improvements to signal controllers that increase mobility and improve safety. Speed management is another area that could benefit from interview data. For example, lower speed limits in construction zones are difficult to enforce, and interview data with drivers can provide information on better methods of restraining driver speeds in these hazardous situations.

Category C (Older and Younger Drivers). The driving behaviors of these two high risk groups are of interest for almost all FHWA safety related studies. For example, older driver's performance as they negotiate new designs informs the engineer of those aspects of the design that present potential safety problems, and may be in need of modification. In contrast, young drivers present a separate set of challenges for highway engineers. Their ability to negotiate a new design may be less of a concern, however; it is necessary to understand how these drivers perform as they drive through these new designs. This is important as some younger drivers may be willing to take extra risks in situations where ambiguity exists. Such information from younger drivers will help engineers determine areas of potential ambiguity in design and modify these areas as necessary to ensure they are not introducing safety hazards.

Category D (Pedestrians and Bicyclists). Research related to pedestrians and bicyclists arises from the need to determine the most effective ways to accommodate these infrastructure users. While overt pedestrian and bicyclist behavior needs to be directly observed to enable engineers to determine potential safety hazards to these user groups. For example, when a new intersection design is being introduced (e.g., a triple lane roundabout) it is especially advantageous to acquire data that shows how pedestrians and bicyclists negotiate such a new design. The needs of disabled pedestrians are also considered when researching new intersection treatments, and in these efforts FHWA works closely with the U.S. Access Board to ensure that novel intersection treatments accommodate their needs. Another example of research in this area is determining bicyclists' reactions to such treatments as separately marked bicycle lanes, signage, and overall roadway configuration.

Description of How Field and Laboratory Study Participants Will Be Acquired

Participants for research studies will be acquired by advertisement in local papers, by the distribution of flyers, or by postings to the internet. Typically, interested parties contact FHWA and they are asked a few questions to determine whether they qualify for the study. These questions involve such issues as age, driver familiarity with the location or scenario being used, number of miles driven per year, and gender.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From These Information Collections and Requests for Comments

Experimental Participants: Approximately 6,000 roadway users drawn from the general driving population.

Frequency: This approval request is for 30 studies over a 3 year period.

Estimated Average Burden per respondent: FHWA estimates data acquisition from persons participating in research will require on average about 1 hour per person.

Estimated Total and Annual Burden Hours: Assuming 20 studies will be Laboratory based (Simulator), and 10 will be Field based (Field Research Vehicle), the burden is calculated as follows:

Laboratory Experiments: 20 Simulator * 210 participants * 1 hour = 4200
Field Experiments: 10 studies * 180 participants * 1 hour = 1800 hours

Estimated Total Burden Hours: = 6000 hours

Estimated Annual Burden Hours (over 3 years) = 2000 hours

Public Comments Invited: You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. FHWA will respond to your comments and summarize or include them when requesting clearance from OMB for these information data collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on December 18, 2009.

Tina Campbell,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. E9–30568 Filed 12–28–09; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

RIN 2130–AB74

Richmond-Hampton Roads Passenger Rail Project

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of availability of the Tier I Draft Environmental Impact Statement and public hearings for the Richmond-Hampton Roads Passenger Rail Project (Project).

SUMMARY: The Federal Railroad Administration announces the availability of the Richmond-Hampton Roads Passenger Rail Project Draft Tier I Environmental Impact Statement (DEIS) for public review and comment. The DEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality NEPA implementing regulations, 40 CFR parts 1500–1508, and the FRA NEPA procedures, 64 FR 28545 (May 26, 1999). FRA is the lead Federal agency and the Virginia Department of Rail and Public Transportation (DRPT) is the lead State agency. The Environmental Protection Agency (EPA) included the DEIS in the Notice of Availability (NOA) published on December 11, 2009.

DATES: FRA invites interested Members of Congress, state and local governments, other Federal agencies, Native American tribal governments, organizations, and members of the public to provide comments on the DEIS. The public comment period began with EPA's publication of the NOA on December 11, 2009. Because of the anticipated interest in the Project, the comment period will continue until February 11, 2010. Written and oral comments will be given equal weight, and FRA and DRPT will consider all comments received or postmarked by that date in preparing the Final EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates and locations for the public hearings are:

1. Richmond: January 26, 2010 from 5:30 to 8 p.m. Eastern Standard Time.

Virginia Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23269.

2. Newport News: January 27, 2010 from 5:30 to 8 p.m. Eastern Standard Time. City Center Conference Facilities, James and Warwick Rooms, 700 Town Center Drive, Newport News, VA 23606.

3. Norfolk: January 28, 2010 from 5:30 to 8 p.m. Eastern Standard Time. Half Moone Cruise and Celebration Center, One Waterside Drive, Norfolk, VA 23510.

ADDRESSES: Comments may be submitted at the public hearings both verbally and in writing. Written comments may be submitted via the project Web site at *http://www.rich2hrrail.info* or mailed to VDRPT at the Commonwealth of Virginia, Department of Rail & Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219, Attention: Public Information Office.

FOR FURTHER INFORMATION CONTACT: For further information regarding the DEIS or the Project, please contact: Ms. Christine Fix, Department of Rail & Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219 (telephone 804 786–1052); or by e-mail at *christine.fix@drpt.virginia.gov* with "Richmond-Hampton Roads Passenger Rail Project" in the subject heading, or Mr. John Winkle, Transportation Industry Analyst, Office of Passenger Programs, Federal Railroad Administration, 1200 New Jersey Ave., SE., Room W38–311, Washington, DC 20590 (telephone 202 493–6067), or by e-mail at *John.Winkle@DOT.Gov* with "Richmond-Hampton Roads Passenger Rail Project" in the subject heading.

SUPPLEMENTARY INFORMATION: The DEIS evaluates the environmental impacts of the Richmond-Hampton Roads Passenger Rail Project, which proposes passenger rail service improvements between the City of Richmond, VA and the Hampton Roads region. As a Tier I document, the DEIS focuses on program level decisions affecting potential passenger rail service in the Richmond-Hampton Roads corridor. The DEIS analyzes a Status Quo Alternative, the No Action Alternative and three Build Alternatives. The Build Alternatives focus on two rail routes to implement passenger rail service improvements: the Peninsula/CSX Route and the Southside/NS Route. The Build Alternatives examine a combination of conventional (79-mph) and higher speed (90 and 110-mph) passenger rail services with varying service frequencies over the two routes. This rail service would serve as an extension of the Southeast High Speed Rail Corridor, providing rail connections to the Southeast, Northeast, and Mid-Atlantic Regions. Potential environmental impacts of the Build Alternatives include increased noise and vibration, local traffic impacts associated with stations, impacts on historic properties and archeological sites, impacts on parks and recreation resources, impacts on sensitive biological resources and wetlands, and use of energy. Mitigation strategies are described to avoid or minimize potential impacts. Such strategies would be further refined in subsequent environmental review.

Availability of the DEIS

DRPT has placed copies of the Draft EIS and appendices at the following libraries:

Blackwater Regional Library	Chesapeake Public Library
Chesterfield County Public Library	Colonial Heights Public Library
Gloucester Public Library	Hampton Main Public Library
Maude Langhorne Nelson Library	Newport News Main Public Library
York County Public Library/Tabb Library	Norfolk Main Library
Pamunkey Regional Library	Petersburg Central Public Library
Portsmouth Main Public Library	Richmond Main Public Library
Suffolk Morgan Memorial Public Library	Virginia Beach Central Library
Williamsburg Regional Library/Williamsburg Library	
Henrico County Municipal Government and Law Library	

Commenters are advised to check the project website for a complete list of library locations and addresses.

The document is also available at the Virginia Department of Rail and Public Transportation Office in Richmond, 600 East Main Street, Suite 2102, Richmond, VA; the Hampton Roads Transportation Planning Organization Office in Chesapeake, The Regional Building, 723 Woodlake Drive, Chesapeake, VA; the Richmond Area Metropolitan Planning Organization, located at the Richmond Regional Planning District Commission, 9211 Forest Hill Avenue, Suite 200, Richmond, VA; and the Tri-Cities Area Metropolitan Planning Organization, located at the Crater District Planning Commission, 1964 Wakefield Street, Petersburg, VA. In addition, electronic versions of the Draft EIS and appendices are available through FRA's Web site at *http://www.fra.dot.gov/us/content/2316*, on the VDRPT Web site at *http://www.drpt.virginia.gov/projects/hamptonpassenger.aspx*, and the project Web site at *http://www.rich2hrrail.info*.

Issued in Washington, DC, on December 18, 2009.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E9–30724 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting, Special Committee 223: Airport Surface Wireless Communications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 223: Airport Surface Wireless Communications meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 223: Airport Surface Wireless Communications.

DATES: The meeting will be held January 26–27, 2010 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 223: Airport Surface Wireless Communications meeting. The agenda will include:

Tuesday, January 26, 2010

Tuesday Morning—Plenary:

- Opening Session (Welcome, Introductions, Administrative Remarks, Approve/Review Meeting #1 Summary).
- Special Committee Leadership.
- Designated Federal Official (DFO): Mr. Brent Phillips.
- Co-Chair: Mr. Aloke Roy, Honeywell International.
- Co-Chair: Mr. Ward Hall, ITT Corporation.
- Agenda Overview.
- Report from EUROCAE WG 82 Kick-off meeting.
- AeroMACS Profile Working Group Status.

Tuesday Afternoon—Profiles WG Breakout Session:

- Document Structure.
- Review of AeroMACS System Requirements Document from EUROCONTROL.
- Technical work on AeroMACS Profile.

Wednesday, January 27, 2010

Wednesday Morning—Profiles WG Breakout Session:

- Continue AeroMACS Profile definition.

Wednesday Afternoon—Reconvene Plenary:

- Profiles WG Status Report and Plenary Guidance.
- Establish Agenda, Date and Place for the next plenary meeting.
- Review of Meeting summary report.
- Adjourn—Expected by 3 p.m. on January 27.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–30778 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Kissimmee Gateway Airport, Kissimmee, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the City of Kissimmee for Kissimmee Gateway Airport under the provisions of 49 U.S.C. 47501 *et seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is December 11, 2009.

FOR FURTHER INFORMATION CONTACT: Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Orlando, Florida 3288, 407–812–6331.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Kissimmee Gateway Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) Part 150, effective November 16, 2009. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (the Act), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by the City of Kissimmee. The documentation that constitutes the "Noise Exposure Maps" as defined in Section 150.7 of 14 CFR part 150 includes: Map A—2009 Noise Exposure Map; Map B—2014 Noise Exposure Map; Table 5.1, 2009 Annual Operations; Table 5.2, 2009 Annual—Average Day Fleet Mix (Itinerant Operations); Table 5.3, 2009 Annual Average Day Fleet Mix (Local Operations); Table 5.4, 2014 Annual Operations; Table 5.5, 2014 Annual—Average Day Fleet Mix (Itinerant Operations); Table 5.5, 2014 Annual Average Day Fleet Mix (Local Operations); Table 5.10, Percentage Runway Utilization; Table 5.11, Percentage Helicopter Runway/Helipad Utilization; Tables 5.12—5.14, Flight Track Percentages; Figure 5.1, Runway 15 Flight Tracks; Figure 5.2, Runway 24 Flight Tracks; Figure 5.3, Runway 33 Flight Tracks; Figure 5.4, Runway 06 Flight Tracks; Figure 5.5, Local Flight Tracks; Figure 5.6, Helicopter Flight Tracks; Figure 6.1, 2009 DNL Contour; Figure 6.2, 2014 DNL Contour; Figure 6.5, 2009 Land Use Noise Contours; Figure 6.6, 2014 Land Use Noise Contours; Figure 6.8A, Residential Land Uses within the 65 DNL Contour; Table 6.1, 2009 DNL Contour Population Summary; Table 6.2, 2014 DNL Contour Population Summary; Map A—North Flow Flight Tracks; Map A—South Flow Flight Tracks; Map A—Helicopter and Local Flight Tracks; Map B—North Flow Flight Tracks; Map B—South Flow Flight Tracks; and Map B—Helicopter and Local Flight Tracks. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on December 11, 2009.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR Part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which

properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of 14 CFR part 150, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration,

Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida on December 11, 2009.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. E9–30795 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–59]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 19, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–1170 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Rouse, 816–329–4135, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 23, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–1170.
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected:
14 CFR part 23, § 23.1549(a), (b), and (c).
Description of Relief Sought:
The petitioner seeks an exemption to allow type certification of the Cessna Model 525C airplanes with the current engine low pressure rotary group shaft speed (N1) and interstage turbine temperature (ITT) displays.

[FR Doc. E9–30793 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–60]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 19, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–1064 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our

dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Rouse, 816–329–4135, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106, or Ms. Ralen Gao, 202–267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 23, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–1064.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected:

14 CFR 23.1321(b), 23.1549(a), (b), and (c).

Description of Relief Sought:

The petitioner seeks an exemption to allow type certification of the Cessna Model 525C airplanes with the current engine oil pressure and temperature displays.

[FR Doc. E9–30792 Filed 12–28–09; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
December 29, 2009

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 50 and 100
Criteria and Procedures for Proposed Assessment of Civil Penalties/Reporting and Recordkeeping: Immediate Notification of Accidents; Final Rule and Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 50 and 100

RIN 1219–AB63

Criteria and Procedures for Proposed Assessment of Civil Penalties/ Reporting and Recordkeeping: Immediate Notification of Accidents

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule makes nonsubstantive organizational changes to the Mine Safety and Health Administration's (MSHA's) existing regulations for reporting accidents and determining penalty amounts for failure to report certain accidents. These changes will allow MSHA to automate the Agency's assessment process for violations involving immediate notification of an accident. They will improve the efficiency and effectiveness of MSHA's assessment process.

DATES: This direct final rule is effective March 29, 2010, unless the Agency receives significant adverse comments by midnight Eastern Standard Time on March 1, 2010.

ADDRESSES: Comments must be identified with "RIN 1219–AB63" and may be sent to MSHA by any of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Electronic mail: zzMSHA-comments@dol.gov.* Include "RIN 1219–AB63" in the subject line of the message.
- *Facsimile:* 202–693–9441. Include "RIN 1219–AB63" in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Availability of Information

MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at *http://www.msha.gov* under the *Rules and Regs* link. Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

II. Direct Final Rule and Significant Adverse Comments

MSHA has determined that this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes that deal with MSHA's management of the processing of civil penalties. MSHA does not anticipate that this direct final rule will result in any changes in the way violations for failure to report certain accidents are evaluated or assessed. MSHA expects no opposition to the changes and no significant adverse comments. However, if MSHA receives a significant adverse comment, the Agency will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, MSHA will consider whether it warrants a substantive response in a notice and comment process.

Elsewhere in this issue of the **Federal Register**, MSHA is publishing a companion proposed rule to speed notice and comment rulemaking should the Agency withdraw this direct final rule. The companion proposal and the direct final rule are substantively identical. MSHA will consider comments to this direct final rule as comments to the companion proposed rule and *vice versa.*

III. Regulatory Background

On March 22, 2007, MSHA published a final rule on Criteria and Procedures for the Proposed Assessment of Civil Penalties (72 FR 13591). The final rule revised the Agency's civil penalty assessment regulations under 30 CFR part 100 and implemented the civil penalty provisions of sections 5 and 8 of the Mine Improvement and New Emergency Response (MINER) Act of 2006. Section 5 of the MINER Act specifies penalties of not less than $5,000 and not more than $60,000 for violations involving failure to report three categories of accidents: (1) Death of an individual at the mine; (2) injury of an individual at the mine which has a reasonable potential to cause death; or (3) entrapment of an individual at the mine which has a reasonable potential to cause death. MSHA included this MINER Act requirement in the special assessment provision of the existing civil penalty regulations. The special assessment process is MSHA's existing procedure for manually reviewing violations to determine civil penalties.

Under existing § 50.10, operators must report accidents within 15 minutes, once the operator knows or should know that the accident has occurred. The existing regulation does not distinguish between types of accidents, but includes the twelve categories of accidents as defined in § 50.2(h). Under the existing procedures for processing penalties, MSHA manually reviews every violation for failure to report an accident to identify the three categories of accidents for which the higher penalty is applicable.

IV. Section-by-Section Analysis

MSHA is changing the existing regulation addressing the immediate notification of accidents in § 50.10 to separately reflect the three categories of accidents in section 5 of the MINER Act, which require specific penalties for failure to report. Section 50.10 of this direct final rule, therefore, is changed to require that the operator immediately contact MSHA in the event of the following accidents: (1) Death of an individual at the mine; (2) injury of an individual at the mine which has a reasonable potential to cause death; (3) entrapment of an individual at the mine which has a reasonable potential to cause death; or (4) any other accident.

Under the direct final rule, by changing the immediate notification regulation to separately identify the categories of accidents that require penalties specified in section 5 of the MINER Act, MSHA will no longer have to manually review all failure to report violations. Instead, a citation will identify the type of accident as either § 50.10(a), (b), (c), or (d), which will allow MSHA to program its automated assessment system to assure that the higher penalties required under the MINER Act are assessed. Violations of

§ 50.10(a), (b), and (c) would automatically receive a proposed penalty of $5,000 or more, up to $60,000, under the assessment provision of § 100.4(c). Violations of § 50.10(d) would be subject to a regular assessment under § 100.3. It is important to note that the special assessment provision will continue to apply to failure to report violations when conditions warrant.

MSHA believes that this direct final rule provides the mining community with more transparency relative to violations involving failure to report accidents. Specifying the type of accident in the citation will make it readily apparent when the violation is subject to the higher penalty. In addition, automating proposed assessments for most violations for failure to report an accident will improve the efficiency and effectiveness of MSHA's assessment process.

This direct final rule redesignates existing special assessment provision § 100.5(f) as § 100.4(c), without change. The section heading of § 100.4 is changed to read, "Unwarrantable Failure and Immediate Notification." Because these categories of accidents are separately identified in the immediate notification regulation in § 50.10 of this final rule, MSHA no longer needs to manually review them under special assessment. As mentioned before, MSHA will continue to review these violations for a special assessment when conditions warrant.

V. Regulatory Analyses

A. Paperwork Reduction Act Statement

This final rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12866—Regulatory Planning and Review

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has determined that this direct final rule does not have an annual effect of $100 million or more on the economy; therefore, the rule is not an economically significant regulatory action under section 3(f)(1) of E.O. 12866.

The changes contained in this direct final rule are nonsubstantive and organizational in nature. MSHA does not anticipate that this direct final rule will result in any changes in the way violations for failure to report certain accidents are evaluated or assessed. The changes will facilitate more efficient use of MSHA's resources and administrative processes. The changes neither alter the compliance burden placed on mine operators nor impact the health or safety of miners.

List of Subjects

30 CFR Part 50

Investigations, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 100

Administrative practice and procedures, Mine safety and health, Penalties.

Dated: December 22, 2009.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA amends chapter I of title 30 of the Code of Federal Regulations as follows:

PART 50—NOTIFICATION, INVESTIGATION, REPORTS AND RECORDS OF ACCIDENTS, INJURIES, ILLNESSES, EMPLOYMENT, AND COAL PRODUCTION IN MINES

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

Authority: 29 U.S.C. 577(a); 30 U.S.C. 811, 813(j), 951, 957, 961.

■ 2. Revise § 50.10 to read as follows:

§ 50.10 Immediate notification.

The operator shall immediately contact MSHA at once without delay and within 15 minutes at the toll-free number, 1–800–746–1553, once the operator knows or should know that an accident has occurred involving:

(a) A death of an individual at the mine;

(b) An injury of an individual at the mine which has a reasonable potential to cause death;

(c) An entrapment of an individual at the mine which has a reasonable potential to cause death; or

(d) Any other accident.

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

■ 3. The authority citation for Part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

■ 4. In § 100.4, revise the section heading and add paragraph (c) to read as follows:

§ 100.4 Unwarrantable failure and immediate notification.

* * * * *

(c) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than $5,000 and not more than $60,000 for the following accidents:

(1) The death of an individual at the mine, or

(2) An injury or entrapment of an individual at the mine, which has a reasonable potential to cause death.

§ 100.5 [Amended]

■ 5. Amend § 100.5 by removing paragraph (f).

[FR Doc. E9–30608 Filed 12–28–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 50 and 100

RIN 1219–AB63

Criteria and Procedures for Proposed Assessment of Civil Penalties/ Reporting and Recordkeeping: Immediate Notification of Accidents

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to make nonsubstantive organizational changes to existing regulations for reporting accidents and determining penalty amounts for failure to report certain accidents. These changes would allow MSHA to automate the Agency's assessment process for violations involving immediate notification of an accident. They would improve the efficiency and effectiveness of MSHA's assessment process.

DATES: MSHA must receive comments by midnight Eastern Standard Time on March 1, 2010.

ADDRESSES: Comments must be identified with "RIN 1219–AB63" and may be sent to MSHA by any of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Electronic mail: zzMSHA-comments@dol.gov.* Include "RIN 1219–AB63" in the subject line of the message.
- *Facsimile:* 202–693–9441. Include "RIN 1219–AB63" in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Availability of Information

MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at *http://www.msha.gov* under the *Rules and Regs* link. Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register.** To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

II. Companion Proposed Rule, Direct Final Rule, and Significant Adverse Comments

Elsewhere in this issue of the **Federal Register,** MSHA is publishing a direct final rule. This companion proposed rule and the direct final rule are substantively identical. MSHA is publishing this companion proposed rule to speed notice and comment rulemaking should the Agency withdraw the direct final rule. MSHA will consider comments to this companion proposed rule as comments to the direct final rule and *vice versa.*

MSHA has determined that the changes in this proposed rule would meet the criteria for a direct final rule because they involve nonsubstantive changes that deal with MSHA's management of the processing of civil penalties. MSHA does not anticipate that this proposed rule would result in any changes in the way violations for failure to report certain accidents are evaluated or assessed. MSHA expects no opposition to the changes and no significant adverse comments. However, if MSHA receives a significant adverse comment, the Agency will withdraw the direct final rule by publishing a notice in the **Federal Register.**

A significant adverse comment is one that explains:

(1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or

(2) Why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the direct final rule, MSHA will consider whether it warrants a substantive response in a notice and comment process.

III. Regulatory Background

On March 22, 2007, MSHA published a final rule on Criteria and Procedures for the Proposed Assessment of Civil Penalties (72 FR 13591). The final rule revised the Agency's civil penalty assessment regulations under 30 CFR part 100 and implemented the civil penalty provisions of sections 5 and 8 of the Mine Improvement and New Emergency Response (MINER) Act of 2006. Section 5 of the MINER Act specifies penalties of not less than $5,000 and not more than $60,000 for violations involving failure to report three categories of accidents: (1) Death of an individual at the mine; (2) injury of an individual at the mine which has a reasonable potential to cause death; or (3) entrapment of an individual at the mine which has a reasonable potential to cause death. MSHA included this MINER Act requirement in the special assessment provision of the existing civil penalty regulations. The special assessment process is MSHA's existing procedure for manually reviewing violations to determine civil penalties.

Under existing § 50.10, operators must report accidents within 15 minutes, once the operator knows or should know that the accident has occurred. The existing regulation does not distinguish between types of accidents, but includes the twelve categories of accidents as defined in § 50.2(h). Under the existing procedures for processing penalties, MSHA manually reviews every violation for failure to report an accident to identify the three categories of accidents for which the higher penalty is applicable.

IV. Section-by-Section Analysis

MSHA is proposing to change the existing regulation addressing the immediate notification of accidents in § 50.10 to separately reflect the three categories of accidents in section 5 of the MINER Act, which require specific penalties for failure to report. This proposed rule would change existing § 50.10 to require that the operator immediately contact MSHA in the event of the following accidents: (1) Death of an individual at the mine; (2) injury of an individual at the mine which has a reasonable potential to cause death; (3) entrapment of an individual at the mine which has a reasonable potential to cause death; or (4) any other accident.

Under the proposed rule, by changing the immediate notification regulation to separately identify the categories of accidents that require penalties specified in section 5 of the MINER Act, MSHA would no longer have to manually review all failure to report violations. Instead, a citation would identify the type of accident as either § 50.10(a), (b), (c), or (d), which would allow MSHA to program its automated assessment system to assure that the higher penalties required under the MINER Act are assessed. Violations of

§ 50.10(a), (b), and (c) would automatically receive a proposed penalty of $5,000 or more, up to $60,000, under the regular assessment provision of § 100.3. Violations of § 50.10(d) would be subject to a regular assessment under § 100.3. It is important to note that the special assessment provision would continue to apply to failure to report violations when conditions warrant.

MSHA believes that this proposed rule would provide the mining community with more transparency relative to violations involving failure to report accidents. Specifying the type of accident in the citation would make it readily apparent when the violation would be subject to the higher penalty. In addition, automating proposed assessments for most violations for failure to report an accident would improve the efficiency and effectiveness of MSHA's assessment process.

This proposed rule would redesignate existing special assessment provision § 100.5(f) as § 100.4(c), without change. The section heading of § 100.4 would be changed to read, "Unwarrantable Failure and Immediate Notification." Because these categories of accidents would be separately identified in the immediate notification regulation in § 50.10 of this proposed rule, MSHA would no longer need to manually review them under special assessment. As mentioned before, MSHA would continue to review these violations for a special assessment when conditions warrant.

V. Regulatory Analyses

A. Paperwork Reduction Act Statement

This proposed rule would not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12866—Regulatory Planning and Review

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has determined that this proposed rule would not have an annual effect of $100 million or more on the economy; therefore, the rule would not be an economically significant regulatory action under section 3(f)(1) of E.O. 12866.

The changes contained in this proposed rule are nonsubstantive and organizational in nature. MSHA does not anticipate that this proposed rule would result in any changes in the way violations for failure to report certain accidents are evaluated or assessed. The changes would facilitate more efficient use of MSHA's resources and administrative processes. The changes would neither alter the compliance burden placed on mine operators nor impact the health or safety of miners.

List of Subjects

30 CFR Part 50

Investigations, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 100

Administrative practice and procedures, Mine safety and health, Penalties.

Dated: December 22, 2009.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is proposing to amend chapter I of title 30 of the Code of Federal Regulations as follows:

PART 50—NOTIFICATION, INVESTIGATION, REPORTS AND RECORDS OF ACCIDENTS, INJURIES, ILLNESSES, EMPLOYMENT, AND COAL PRODUCTION IN MINES

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

Authority: 29 U.S.C. 577(a); 30 U.S.C. 811, 813(j), 951, 957, 961.

2. Revise § 50.10 to read as follows:

§ 50.10 Immediate notification.

The operator shall immediately contact MSHA at once without delay and within 15 minutes at the toll-free number, 1–800–746–1553, once the operator knows or should know that an accident has occurred involving:

(a) A death of an individual at the mine;

(b) An injury of an individual at the mine which has a reasonable potential to cause death;

(c) An entrapment of an individual at the mine which has a reasonable potential to cause death; or

(d) Any other accident.

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

3. The authority citation for Part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

4. In § 100.4, revise the section heading and add paragraph (c) to read as follows:

§ 100.4 Unwarrantable failure and immediate notification.

* * * * *

(c) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than $5,000 and not more than $60,000 for the following accidents:

(1) The death of an individual at the mine, or

(2) An injury or entrapment of an individual at the mine, which has a reasonable potential to cause death.

§ 100.5 [Amended]

5. Amend § 100.5 by removing paragraph (f).

[FR Doc. E9–30607 Filed 12–28–09; 8:45 am]

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Federal Register

Tuesday,
December 29, 2009

Part III

Department of Housing and Urban Development

24 CFR Parts 5 and 908
Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System—Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 908

[Docket No. FR–5351–F–02]

RIN 2501–AD48

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System—Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On January 27, 2009, HUD issued a final rule that revised the regulations for its public and assisted housing programs to require the use of the Enterprise Income Verification system by public housing agencies and multifamily housing owners and management agents when verifying the employment and income of program participants. Consistent with Administration policy to review rules issued during the transition from one Administration to another, HUD re-opened the January 27, 2009, final rule for public comment, and delayed the effective date of the regulatory amendments to January 31, 2010. The public comments received in response to solicitation of comments on the January 27, 2009, final rule highlighted certain regulatory provisions requiring further clarification and others extraneous to the purpose of the rule, which was full implementation of the Enterprise Income Verification (EIV) system. On October 15, 2009, HUD published a proposed rule soliciting public comment on proposed revisions to the January 27, 2009, final rule that would clarify certain provisions of the January 27, 2009, final rule and return other regulatory provisions to their pre-January 2009, final rule content.

This final rule follows publication of the October 15, 2009, proposed rule, and takes into consideration the public comments received on the proposed rule. After careful consideration of the issues raised by the commenters, HUD has decided to make three minor technical changes to the October 15, 2009, proposed rule to clarify the scope of the provision governing termination of assistance, and the scope of the Social Security number (SSN) disclosure requirements applicable to new household members under the age of 6 and current participants 62 years of age or older.

DATES: *Effective Date:* January 31, 2010.

FOR FURTHER INFORMATION CONTACT: For Office of Public and Indian Housing programs, contact Nicole Faison, Program Advisor for the Office of Public Housing and Voucher Programs, Department of Housing and Urban Development, 451 7th Street, SW., Room 4214, Washington, DC 20410, telephone number 202–402–4267. For Office of Housing Programs, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 7th Street, SW., Room 6138, Washington, DC 20410, telephone number 202–402–2473. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On January 27, 2009, at 74 FR 4832, HUD published a final rule, entitled "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs" (January Final Rule). The January Final Rule revised HUD's public and assisted housing program regulations to implement the upfront income verification process for program participants and to require the use of HUD's EIV system by public housing agencies (PHAs) and owners and management agents (O/As) (collectively referred to in this final rule as "processing entities"). The January Final Rule followed publication of a June 19, 2007 proposed rule, at 72 FR 33844, and took into consideration the public comments received on the June 2007 proposed rule.

The January Final Rule was originally scheduled to become effective on March 30, 2009. On February 11, 2009, at 74 FR 6839, HUD published a notice in the **Federal Register** seeking public comment on whether to delay the effective date of the January Final Rule. The February 11, 2009, notice was issued in accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review" and subsequently published in the **Federal Register** on January 26, 2009 (74 FR 4435). The notice explained that HUD was considering a temporary delay in the effective date to allow the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff memorandum. In addition to soliciting comments specifically on delaying the effective date, the February 11, 2009, notice also requested comment generally on the January Final Rule.

The comment period on the February 11, 2009, notice closed on March 13, 2009. HUD received 50 public comments. Comments were submitted by a variety of organizations, including PHAs, property owners, management agents, legal aid organizations, community development organizations, and public interest organizations. The majority of comments were supportive of a delayed effective date. The commenters not only supported a delay, but sought clarification or changes by HUD of certain aspects of the January Final Rule, about which questions and comments were raised. Among other issues, commenters requested that HUD address the need to revise the definition of "annual income," and to clarify the verification procedures applicable to noncitizens and participants who may experience difficulty obtaining SSNs for their children.

Following publication of the February 11, 2009, **Federal Register** notice, HUD issued a final rule on March 27, 2009 (74 FR 13339), that extended the effective date of the January Final Rule to September 30, 2009. The purpose of this extension was to provide HUD with time to review the public comments received in response to the February 11, 2009, notice. On August 28, 2009, at 74 FR 44285, HUD published a final rule that further extended the effective date of the January Final Rule to January 31, 2010. The further extension was undertaken to allow the two HUD Assistant Secretaries, who have responsibility for the programs affected by the rule and were then only recently confirmed, sufficient time to review the subject matter of the January Final Rule, and to review and consider the public comments received on HUD's February 11, 2009, **Federal Register** notice.

II. The October 15, 2009, Proposed Rule

On October 15, 2009, at 74 FR 52931, HUD published a proposed rule soliciting public comment on proposed regulatory revisions to the January Final Rule to address the issues and concerns raised by the public commenters on the January Final Rule. The regulatory changes proposed by HUD in the October 15, 2009, proposed rule were few and the changes focused on addressing issues raised by the commenters regarding the purpose of the January Final Rule, which is full implementation of the EIV system. Other issues raised by the commenters but extraneous to EIV implementation were deferred for future consideration. Specifically, the Department proposed to withdraw the January Final Rule

amendments to the definition of annual income and to HUD's noncitizens. regulations and return these provisions to their pre-January 2009 content.

The October 15, 2009, proposed rule reiterated HUD's commitment to the full and effective implementation of the EIV system. The most significant regulatory changes proposed by the October 15, 2009, rule were designed to simplify the SSN disclosure and verification processes, to the extent feasible, and consistent with maintaining confidentiality of these processes. Specifically, HUD proposed to alleviate the potential burdens imposed on seniors by exempting current participants who are 62 years of age or older from having to disclose a SSN. HUD also proposed to reduce administrative burden by exempting all participants, regardless of age, who have previously disclosed a valid SSN and have not been issued a new SSN from having to re-provide their SSN for duplicative verification. The proposed rule would also permit compliance with the SSN disclosure requirements through submission of a valid SSN card issued by the Social Security Administration or an original document issued by a Federal or State government agency that provides the SSN of the individual along with other identifying information. Further, HUD proposed to revise and clarify the applicability of the SSN disclosure requirements for households adding new household members under the age of 6. The proposed rule would also provide processing entities with additional flexibility to determine the timing of disclosure of a newly assigned SSN, and to defer the termination of a participant who fails to comply with the SSN disclosure requirements due to unforeseen circumstances outside the control of the household.

Interested readers are referred to the preamble of the October 15, 2009, proposed rule for additional information regarding the proposed regulatory amendments to the January Final Rule.

III. This Final Rule; Technical Changes to October 15, 2009, Proposed Rule

This final rule takes into consideration the public comments received on the October 15, 2009, proposed rule. The public comment period on the proposed rule closed on November 16, 2009, and HUD received 21 comments. Comments were submitted by PHAs, multifamily property managers, national organizations representing PHAs and O/As, housing service providers for the aging, legal aid organizations, and private individuals. After careful consideration of the issues raised by the commenters, HUD decided to make three minor technical changes to the October 15, 2009, proposed rule. Specifically, this final rule clarifies that new household members under the age of 6 who already have a SSN are subject to the same disclosure and verification requirements as new household members who are at least 6 years of age. The final rule also clarifies that, subject to the exemptions allowed, an entire household may lose its tenancy if one member of the household does not comply with the SSN disclosure requirements. This was the position that HUD took in the final rule issued on January 27, 2009, and was not proposed to be changed by the October 15, 2009, proposed rule. HUD emphasizes, however, that the possible loss of tenancy is subject to the exemptions provided in HUD's regulations. HUD has also taken the opportunity afforded by this final rule to clarify that a participant who qualifies for the senior exemption to the SSN disclosure requirements is exempt from the SSN requirements for all future income examinations, even if the senior moves to a new HUD-assisted property.

The regulatory amendments made by this final rule supersede provisions of the January Final Rule that would otherwise take effect on January 31, 2010. The following section of the preamble presents a summary of the significant issues raised by the public commenters on the October 15, 2009, proposed rule and HUD's responses to these issues.

IV. Discussion of the Public Comments Received on the October 15, 2009, Proposed Rule

The majority of the commenters expressed their support for the regulatory changes proposed by the October 15, 2009, proposed rule, and particularly for the EIV system. In general, commenters stated that the EIV system has been an increasingly valuable tool to processing entities, by improving the accuracy of income and rent determinations, uncovering potential fraud, and reducing administrative overhead in assisted housing programs.

Commenters expressed their support for delay in the EIV implementation while HUD took the time to clarify other issues addressed by the January Final Rule. Two commenters, however, encouraged HUD to move forward with a final rule that would address the definition of "annual income." The commenters stated that they support the definition of "annual income" in the January Final Rule. The commenters asked HUD not to wait on statutory changes, for which legislative proposals have been offered for the past 6 years but none have been enacted into law. The commenters encouraged HUD to commence rulemaking on the subject of annual income as expeditiously as possible. HUD is aware of the need to address the issue of annual income and intends to address this issue.

Another comment that was expressed by housing provider commenters that use EIV was on the need for additional guidance and attention by HUD on several aspects of the EIV system. HUD will be providing such guidance to help facilitate mandatory use of EIV in the near future.

A. Comments Regarding EIV Implementation

Comment: Date of mandatory use of EIV. One commenter stated that HUD's January Final Rule was clear on all issues and that EIV implementation should not have been delayed. The commenter stated that the delay in implementation places taxpayer dollars at risk because of the higher possibility that improper subsidies will occur without using EIV. Other commenters, however, supported further delay of mandatory implementation of EIV. One commenter suggested that it might be advisable to further delay the EIV implementation date, given the delays in the release of the long-expected revisions to the current EIV guidance and the need for new training on system use. Another commenter stated that the rule should allow for PHAs to continue exercising the discretion to use EIV and should not make EIV mandatory. The commenter stated that PHAs have found certain non-EIV resources to be more reliable and accurate than EIV in verifying income. The commenter stated that there are still problems with the EIV system and that by mandating use of EIV, a failure on the part of a PHA to use EIV will subject the PHA to sanctions and adverse Office of Inspector General audit findings. The commenter stated that the best solution is to continue to allow PHAs the discretion, but no mandate to use EIV. Another commenter expressed similar concerns about mandating use of EIV by O/As. Another commenter, also concerned with the impact of mandatory EIV use by O/As, stated that HUD has underestimated the success of EIV. This commenter states that HUD should develop an escalated support structure for O/As who still are struggling to get access to secure systems, to EIV, or to working user names and passwords, including a key group of representatives to handle

advanced support issues. This commenter also offered a list of subjects related to EIV on which HUD should provide additional guidance. Another commenter stated that HUD's EIV system cannot serve the functions required under the rule.

HUD Response: HUD remains of the position that mandatory use of EIV, commencing on January 31, 2010, is the proper course of action to follow. For the reasons expressed by the majority of the commenters, the use of upfront income verification will serve as a valuable resource in verifying employment and income while helping to identify and cure inaccuracies in public and assisted housing subsidy determinations, this benefitting public and assisted housing providers, tenants, and taxpayers. Additionally, HUD has already provided a substantial period for affected parties and interested members of the public to comment on the EIV system, and a further delay in implementation of the EIV system is without satisfactory justification. Having said that, however, HUD is cognizant that, as with the use of any information system, improvements will be needed and features can be enhanced, and that users of the system will require ongoing education and guidance. HUD is committed to having the EIV system be as efficient and effective as possible and to making changes that will achieve this objective. As noted earlier, HUD is also committed to issuing guidance on EIV and upfront verification, as well as to continuing to provide the training necessary to ensure that users are familiar with, and capable of successfully implementing, the EIV system.

Comment: Clarify meaning of use of EIV system in its entirety. Several commenters requested that HUD clarify the meaning of using EIV "in its entirety." One of the commenters stated that if processing entities are required to use EIV "in its entirety" and be sanctioned for failing to do so, HUD needs to better explain the meaning of the phrase "in its entirety." The commenter suggested that HUD make the requested administrative guidance easily accessible to processing entities, such as by posting it on HUD's Web site. "If not, "the commenter wrote, "compliance with the requirement will be difficult and enforcement may be arbitrary." Similar to this comment, but expressed slightly differently, two commenters requested that the final rule clearly identify each stage for which EIV is required; that is, whether EIV use is mandatory only for initial admission, or if it is also mandatory for annual reexaminations or interim reexaminations. One commenter stated that housing providers currently cannot access EIV for applicant households prior to admission, and that verification is available only after an applicant household is determined eligible for housing assistance. The reason that such information is not available is that information has not been submitted into the Public and Indian Housing Information Center (PIC). With respect to entities' responsibilities for implementing EIV, a commenter stated that, to avoid confusion, the final rule should more clearly differentiate between the multifamily Section 8 programs in 24 CFR part 880, 881, 883, 884, 886, and 891, and the role of PHAs in the Housing Choice Voucher program (24 CFR part 982). The commenter states that, in the latter program, the PHA is the processing entity, while in the former programs the PHA is not. The commenter stated that it is important for the final rule to clearly address the roles and responsibilities assigned to PHAs, O/As, and contract administrators.

HUD Response: Use of EIV in its entirety means that EIV is required by the PHA or O/A to verify the employment and income of existing tenants at the time of all mandatory reexaminations and recertifications. In addition, the PHA or O/A must use other reports in EIV such as the Failed Verification Report, the Deceased Tenant Report, the Multiple Subsidy Report, etc., at various times to reduce administrative and subsidy payment errors. The inclusion of the "in its entirety" language was in response to commenters on the January 2009 Final Rule who questioned whether the use of the EIV system was required only for income verification with respect to determining eligibility for admission. As noted in the preamble to the October 15, 2009, proposed rule, HUD clarified that processing entities "must use the EIV system in its entirety as a third party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income and also to reduce administrative and subsidy payment errors in accordance with HUD administrative guidance" (74 FR 52931, 52934 first column).

With respect to initial admission, EIV cannot be used by processing entities to verify an applicant's income, since form HUD–50058 or HUD–5009 is not transmitted to HUD until after the family is admitted to the program. HUD will issue administrative guidance with respect to the timeframe for consulting the EIV system once the form HUD–50058 or HUD–50059 has been transmitted. This will allow processing entities to promptly follow up with the family to discuss, in a timely manner, any EIV-noted disparities in reported family employment, income, identity, or receipt of duplicate rental assistance and make any necessary subsidy adjustments based on confirmed information that may not have been reported or may have been understated by the family. HUD obtains income information for all newly admitted families within 60 days of receiving the form HUD–50058 or HUD–50059 from the processing entities.

HUD believes that the final rule is clear on the roles and responsibilities of the processing entities that are charged with using EIV, but will publish additional administrative guidance that outlines the requirements for the use of EIV by PHAs, O/As, and contract administrators.

Comment: Compatibility of EIV with non-HUD programs. Two commenters expressed concern with the reliance on EIV when HUD's housing programs are combined with other housing programs that rely on HUD income determinations, such as low-income housing tax credits (LIHTCs). The commenters expressed concern that non-HUD providers will not be able to use the EIV data to which HUD housing providers have access.

HUD Response: Use of EIV data is available, and limited to, the processing entity (and their hired management agents) who have transmitted a form HUD–50058 and HUD–50059 to the PIC and Tenant Rental Assistance Certification System (TRACS), respectively.

Disclosing EIV information to O/As for use under the LIHTC program or the Rural Housing Service (RHS) Section 515 program is not allowed since neither the Internal Revenue Service nor the RHS are a party to the computer matching agreements that HUD has with the Department of Health and Human Services and the Social Security Administration, which provide the income and benefit data in EIV. The fact that there is financing through other federal agencies involved in a particular property under one of the authorized HUD programs does not then permit that federal agency to use or view information in the EIV system that is covered by the computer matching agreements.

Comment: EIV should not be relied upon for third party verification. Several commenters advised of difficulties using the EIV system as a third party source to verify employment and income. The commenters stated that the data available in EIV is frequently outdated, in some instances over 6 months old.

One commenter stated that EIV was not designed to be the sole, main, or primary source of income verification. The commenter stated that the final rule should identify circumstances under which independent third party verification must be used to complement upfront verification of income using the EIV system, such as when a tenant disputes the EIV data or a PHA believes it needs additional information. Other commenters stated that the mandate to use EIV would result in processing entities relying on EIV data they know to be inaccurate, rather than using other, more accurate sources of income and rent data in order to avoid HUD findings of noncompliance with regulatory requirements or failure to properly manage assisted housing programs. The commenters stated that, rather than requiring use of EIV, EIV should simply be another tool available to housing providers for verifying the completeness and accuracy of reported income.

HUD Response: As stated earlier, HUD is aware that EIV is not a perfect system but EIV has been found to be an effective verification system. EIV has been praised by the Government Accountability Office (GAO) as "an important part of [HUD's] plan for reducing improper rental assistance payments" and as providing processing entities "with an efficient method for validating the incomes of families receiving assistance."[1] As with any electronic database, there may be, at times, a certain amount of delay between actual changes in income and employment information and updates to the EIV data. Although HUD has no control over the time lag in these data, which are provided by other sources, the Department understands the concerns raised by the commenters. The Department has and will continue to issue guidance on how to use the data in EIV as third party verification despite the time lag.

Comment: Additional resources for successful EIV implementation. One commenter stated that, while EIV is a valuable tool for combating fraud, waste, and abuse, EIV has increased the administrative workload on processing entities. The commenter stated that HUD should "make available grants to PHAs that are earmarked for providing additional resources and investigative/paralegal staffing for combating fraud and program abuse."

HUD Response: HUD disagrees with the commenter that use of the EIV system increases administrative workload. EIV is an automated system that is free to the user and available 24 hours a day, 7 days a week. In contrast to a manual system, EIV has been determined to be the most effective, efficient, and least burdensome way to verify income. Further, HUD will be issuing guidance to processing entities on how to use EIV as effectively and efficiently as possible.

Comment: EIV may negatively affect HUD auditors. One commenter stated that the stringency of the EIV system may interfere with an auditor's access to tenant income and employment information in the testing of lease files as required by the HUD Consolidated Audit Guide. The commenter stated that the choices available to auditors would be to gain EIV access as a "Non-HUD User," or view the required information in a very limited fashion. The commenter stated that, while gaining access as a Non-HUD User affords the maximum flexibility in viewing the information, there are large administrative burdens involved, the costs of which cannot be passed on. On the other hand, the commenter stated, the second, less burdensome option limits access to hardcopy files. According to the commenter, these files may be located at multiple property sites and it is unclear whether the files may be transmitted between sites. The commenter stated that auditors would incur prohibitive costs if required to visit all project sites to view hardcopy files. The commenter urged HUD to devise another way for auditors to access the necessary EIV data, and to clarify the protocols regarding the copying and transmittal of this sensitive information.

HUD Response: HUD will take under advisement the suggestions made by the commenter and review ways to facilitate the vital work performed by auditors. HUD notes that auditors are authorized to view EIV records contained in tenant files for the purpose of determining program compliance; however, third party auditors are not authorized to obtain access to EIV. The requirements governing the accessing of EIV data by independent public auditors have been imposed by the entities with which HUD has the computer matching agreements. In addition, HUD has a duty to safeguard the integrity of the EIV system and to protect the confidentiality of the income and employment data contained in the system. HUD takes this responsibility seriously and will ensure that any access to EIV data contains appropriate privacy protections.

B. Comments Regarding SSN Disclosure and Verification Requirements

1. General Comments on Scope, Applicability of and Exemption of SSN Requirements

Comment: Authority to require SSN disclosure. A few commenters questioned HUD's authority to require SSN disclosure as a condition of participation in federally assisted housing programs. The commenters stated that HUD has not provided an analysis to support its position and that there is no statutory authorization for the requirement of having a SSN as a condition for receipt of benefits. The commenters stated that, while HUD has authority to deny housing assistance to people who have been issued SSNs and failed to disclose them, HUD has pointed to no authority allowing it to deny assistance to individuals who have never had SSNs assigned, and where the individual certified to that effect. The commenters requested that the final rule retain the ability for individuals who have not had a SSN assigned to certify to that fact.

HUD Response: The SSN disclosure and verification requirements made effective by this final rule are consistent with the authorizing statutes for the various HUD programs affected by the rule, and are issued pursuant to the general rulemaking authority granted HUD by section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)). Section 7(d) provides the Secretary with the authority to "make such rules and regulations as may be necessary to carry out his functions, powers, and duties." The statutes governing HUD's housing assistance programs establish criteria for those who seek to reside in such housing and, for all of those programs, eligibility criteria include income requirements and citizenship and legal immigration requirements, at a minimum. HUD has an obligation to ensure that those receiving housing assistance meet the statutory criteria, and to minimize any opportunity for fraud, waste and abuse. Contrary to the statements made by the commenters that HUD has failed to provide a need for the SSN requirements, HUD has explained its rationale for the modified disclosure and verification procedures in the preambles to the various rules associated with this rulemaking, including the preamble to this final rule. The EIV system will help to identify and cure inaccuracies in public and assisted housing subsidy determinations, thus benefitting public and assisted housing providers, tenants, and taxpayers. The EIV system relies on the inputting of a SSN to verify income and employment

[1] GAO, *High Risk Series: An Update*, GAO–07–310 (Washington, DC, January 2007), at page 14.

data. Accordingly, the SSN disclosure requirements are an essential component to the full and successful implementation of EIV. Contrary to the belief of the commenters, a certification to the lack of a SSN has never, on its own, been acceptable to permit an individual to become a participant in a HUD rental assistance program.

Notwithstanding the need for SSN disclosure, HUD is cognizant of the potential hardship that the requirements may impose on some households and has attempted, where possible, to mitigate such burden. HUD believes that the final rule strikes the appropriate balance between the need to fully implement EIV and avoiding the imposition of undue regulatory burden.

As discussed more fully elsewhere in this preamble, this final rule exempts the elderly residing in HUD subsidized housing from having to disclose a SSN and has extended the applicable disclosure deadlines for households adding new children or who fail to comply with the SSN requirements due to unforeseen circumstances.

Comment: Allow flexibility in verification for unexpected circumstances. One commenter stated that the costs and potential incorrect terminations of assistance outweigh the potential benefits of a strict identity verification system. HUD should evaluate the fact that, in many cases, the non-disclosure is justifiable and that non-verified tenants make up a very small percentage of the total, against the harm caused by rigid barriers to housing, such as increased homelessness. The commenter states that eligible household members may lack a SSN because they are ineligible for a SSN or face some other logistical barrier to getting one. The commenter stated that examples of such barriers include: victims of human trafficking who are eligible for benefits under 22 U.S.C. 7105(b); individuals granted withholding of deportation; children of immigrant families, and other similar examples given in the comment. The commenter stated that HUD should allow a broader range of documentation to allow for such situations. Related to the request to not establish a strict identity verification system, the commenter stated that the rule should make clear that prorated assistance is available to families who are unable to disclose a SSN. The commenter also stated that participants should not be punished for circumstances beyond their control, and that the language in paragraph (c)(2) of § 5.218 (Penalties for failing to disclose and verify Social Security and Employer Identification Numbers), which states that the housing provider "may defer termination," should be changed to "must defer termination."

HUD Response: HUD disagrees that the verification system being established by this rulemaking is strictly an identity verification system, and HUD has allowed flexibility in several areas where HUD found it could provide flexibility, yet maintain the need to ensure that individuals and families being provided housing assistance under HUD programs meet the eligibility requirements for these programs. With respect to the issue of proration of assistance, HUD has not proposed to change its regulations governing proration of assistance. Proration of assistance applies only to those who do not contend eligible immigration status. There is no proration of assistance for noncompliance with the SSN disclosure requirements. With respect to penalties, HUD believes it is important to leave discretion with the processing entities, who are in the best position to determine, given the circumstances confronted, when deferral of termination is warranted.

Comment: Definition of "valid SSN." One commenter wrote that the term "valid SSN" should be defined as a SSN that has not been identified as invalid by the EIV system.

HUD Response: HUD's position is that the meaning of the term "valid SSN" is clear from the context of the regulatory language, and a codified definition is not necessary. The commenter correctly notes that a valid SSN is one that has not been identified as invalid by the EIV system, either when the SSN is initially disclosed or during a subsequent examination conducted by the processing entity.

Comment: Does a household include live-in aides and foster children? One commenter asked whether live-in aides and foster children are considered household members subject to the SSN disclosure and verification requirements. Another commenter stated that there should be an exemption for foster children because fostering agencies will not always disclose the SSN.

HUD Response: Live-in aides and foster children are subject to the SSN requirements.

Comment: Disclosure of newly assigned SSN. One commenter suggested the removal of the language providing that a newly assigned SSN must be disclosed "at such earlier time specified by the processing entity" (§ 5.216(e)(2)(iii)). The commenter stated that the processing entity should not have the ability to determine when a newly assigned SSN should be disclosed.

HUD Response: Section 5.216(e)(2), to which the commenter objects, requires that a newly assigned SSN be disclosed no later than the next regularly scheduled reexamination or recertification of income and family composition, but provides processing entities with the discretion to require disclosure at some earlier time. This regulatory section is designed to provide processing entities with the operational flexibility to determine when the disclosure of a newly assigned SSN is less disruptive to households and most beneficial to the administration of the housing assistance—which HUD maintains is appropriate.

Comment: Clarify consequences to households if one member of household does not comply with SSN requirements. One commenter asked HUD to clarify, at the final rule stage, if an entire household loses its tenancy if one member of the household does not comply with SSN requirements.

HUD Response: Subject to the exemptions allowed, an entire household may lose its tenancy if one member of the household does not comply with the SSN disclosure requirements. HUD has taken the opportunity afforded by this final rule to clarify this issue in the regulatory text. Specifically, § 5.218(c), regarding the termination of assistance and tenancy, has been revised to clarify that the "participant and the participant's household" are subject to termination for failure to comply with the SSN requirements. As noted earlier in this preamble, the possibility that an entire household may lose its tenancy if one member of the household does not comply with the SSN disclosure requirements was part of HUD's January 27, 2009, final rule (74 FR 4832), and was not proposed to be changed by HUD's October 15, 2009, proposed rule. (Please see HUD's response to a comment about loss of tenancy by a household that was provided in the January 27, 2009, final rule at 74 FR 4833, third column.)

2. Comments Regarding Individuals Who Do Not Contend Eligible Immigration Status

Comment: Such individuals should not be exempt from SSN disclosure requirements. One commenter objected to the inapplicability of the SSN disclosure requirements to persons who do not contend legal immigration status. The commenter stated that such exception unjustly requires United States citizens to undergo more stringent verification procedures than

individuals who lack the legal right to reside in the U.S. The commenter suggested that the final rule provide a comprehensive list of documents that will be used to verify citizenship.

HUD Response: The commenter is incorrect in asserting that the exception to the SSN requirements protects individuals who lack the legal right to reside in the U.S. The exception applies solely to individuals who do not contend legal immigration status (that is, the legal immigration status required by the Housing and Community Development Act of 1980, 42 U.S.C. 1436a)[2]), and therefore are ineligible for HUD housing assistance. Individuals who do not contend legal immigration status may include persons lawfully residing in the U.S.; for example, persons for whom entry was provided on student or work visas, but who do not meet the legal residency categories of the Housing and Community Development Act of 1980. Individuals who do not contend legal immigration status for HUD subsidized housing may reside in HUD subsidized housing only as members of a family who contend and are confirmed to be U.S. citizens or have the legal immigration status required by the Housing and Community Development Act of 1980.

HUD is not revising the rule in response to the request to provide a comprehensive list of documents to verify citizenship. This final rule is solely directed at full implementation of EIV, and is not directed to revising or updating HUD's noncitizens regulations. Although the January Final Rule would have made several revisions to the documentation requirements in HUD's noncitizens regulations, those amendments were found to be extraneous and consequently distracting to HUD's goal of full EIV implementation. Given the sensitivity and significance of the issues involved, HUD has withdrawn these amendments, leaving in place the noncitizens requirements as codified prior to revision by the January Final Rule. Any changes to HUD's noncitizen regulations are more appropriately undertaken by separate rulemaking that focuses exclusively on these policies and providing the public with additional opportunity to comment.

Comment: Exempt individuals not contending eligible immigration status from the penalties authorized by § 5.218. One commenter stated that the penalties of § 5.218 (Penalties for failing to disclose and verify Social Security and Employer Identification numbers) should be inapplicable to applicants and participants who do not contend eligible immigration status under 24 CFR part 5, subpart E.

HUD Response: Since individuals who do not contend eligible immigration status under subpart E are exempt from the requirement to disclose a SSN, HUD believes it is clear that the penalties for failure to disclose a SSN are not applicable to any individual for whom an exemption applies.

Comment: Clarify treatment of the Certificate of Naturalization. One commenter asked HUD why, given the protections provided by EIV, does the Certificate of Naturalization say "Do Not Copy." The commenter stated, "With the added security EIV now provides by matching identity with the SSA, it seems odd that we now also need to increase our precautions as well."

HUD Response: Whenever the issue of information pertaining to personal identity is involved, HUD believes that all measures directed to maintaining confidentiality should be followed.

3. Comments Regarding the "Grandfathering" of Elderly Participants

Comment: The provision regarding the "grandfathering" of seniors is contradictory. One commenter asked that HUD's final rule clarify whether seniors, 62 years of age or older, residing in HUD subsidized housing as of January 31, 2010, are exempt from the requirements. Another commenter stated that the seniors exemption that HUD provides in the rule should be continued beyond January 31, 2010, and that, in fact, HUD could not set a cut-off date of January 31, 2010, for the seniors exemption because the Housing and Community Development Act of 1980 at 42 U.S.C. 1436a(d)(1)–(2) allows seniors to self-certify. Another commenter stated that § 5.216(e), which addresses the "grandfathering" of persons age 62 and older with respect to disclosure of SSNs, is contradictory, in that it states that current participants age 62 and older are not required to disclose SSNs, but then states that only those individuals who have previously disclosed a valid SSN are exempted from the disclosure requirements.

HUD Response: The exemption for seniors provided by the rule is applicable only to participants who are 62 years of age or older on January 31, 2010. Individuals reaching the age of 62 years after January 31, 2010, will be subject to the SSN disclosure requirements. With respect to the commenter who suggested that HUD was statutorily prohibited from requiring a senior to disclose a SSN, the statute to which HUD refers is the Housing and Community Development Act of 1980, which governs housing assistance for immigrants. The provision to which the commenter specifically refers allows individuals not claiming legal immigration status for housing assistance to not declare eligibility for this assistance. This provision is already reflected in HUD's regulations. With respect to the final issue raised by the third commenter, the commenter incorrectly reads § 5.216(e). As proposed in the October 15, 2009, rule, this final rule exempts current program participants who are 62 years of age or older as of January 31, 2010, from having to disclose a SSN. The exception applies whether or not the participant has previously disclosed a SSN. Section 5.216 (e)(1)(i) explicitly provides that the SSN disclosure requirements apply to "[e]ach participant, *except those age 62 or older as of January 31, 2010*" (emphasis added). Section 5.216(e) then provides an additional exemption for current participants, regardless of age, who previously have disclosed a valid SSN. These individuals are also excused from having to re-provide their SSN for duplicative verification.

Comment: All seniors—whether current participants or applicants—should be exempted from SSN disclosure. Three commenters suggested that HUD expand the exemption for seniors 62 years of age and older to include applicants, as well as current program participants. The commenters stated that the potential burdens of producing a SSN, which HUD seeks to alleviate through the exemption for senior participants, are also faced by older applicants. One commenter suggested that a senior applying after January 31, 2010, be allowed to provide a SSN without documentary proof, so long as the senior signs a statement that the number is valid and that the senior understands that EIV will be used to verify the accuracy of the number. The commenter suggested that the applicant should be allowed to retain his or her place on the waiting list but not become a participant until the SSN verification procedures are met.

HUD Response: HUD believes that an exception is justified for persons age 62 or older on January 31, 2010, who are currently residing in assisted housing, because of the potential burdens faced by the elderly in providing a SSN, the small number of seniors who would qualify for the exception, and the fact that many of these senior citizens have resided in their units for years in compliance with all other program requirements. However, HUD remains of the position that all new applicants,

[2] The Housing and Community Development Act of 1980 lists the categories of resident immigrants that are eligible to receive HUD housing assistance.

regardless of age, must meet the SSN disclosure requirements.

Comment: Objection to the senior exemption. One commenter questioned the need for the exemption proposed by HUD for seniors 62 years of age or older. The commenter stated that processing entities will have difficulty administering exceptions to the SSN disclosure requirements, and suggested that all individuals, other than those not contending legal immigration status, should be required to provide a SSN. This commenter suggested that seniors should be granted the same flexibility proposed for children under 6 years of age, that is, a 90-day period in which to produce the SSN. This commenter also suggested that, if the exemption for persons 62 years of age or older remains in the final rule, seniors should not be included in the EIV reconciliation reports that HUD provides to processing entities identifying participants who have not complied with the SSN disclosure requirements.

HUD Response: HUD has carefully limited the scope of the exceptions to the SSN disclosure and verification requirements. The exception to which the commenter objects is narrowly tailored to avoid the eviction of elderly persons who already reside in assisted housing and who are in compliance with all other program requirements. HUD believes the narrow exemption for seniors is merited given the potentially harsh results should these persons be subject to the SSN requirements and the burdens that may be experienced by seniors in trying to produce a SSN. The commenter, however, raises a good point with regard to the omission of elderly participants from the EIV reconciliation reports. Although it currently is not possible to omit these individuals given the current design of the EIV system, HUD will take the suggestion made by the commenter under advisement.

Comment: Clarification of senior exemption. One commenter requested clarification on whether senior participants processed on or after January 31, 2010, will need to produce a valid SSN. Another commenter asks whether "grandfathering" applies if the senior moves from one HUD-assisted property to another. The commenter stated that a senior may need to move to different housing for good reasons, such as the presence of a disability, the senior has another type of verified medical condition, the senior becomes the victim of abuse, or the senior requires the assistance of a live-in aide and hence a larger unit. In these cases, the senior should continue to receive HUD assistance so long as proper verification is performed.

HUD Response: The exception for senior participants is based on a two-prong test: (1) the participant must be 62 years of age or older on January 31, 2010; and (2) the person's initial determination of eligibility must have begun before that date. A participant who fails either prong is subject to the SSN disclosure requirements. A participant who satisfies both prongs is exempt from the SSN requirements for all future income examinations, even if the senior moves to a new HUD-assisted property. HUD has taken the opportunity afforded by this final rule to clarify this point. Specifically, the regulatory text no longer provides that the initial determination of eligibility is "under the program involved." The inclusion of this phrase might mistakenly have been interpreted to mean that elderly participants "lose" the exemption when moving to a new unit.

4. Comments Regarding the Addition of New Household Members

Commenter: Question regarding addition of new household member who is at least 6 years of age. One commenter asked whether new household members over 6 years of age must disclose a SSN before they are added to the lease or before the household is placed on the waiting list, or whether the new household member may move in and then be given 90 days to produce a SSN. If households are allowed on the waiting list prior to SSN disclosure, how long may the household remain on the list without all of the members having disclosed a valid SSN?

HUD Response: The provisions for adding a new household member apply solely to households already receiving housing assistance and, therefore, would not affect placement on a waiting list. The final rule, at § 5.216(e)(2)(i), provides that the new household member must disclose a SSN upon the request of the processing entity, and no later than the time of processing the interim reexamination or recertification of family composition that includes the new member.

Comment: Omission of children under 6 years of age who already have a SSN. One commenter stated that the provisions regarding the addition of new household members at § 5.216(e)(2) seems to inadvertently omit disclosure requirements pertaining to children under 6 years of age who already have a SSN. Another commenter asked, in the case of a new household with members under 6 years of age or an existing household who adds a member under 6 years of age, who has 90 days to produce an SSN for the child, what happens after the end of the time period and any extension? The commenter asked if assistance is terminated, and, if so, when is the termination effective? Should the household begin paying market rent as of the month following the 90-day extension? Is there a different rule for Project Rental Assistance Contract (PRAC) properties?

HUD Response: HUD's rule provides that the 90-day period for the disclosure of a SSN applies solely to new household members under the age of 6 who do not already have a SSN (see § 5.216(e)(2)(ii)(A)). New household members under the age of 6 who have a SSN are subject to the same disclosure requirements as new household members at least 6 years of age and must disclose the SSN upon the earlier of: (1) the request of the processing entity; or (2) the interim reexamination or recertification of family composition that includes the new member. To enhance clarity, HUD has revised the language of § 5.216(e)(2) to explicitly make this point.

Comment: Suggested change to SSN disclosure requirements for new household members under the age of 6. One commenter suggested that to avoid having to conduct multiple reexaminations to add a child to the household, the final rule should allow a processing entity to add a child with another identification number, but not require the SSN until the next regularly scheduled reexamination, or no later than 15 months after the child is added to the household.

HUD Response: HUD has not revised the rule in response to this comment. HUD remains of the position that the provisions regarding the addition of children under the age of 6 to the household strike the appropriate balance between mitigating the potential burden faced by a family in obtaining a new SSN for a child, minimizing the burden on processing entities, and assuring the integrity of the EIV process. Processing entities will still be able to use HUD systems to generate an alternate identification number to facilitate reporting of the new household member under the age of 6 on the form HUD–50058 or HUD–50059. However, the alternate identification number must be replaced with a SSN, within 90 calendar days (or approved 90-day extension) of the child being added to the household.

5. Comments Regarding Waiting List Placement and Termination of Assistance

Comment: Households that fail to comply with SSN requirements should be removed from waiting list. One commenter suggested that applicants who do not disclose their SSNs should be able to remain on the waiting list for 90 days, with one 90-day extension, rather than indefinitely.

HUD Response: HUD has not revised the rule in response to this comment. A household on the waiting list will not be provided housing assistance until such time as all household members disclose a valid SSN. Moreover, placement on the waiting list merely serves to reserve a place in the program for the household, but does not necessarily deny or delay housing assistance to other households. Depending on the policies of the processing entity governing placement on the waiting list, an applicant household that is lower on the waiting list, but that is able to comply with the SSN requirements, may be eligible to move ahead of a family that is unable to comply with the SSN requirements at the time assistance becomes available, and thus be provided housing assistance. HUD will issue administrative guidance on how long a processing entity may keep an applicant family that is noncompliant with the SSN disclosure requirement on the waiting list.

Comment: Question regarding scope of termination. Two commenters stated that § 5.218(c)(3) should be clarified regarding whether the failure of a member of a household to disclose a SSN would result in the loss of tenancy for the entire household or only the member who failed to disclose the SSN. One of the commenters stated that if the result was the loss of tenancy for the entire family it would violate the due process cause of the 14th Amendment by violating the right of families to live together, as recognized in *Moore* v. *East Cleveland,* 431 U.S. 494 (1977) and *Yolano-Donnelly* v. *Cisneros,* No. S–86–846 (E.D. Cal., March 8, 1996).

HUD Response: HUD believes that its regulations are clear that housing assistance may not be provided on behalf of a household that contains a member who fails to comply with the SSN disclosure and verification requirements. Contrary to the commenter's statement that denial of assistance would result in forced separation of family members, the result is that denial of assistance precludes HUD housing assistance as a housing option, but does not result in forced separation of family members.

C. Comments Regarding Definition of Annual Income

Comment: Use of historical income. Although the October 15, 2009, proposed rule withdrew the January Final Rule amendments to the definition of annual income codified at § 5.609, one commenter registered disapproval with the January Final Rule amendments regarding the use of historical amounts in determining annual income. The commenter recommended that income should continue to be defined as anticipated income for the 12-month period following move-in or certification. The commenter stated that the use of historical income might lead to the granting of housing assistance to individuals who do not need it, and increase the administrative burden on processing entities due to the greater discretion allowed.

HUD Response: The recommendation made by the commenter is reflected in this final rule. As part of the October 15, 2009, proposed amendments, HUD withdrew the January Final Rule amendments pertaining to the definition of annual income. Accordingly, the content of the annual income provision at § 5.609 remains as it was prior to amendment by the January Final Rule.

Comment: HUD should address annual income determinations for seasonal or cyclical workers. One commenter urged HUD to quickly address the method of calculating rent for seasonal workers and those participants who habitually lose income prior to annual recertifications. The commenter wrote that there is insufficient guidance on this topic.

HUD Response: HUD understands the concern expressed by the commenter and, as stated in the preamble to the October 15, 2009, proposed rule, issues concerning calculation of rent are more appropriate for a rule for which that subject is the focus. The focus of this rule is full implementation of the EIV system.

D. Comments Regarding Proposed Amendment to 24 CFR part 908

Comment: Record retention requirement. Two commenters expressed concern regarding the proposed conforming change to the part 908 requirements. (HUD's regulations at 24 CFR part 908 codify the requirements regarding the electronic submission of required family data for certain assisted housing programs.) The commenters expressed concern with the proposed requirement that supporting documentation be retained along with the form HUD–50058, for 3 years after a household ends its participation. One commenter questioned whether the Code of Federal Regulations is the appropriate place to mandate records retention requirements. The other commenter was concerned about confidentiality issues that may result from maintaining hard copies of the forms for a period of 3 years after a household ends its participation, and asked whether electronic retention of the information would meet the record retention requirement.

HUD Response: The record retention requirements provided by this rule will assist HUD's monitoring of EIV implementation. The Code of Federal Regulations contains binding agency requirements, including agency information collection and recordkeeping requirements. HUD notes that the part 908 regulations were promulgated in 1995 and have been in effect for over a decade. With respect to the question concerning electronic retention of the forms, the proposed regulatory text made final by today's rule explicitly provides that "[e]lectronic retention of form HUD–50058 and HUD–50058–FSS, and supporting documentation fulfills the retention requirement under this section" (see § 908.101).

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this final rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order).

The Final Rule was determined an economically significant rule based on its mandate that the EIV system be used by all processing entities. The narrowly tailored regulatory amendments made by this final rule do not modify the economic impact of mandatory EIV use, and neither add or revise the EIV requirements of the Final Rule. These regulatory amendments are limited to addressing certain provisions of the Final Rule that caused confusion and that were extraneous to full implementation of EIV. The clarifications made by this rule do not result in an impact on the economy of $100 million or more.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development,

451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Paperwork Reduction Act

The information collection requirements in this final rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2577–0220 and 2502–0204. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB Control Number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As an initial matter, HUD notes that this final rule builds upon the January Final Rule, which the Department determined did not have a significant economic impact on a substantial number of small entities. This scope of this final rule is much more narrowly focused than that of the January Final Rule, and its potential economic impacts are correspondingly reduced. As noted, this final rule is concerned exclusively with the full and successful implementation of the EIV system. The regulatory amendments made by this final rule are few and limited to clarifying certain provisions of the January Final Rule and returning other regulatory provisions extraneous to EIV implementation to their pre-January 2009 final rule content. The final rule does not alter the economic impact of full EIV implementation, and neither adds to or modifies the EIV requirements of the January Final Rule. To the extent this final rule has any economic impact, it is to reduce the costs and regulatory burdens imposed on processing entities by withdrawing the January Final Rule amendments to HUD's annual income requirements and the regulations governing housing assistance to noncitizens.

Accordingly, this final rule does not alter the small entity impact analysis made in the January Final Rule nor does this final rule, which makes certain clarifying amendments, result in a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule involves external administrative or fiscal requirements or procedures related to income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance that do not constitute a development decision affecting the physical condition of specific project areas or building sites. In addition, part of this rule involves operating instructions and procedures in connection with activities under **Federal Register** documents that previously have been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(6) and 50.19(c)(4), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule does not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 908

Computer technology, Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 5 and 908, as amended in the final rule published on January 27, 2009, at 74 FR 4832, as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 2. Revise § 5.216 to read as follows:

§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *General.* The requirements of this section apply to applicants and participants as described in this section, except that this section is inapplicable to individuals who do not contend eligible immigration status under subpart E of this part (see § 5.508).

(b) *Disclosure required of assistance applicants.* Each assistance applicant must submit the following information to the processing entity when the assistance applicant's eligibility under the program involved is being determined.

(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant's household; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(c) *Disclosure required of individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the individual owner applicant and to each member of the individual owner applicant's household

who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(d) *Disclosure required of certain officials of entity applicants.* Each officer, director, principal stockholder, or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each SSN.

(e) *Disclosure required of participants*—(1) *Initial disclosure.* (i) Each participant, except those age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, must submit the information described in paragraph (e)(1)(ii) of this section, if the participant has:

(A) Not previously disclosed a SSN;

(B) Previously disclosed a SSN that HUD or the SSA determined was invalid; or

(C) Been issued a new SSN.

(ii) Each participant subject to the disclosure requirements under paragraph (e)(1)(i) of this section must submit the following information to the processing entity at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification for the program involved:

(A) The complete and accurate SSN assigned to the participant and to each member of the participant's household; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(2) *Subsequent disclosure.* Once a participant has disclosed and the processing entity has verified each SSN, the following rules apply:

(i) *Addition of new household member who is at least 6 years of age or under the age of 6 and has an assigned SSN.* When the participant requests to add a new household member who is at least 6 years of age, or is under the age of 6 and has an assigned SSN, the participant must provide the following to the processing entity at the time of the request, or at the time of processing the interim reexamination or recertification of family composition that includes the new member(s):

(A) The complete and accurate SSN assigned to each new member; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new member.

(ii) *Addition of new household member who is under the age of 6 and has no assigned SSN.* (A) When a participant requests to add a new household member who is under the age of 6 and has not been assigned a SSN, the participant shall be required to provide the complete and accurate SSN assigned to each new child and the documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new child within 90 calendar days of the child being added to the household.

(B) The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the participant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant. During the period that the processing entity is awaiting documentation of a SSN, the processing entity shall include the child as part of the assisted household and the child shall be entitled to all the benefits of being a household member. If, upon expiration of the provided time period, the participant fails to produce a SSN, the processing entity shall follow the provisions of § 5.218.

(iii) *Assignment of new SSN.* If the participant or any member of the participant's household has been assigned a new SSN, the participant must submit the following to the processing entity at either the time of receipt of the new SSN; at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification; or at such earlier time specified by the processing entity:

(A) The complete and accurate SSN assigned to the participant or household member involved; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN of each individual.

(f) *Disclosure required of entity applicants.* Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) Any complete and accurate EIN assigned to the entity applicant; and

(2) The documentation referred to in paragraph (g)(2) of this section to verify the EIN.

(g) *Required documentation*—(1) *SSN.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (e) of this section is:

(i) A valid SSN card issued by the SSA;

(ii) An original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual, along with other identifying information of the individual; or

(ii) Such other evidence of the SSN as HUD may prescribe in administrative instructions.

(2) *EIN.* The documentation necessary to verify an EIN of an entity applicant that is required to disclose its EIN under paragraph (f) of this section is the official, written communication from the Internal Revenue Service (IRS) assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(h) *Effect on assistance applicants.* (1) Except as provided in paragraph (h)(2) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide:

(i) The complete and accurate SSN assigned to each member of the household; and

(ii) The documentation referred to in paragraph (g)(1) of this section to verify the SSN of each such member.

(2) For applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals under 24 CFR part 882, subpart H, the documentation required in paragraph (h)(1) of this section must be provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the applicant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the applicant. If, upon expiration of the provided time period, the individual fails to produce a SSN, the processing entity shall follow the provisions of § 5.218.

(i) *Rejection of documentation.* The processing entity must not reject documentation referred to in paragraph (g) of this section, except as HUD may otherwise prescribe through publicly issued notice.

■ 3. Amend § 5.218 by revising paragraphs (a), (b) and (c) to read as follows:

§ 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility of assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in § 5.216.

(b) *Denial of eligibility of entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

(1) The entity applicant does not meet the EIN disclosure, documentation, and verification requirements specified in § 5.216; or

(2) Any of the officials of the entity applicant referred to in § 5.216(d) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in § 5.216.

(c) *Termination of assistance or termination of tenancy of participants.* (1) The processing entity must terminate the assistance or terminate the tenancy, or both, of a participant and the participant's household, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation, and verification requirements specified in § 5.216.

(2) The processing entity may defer termination and provide the participant with an additional 90 calendar days to disclose a SSN, but only if the processing entity, in its discretion, determines that:

(i) The failure to meet these requirements was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant; and

(ii) There is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline.

(3) Failure of the participant to disclose a SSN by the deadline specified in paragraph (c)(2) of this section will result in termination of the assistance or tenancy, or both, of the participant and the participant's household.

* * * * *

■ 4. Add a new § 5.233 to read as follows:

§ 5.233 Mandated use of HUD's Enterprise Income Verification (EIV) System.

(a) *Programs subject to this section and requirements.* (1) The requirements of this section apply to entities administering assistance under the:

(i) Public Housing program under 24 CFR part 960;

(ii) Section 8 Housing Choice Voucher (HCV) program under 24 CFR part 982;

(iii) Moderate Rehabilitation program under 24 CFR part 882;

(iv) Project-based Voucher program under 24 CFR part 983;

(v) Project-based Section 8 programs under 24 CFR parts 880, 881, 883, 884, 886, and 891;

(vi) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(vii) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);

(viii) Sections 221(d)(3) and 236 of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715z–1); and

(ix) Rent Supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(2) Processing entities must use HUD's EIV system in its entirety:

(i) As a third party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income, in accordance with § 5.236, and administrative guidance issued by HUD; and

(ii) To reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

(b) *Penalties for noncompliance.* Failure to use the EIV system in its entirety may result in the imposition of sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculations, or both.

§ 5.236 [Amended]

■ 5. In § 5.236(b)(3)(i)(A), remove "215".

PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

■ 6. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 1437f, 3535d, 3543, 3544, and 3608a.

■ 7. Revise § 908.101 to read as follows:

§ 908.101 Purpose.

The purpose of this part is to require Public Housing Agencies (PHAs), including Moving-to-Work (MTW) PHAs, that operate Public Housing, Indian Housing, or Section 8 Rental Certificate, Housing Choice Voucher (HCV), Rental Voucher, and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. These electronically submitted data are required for HUD forms: HUD–50058, including the Family Self-Sufficiency (FSS) Addendum. Applicable program entities must retain at a minimum, the last three years of the form HUD–50058, and supporting documentation, during the term of each assisted lease, and for a period of at least 3 years from the end of participation (EOP) date, to support billings to HUD and to permit an effective audit. Electronic retention of form HUD–50058 and HUD–50058–FSS and supporting documentation fulfills the record retention requirement under this section.

Dated: December 21, 2009.

Shaun Donovan,

Secretary.

[FR Doc. E9–30720 Filed 12–28–09; 8:45 am]

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Part IV

Department of Defense

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Edgewood Chemical Biological Center (ECBC); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Edgewood Chemical Biological Center (ECBC)

AGENCY: Office of the Under Secretary of Defense (Civilian Personnel Policy) (DUSD (CPP)), Department of Defense (DoD).

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: Section 342(b) of Public Law 103–337, as amended, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology Reinvention Laboratories (STRLs). The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1107 of Public Law 110–181 as amended by section 1109 of Public Law 110–417 requires the Secretary of Defense to execute a process and plan to employ the Department's personnel management demonstration project authorities found in title 5 United States Code (U.S.C.) section 4703 at the STRLs enumerated in 5 U.S.C. 9902(c)(2), as redesignated in section 1105, Public Law 111–84, and 73 **Federal Register** (FR) 73248 to enhance the performance of these laboratories. The ECBC is listed as one of the designated STRLs.

DATES: Implementation of this demonstration project will begin no earlier than February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Edgewood Chemical Biological Center ECBC: Ms. Kim Hoffman, U.S. Army ECBC, Directorate of Program Integration, Workforce Management Office (RDCB–DPC–W), 5183 Blackhawk Road, Building 3330, Room 264, Aberdeen Proving Ground, MD 21010–5424.

DoD: Ms. Betty Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are "generally similar in nature" to the Department of Navy's "China Lake" Personnel Demonstration Project. The terminology, "generally similar in nature," does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

This demonstration project involves: (1) Two appointment authorities (permanent and modified term); (2) extended probationary period for newly hired engineering and science employees; (3) pay banding; (4) streamlined delegated examining; (5) modified reduction-in-force (RIF) procedures; (6) simplified job classification; (7) a pay-for-performance based appraisal system; (8) academic degree and certificate training; (9) sabbaticals; and (10) a Voluntary Emeritus Corps.

2. Overview

DoD published notice in 73 FR 73248, December 2, 2008, that pursuant to subsection 1107(c) of Public Law 110–181 the three STRLs listed in 73 FR 73248 not having personnel demonstration projects at this time may adopt any of the flexibilities of the other laboratories listed in subsection 9902(c)(2), as redesignated in section 1105 of Public Law 111–84, and further provided notice of the proposed adoption of an existing STRL demonstration project by two centers under the United States (U.S.) Army Research, Development and Engineering Command (RDECOM): ECBC and Natick Soldier Research, Development and Engineering Center (NSRDEC). The notice indicated that these two centers intended to adopt the STRL Personnel Management Demonstration project designed by the U.S. Army Communications—Electronics Command, Research, Development, and Engineering organizations (a reorganization changed this designation to the U. S. Army Communications—Electronics Research, Development and Engineering Center (CERDEC)). Relative to ECBC's intent to adopt the CERDEC demonstration project, DoD received comments from three employees during the public comment period which ended on January 2, 2009: Two presented interests on behalf of the Unions they represent and the other presented comments on behalf of the organization itself. All comments were carefully considered.

The following summary addresses the pertinent comments received, provides responses, and notes resultant changes to the original CERDEC project plan published in 66 FR 54872, October 30, 2001. Each commenter addressed more than one topic and each topic was counted separately. Thus, the total number of comments exceeds the number of individuals cited above.

A. Pay-for-Performance System

Ten comments were received that relate to the pay-for-performance system.

(1) General

Comments: Three comments were received concerning the pay-for-performance system in general as follows: questioned impact to "good" workers since this system is designed to reward "very high" performers; asserted that individual performance appears to be more critical and questioned impact to teamwork; and expressed concern that favoritism could impact employees getting a fair share in payouts from pay pools which have a fixed amount of money.

Response: The demonstration project performance management system is designed to provide greater differentiation among performers, as opposed to the current Total Army Performance Evaluation System (TAPES) which has evolved into most employees being rated at the same level. This new approach is based on a pay-for-performance model which allows for greater communication between supervisor and employee, promotes clearer accountability of performance, facilitates employee career progression and provides an understandable and rational basis for pay changes by linking pay and performance. Under a pay-for-performance appraisal system there is a fixed amount of money for allocation to all employees rated. It is expected that higher performing employees earn greater rewards than lower performing employees. It is important to note that under this demonstration project, no employee who is rated at an acceptable level (10 or above on a scale of 0–50) loses base pay. A reduction in base pay could only occur if an employee receives an unacceptable rating (9 or below on a scale of 0–50) and is the subject of an adverse action.

Pay-for-performance systems are often viewed as increasing competition among employees for limited financial

rewards and are believed to have a negative impact on teamwork. However, the Office of Personnel Management (OPM), in an independent evaluation of laboratory demonstration projects analyzed this factor and concluded that teamwork had actually improved and that the pay-for-performance system had no negative effect on teamwork. Furthermore, a rigorous review process is an integral part of the demonstration project's pay-for-performance system which links base pay and bonus to organizational, team and individual performance. Interpersonal skills is one of the critical performance elements in every employee's performance plan. This element includes such qualities as being an effective team player, coordinating actions with others, being considerate of differing viewpoints, maintaining effective relationships, *etc.*, all of which encourage sustainment of teamwork. Lastly, special act and other traditional 5 U.S.C. awards are still viable options that can be used to reward groups for exceptional team work.

Major features in the design of the rating system are intended to overcome perceptions of favoritism and limited differentiation among ratings. Improved communication throughout the rating cycle facilitates building a common understanding of performance expectations and progress toward achieving those expectations. The automated performance management tool helps assure that objectives are in place on a timely basis, accomplishments are recorded, and communication related to performance is on-going. The pay-for-performance system uses standard performance elements and performance benchmarks to evaluate employee performance that supports the mission, allows managers to make meaningful performance distinctions, considers pay in making performance-based pay decisions and provides information to employees about the results of the appraisal process and pay decision. At the end of the rating period, employees submit their accomplishments. Following the initial scoring of each employee, raters in an organizational unit along with their next level of supervision, meet to ensure consistency and equity of the ratings. Through discussion and consensus building, consistent and equitable ratings are determined based on similar level of performance, level of work and level of base pay. This improves upon the current performance appraisal system where there are only brief performance standards described for the fully successful level and rating is typically done by a supervisor with review and approval by a senior rater.

The demonstration project plan includes other means of checks and balances that address perceptions of favoritism and bias. A Personnel Management Board has been created to provide oversight for the project and includes members representing each directorate. A cross-section of employees participate in a Workforce Advisory Group and are actively involved in identifying training needs and developing operating procedures. Training in the pay-for-performance system and other aspects of the demonstration project will be mandatory for all supervisors. Finally, perceived fairness of the appraisal process has been identified as an area for evaluation and will be included in surveys of the workforce and focus group discussions with employees. An annual report with a thorough review and analysis of the pay-for-performance cycle will be published to assist in providing greater transparency.

(2) Rating

Comments: One commenter believes that higher scores are needed each year to receive pay increases and questioned whether salary increases taper off after a few years. The same commenter questioned whether managers will be involved in rating employees they do not have direct contact with and whether pay pool managers will be familiar with those they are rating.

Response: Base pay increases and/or bonuses are earned based on an employee's total performance score. Scores of 21 or higher earn a performance payout. Higher scores are not needed each year to receive a base pay increase. Base pay increases can continue to be earned which allows progression in base pay up to the maximum base pay rate for the employee's pay band. Once an employee reaches the maximum base pay rate for their pay band their base pay is "capped," similar to when an employee reaches step 10 of their General Schedule (GS) grade. The performance payout earned is then converted to bonus. The project plan also includes two performance-based rules (midpoint rule and significant accomplishment rule) that may affect base pay increases. Refer to III.C.10. and III.C.11. for how these rules relate to scores. It is important to note that as base pay progresses over time, performance expectations also increase and are factored into the appraisal process.

As to the rating process, first-line supervisors initially rate their employees. These initial scores are then subject to discussion, review and reconciliation and may result in adjustments upward or downward. Review of the scores across organizational lines continues at succeeding levels up the management chain to the final level of review which is the pay pool manager. Participants in the next level reconciliation will have full knowledge of their respective preceding level's discussions and decisions to represent those employees. Other participants may have varying degrees of direct knowledge of an employee's performance but will be knowledgeable of the nature of the technologies/work being performed. The requirement for raters to explain their recommended ratings and the active discussion within the group emphasizes to each rater the importance of taking performance management earnestly. The process of reconciliation serves to overcome variations in expectations from one rater to another, helps to ensure that different raters apply the performance benchmarks consistently, and resolves variances in what one manager considers exceptional work from another who judges it as merely acceptable.

(3) Pay Pools

Comments: One commenter recommended that the base pay and bonus pay pool funding percentage be revised to set a minimum percentage rather than ranges. Another commenter questioned how many pay pools would be set for the Rock Island site. This same commenter asked who would serve as the pay pool manager(s) for the Rock Island site.

Response: The laboratory considered the recommendation to alter the pay pool funding percentage and has amended III.C.7. "Pay Pools" to define pay pool funding for base pay increases and bonuses at minimum levels as opposed to a range of minimum and maximum. The base pay increase pool of money will be set at no less than the current minimum of 2% and the bonus increase pool of money will be set at no less than the current minimum of 1%. Higher amounts may be set within budgetary limits.

With regard to the questions concerning pay pools and pay pool manager(s) at one of ECBC's remote sites (Rock Island), the Personnel Management Board will annually determine the number of pay pools using guidelines such as size, number of supervisory/non-supervisory employees participating, *etc.*, and make a recommendation to the Technical Director for final approval. Once the pay

pools have been decided, then the pay pool managers will be named for each pay pool by the Personnel Management Board. All employees will be informed of their pay pool assignment and designated pay pool manager.

(4) Payout Determinations

Comments: One commenter questioned how payouts are computed and the factors that affect the equation. The same commenter asked whether management can decide to not give a base pay increase or bonus for an employee's rating and give payouts in the form of all bonus rather than a combination of base pay increase and bonus.

Response: Management cannot arbitrarily decide to not give a pay increase or a bonus. An employee's performance payout is based on the employee's score, the shares earned for that score, the value of the shares and the employee's adjusted base pay. The performance payout is calculated based on provisions set forth in the FR Notice and the resulting payout is a base pay increase and/or bonus. Scores translate into shares and each point above the score of 20 is worth one tenth of a share with a maximum score of 50 equaling 3 shares. There is no discretion on the amount of shares earned. For example, a score of 32 earns 1.2 shares. The value of a single share, however, may vary from one pay pool to another since it is based on factors relative to individual pay pools (such as the number of shares awarded in the pay pool, *etc.*). Figure 3 (III.C.8.) illustrates the formula for computing share value. The value of a share is computed after the scores for each individual in the pay pool have been finalized. The payout (base pay increase/bonus) is calculated by first multiplying the shares earned by the share value and multiplying that product by base pay. An adjustment is then made to account for locality pay or staffing supplement.

Payouts are typically a combination of base pay increase and bonus. The split is generally determined by the funding in the pay pool (*i.e.,* if the pay pool funding is two-thirds base pay and one-third bonus funding, then the payout split would be two-thirds base pay increase and one-third bonus). For employees at the maximum base pay of their band or affected by a performance-based rule, some or all of the payout converts to bonus as determined by the end of the band or the specific performance rule. The full amount of the base pay increase and bonus may also be affected if an employee leaves the demonstration project prior to the effective date of the payout. There is some discretion on the part of the pay pool manager to shift all or some of an employee's bonus portion to base pay increase depending on available unexpended base pay funds and other criteria to be established. Any dollar increase to an employee's base pay increase will be offset by a corresponding decrease in the employee's bonus. Thus, the employee's total performance payout is unchanged. Internal operating procedures will provide further guidance.

B. Pay

Nine comments were received related to pay.

(1) General

Comments: Five comments were received regarding pay in general as follows: whether the GS salary tables will be used as a guide and at what point an employee's salary is capped; whether employees will receive the annual general pay increase; an interest in history of employees reaching the top of their pay band since GS employees can reach the top of their grade over time; a remark that morale could be an issue for careerists who have paid their dues since new employees under the demonstration will have greater monetary incentives available to them; and a suggestion to relieve pay compression by providing additional waivers to permit full locality payment.

Response: The minimum and maximum rate of base pay for each band continues to be linked to the GS rates of pay. The rates are updated each year following the general pay increase which typically takes place in January. As long as the general pay increase is authorized, all employees in the demonstration project who are performing at an acceptable level will receive it. Acceptable performance under the demonstration project is defined as a total score of 10 or above and every performance element scored at 10 or above (on a scale of 0–50). If an employee is on a Performance Improvement Plan (PIP) due to unacceptable performance when the general pay increase takes effect, he/she will not receive it until such time as the performance improves to an acceptable level and remains so for at least 90 days.

Maximum potential base pay progression depends on the end point of the employee's pay band. For example, if the base pay rate range is GS–12/step 1 to GS–13/step 10, as is the case for DE–III, the employee can progress in base pay beyond the GS–12/step 10 base pay rate up to the maximum of the GS–13/step 10 base pay rate equivalent based on individual performance. Refer to III.A.2. which illustrates the pay band structure and the crosswalk to GS grades.

Under the demonstration project, base pay progression within a pay band is directly linked to individual performance. As a result, we can not specify a certain number of years it would take to progress from the minimum to the maximum of the band. However, progress through the band will be one of the areas assessed. As previously stated, employees are eligible (based on their performance scores) to receive annual base pay increases (unless they have reached the top of their band or are impacted by a performance-based rule). Annual base pay increases replace the traditional within-grade increases and quality step increases. In addition, an employee under the GS system is limited in base pay progression to step 10 of their grade. Under the demonstration project, however, employees are placed in pay bands which cover a wider range of base pay than a single grade (except for DK–III) and promotions are required only for movement to a higher band.

Under the GS pay system, employees must perform at an acceptable level and meet length of service requirements in order to be entitled to a within-grade increase. The waiting period for a step increase changes from one year to two years and then to three years over time, totaling eighteen years for normal progression in grade from step 1 to step 10. While it is true that most GS employees will reach step 10 of their grade given enough time, it is not a guarantee because of the performance factor. The demonstration pay-for-performance system rewards good performance and as such, it is entirely possible that employees in the demonstration project could receive base pay increases that are equivalent to or higher than a step increase each year and could, therefore, progress in their band faster than they would under the GS system.

Motivating and incentivizing the workforce is one of the objectives of the laboratory demonstration project. In fact, in an evaluation of laboratory demonstration projects, OPM conducted a pulse survey which concluded that motivation levels remained high and that pay satisfaction increased in all labs. As previously described, employees have the opportunity to advance without competition within a pay band, thus eliminating previous promotion requirements and grade limitations. While it is true that under the demonstration project pay may be set anywhere in the band for newly hired employees, decisions are based on

the qualifications of the individual, the unique requirements of the position and the labor market considerations relative to the occupation. Other demonstration projects who are offering higher starting base pay for interns, as an example, have seen a significant increase in the recruitment of graduates with higher Grade Point Averages (GPAs) and are able to recruit at more selective colleges and universities. Although the starting base pay is higher than the GS counterpart, this is offset by slower pay progression that is dependent upon individual performance and tends to be slower than the rapid career ladder promotions that occur in the GS system. Consequently, at the conclusion of the 18–30 month internship, employees' base pay is comparable.

As to the last comment, there is concern that individuals whose base pay is at the higher end of the GS–15 base pay range do not receive their full locality pay. This situation also occurs within the demonstration project for the Engineering and Science (E&S) and the Business and Technical (BT) occupational families since Pay Band IV of both is linked to a range of GS base pay with a cap equivalent to the GS–15, step 10 base pay rate. However, increasing the maximum base pay for GS–15 equivalent pay bands will create a compensation imbalance with individuals in Scientific and Professional and Senior Executive Service positions. This locality cap issue is being examined at higher levels; therefore, no change is proposed.

(2) Supervisory Pay

Comments: One commenter proposed that supervisory/team leader pay adjustments and pay differentials be changed to provide up to ten percent for team leaders. Another commenter asked whether supervisory pay is based on the number of employees supervised.

Response: The suggestion to increase the maximum for team leader pay adjustments and differentials from five percent to ten percent of base pay was considered and senior management agreed that this change would increase our flexibility to incentivize team leaders when warranted. Therefore, language has been added to revise the amount of pay adjustments and pay differentials for team leaders from "up to five percent" to "up to ten percent" in III.F.7. "Supervisory and Team Leader Pay Adjustments" and III.F.8. "Supervisory/Team Leader Pay Differentials."

As to the second comment, for a position to be classified as supervisory, the individual must spend at least 25 percent of their time performing supervisory duties, *e.g.* assigning/reviewing work, evaluating performance, approving leave, *etc.* Pay is not based on a specific number of employees supervised but the number of employees supervised may be an influencing factor in determinations related to supervisory base pay adjustments and pay differentials. Adjustments and differentials will be used selectively, not routinely, to compensate supervisors and/or team leaders who meet detailed criteria contained in the demonstration project internal operating procedures.

(3) Internal Placement

Comments: One commenter suggested that a pay increase of up to a defined amount should be permitted when a person moves to a position of greater responsibility (reassignment) within the same pay band. Another commenter inquired how performance payouts are handled for employees on temporary assignments/promotions and whether pay increases are withdrawn when the temporary assignment/promotion ends.

Response: Since broad pay bands include positions of varying complexity and responsibility, a base pay increase would provide incentive to encourage employees to accept positions of greater responsibility in the same pay band. Therefore, language has been added at III.F.5. to address this issue and to define "reassignment" in III.E.2. A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, authority or for other compelling reasons. Such an increase is subject to specific guidelines to be established by the Personnel Management Board.

With regard to a temporary assignment/promotion, an employee can be rated if they are under approved objectives for the position for a minimum of 120 days. The payout is calculated using the computations in III.C.8. When a temporary promotion is terminated, pay will be determined based on the position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to policies established by the Personnel Management Board. Those adjustments may not increase the base pay for the position of record beyond the applicable pay band maximum base pay. Internal operating procedures will provide further guidance.

C. Extraordinary Achievement Recognition

Two comments were received about the Extraordinary Achievement Recognition.

Comments: One commenter suggested that the Extraordinary Achievement Recognition language be moved to a separate section since it is considered after and separate from the pay pool payout process. The same commenter also proposed that the Extraordinary Achievement Recognition language be revised to allow for bonus as an alternative to a base pay increase since capped employees would be precluded from receiving this recognition.

Response: While an Extraordinary Achievement Recognition is considered after the pay pool payout process, it is not entirely separate from the process itself. Following the performance evaluation process, the pay pool manager is the agent who requests permission from the Personnel Management Board to grant a base pay increase higher than the one generated by the compensation formula for that employee. However, senior management is in agreement that a separate paragraph would clarify the intent and process for the Extraordinary Achievement Recognition and the provision has been moved to a separate paragraph in III.C.9. "Base Pay Increases and Bonuses."

As to the second comment, language has been added to the new section at III.C.9. as referenced above allowing for the option to grant either a base pay increase and/or a bonus as an Extraordinary Achievement Recognition. This permits employees whose base pay is at the maximum of their pay band to receive this recognition.

D. Pay Bands

Two comments were received concerning Pay Bands.

Comments: One commenter advised that reconsideration be given to initial placement of all GS–14 engineers and scientists to the E&S occupational family (DB) Pay Band IV and requested clarification of how any subsequent conversions for GS–14 E&S positions will be handled. Another comment received suggested that the number of Pay Band V positions be expanded to permit a certain number or percent at each STRL since the current limited number has already been allocated to other organizations which would preclude ECBC from having this flexibility.

Response: We have carefully considered these comments. With

regard to placement of GS–14 E&S employees, language has been changed in III.A.1. and added in III.A.2. to reflect that upon conversion into the demonstration project, E&S employees currently at grade GS–14 will be assigned to either Pay Band III or Pay Band IV based on a review of the duties and responsibilities of the position as compared to the classification criteria.

In response to the second comment, the use of Pay Band V has proven to be beneficial in recruiting and retaining highly-qualified senior scientific technical managers in those STRL personnel demonstration projects that have such positions. The limited number of such positions makes it difficult to meet the requirements of all the STRLs who wish to use this flexibility. The DoD is currently reviewing all Pay Band V positions. No change is proposed in the number of Pay Band V positions pending the completion of the DoD review.

E. Probationary Period

Two comments were received about the extended probationary period.

Comments: One commenter advised that a recent court decision limited the intent of the extended probationary period. The other commenter questioned why the probationary period is extended to three years and is only applicable to new engineers and scientists.

Response: The purpose of extending the probationary period is to allow supervisors a proper period of time to fully evaluate an employee's performance and conduct. It applies to newly hired engineers and scientists since this group is often given advanced training during their first year on the job, which removes them from the workplace and direct observations of their performance. This can minimize the time available for the supervisor to determine whether the employee should be retained beyond the probationary period.

The extended probationary period of up to three years allows supervisors sufficient time to properly, objectively and completely evaluate an employee's performance and conduct. Probationary employees whose conduct and/or performance is unsatisfactory may be terminated in accordance with the procedures in part 315 of title 5 of the Code of Federal Regulations (CFR). However, a recent court decision has extended adverse action procedural and substantive protections to individuals defined as employees without regard to whether the individuals are serving a probationary period. To permit termination during the probationary period without using adverse action procedures, waivers have been added under IX. "Required Waivers to Law and Regulation" to allow for up to a three-year probationary period and to remove from the definition of employee, except for those with veterans' preference, those serving a probationary period under an initial appointment.

If a probationary employee's performance is determined to be satisfactory at a point prior to the end of the three-year period, a supervisor has the option of ending the probationary period at an earlier date, but not before the employee has completed one year of continuous service.

F. Conversion

Two comments were received related to conversion into the demonstration project.

Comments: One commenter inquired whether management can place an employee into a lower band upon conversion than where they are under the GS system. Another commenter recommended that conversion of interns into the demonstration project occur when the employees reach their full performance level for their GS position.

Response: Initial entry into the demonstration project is accomplished through a full employee-protection approach that ensures initial placement of each employee into a pay band with no loss of pay upon conversion. Employees are placed in an occupational family (*i.e.,* DB, DE, DK) based upon their occupational series and in a pay band that includes their current grade. The GS–14 grade occurs in two bands of the E&S occupational family, which are Pay Band III and Pay Band IV. The placement of GS–14 employees in the DB family will be decided upon a review of the position's duties and responsibilities as compared to the demonstration project classification criteria and may occur in either DB Pay Band III or DB Pay Band IV. Placement of a GS–14 into DB–III, however, is not placement in a lower graded position.

As to the second comment, interns typically receive several career promotions prior to reaching their full performance level. Average base pay performance payouts may not provide increases as substantial as career promotions under the GS. Delaying conversion into the demonstration project pay bands until interns reach their full performance level will assure that the interns' base pay is commensurate with the full performance level base pay rate. Therefore, the language at II.E. has been revised to reflect that interns will not convert into demonstration project pay bands until they reach their full performance level.

G. Classification

One comment was received concerning classification.

Comment: One commenter questioned that with the GS system having over 400 series and the laboratory demonstration project with only 22, how classification of positions will be conducted and who (*i.e.,* employees) will be involved in that process.

Response: OPM series and position titles will continue to be used in the demonstration project. Based on the nature of the work, the series will be assigned to one of three occupational families. A listing of the series assigned to each occupational family for ECBC is contained in Appendix B. Demonstration project classification criteria will be developed for each occupational family. These classification criteria will replace the OPM classification standards and guides for purposes of grading. The Technical Director will have classification authority and this authority may be re-delegated. As is the case now, Civilian Personnel Advisory Center (CPAC) specialists will assist the classification authority to assure that positions are properly classified in accordance with the demonstration project criteria.

On conversion into the demonstration project, employees will be assigned to an occupational family and pay band based on their current occupational series and grade. Since there is an overlapping band for engineers and scientists at the GS–14 level, the assignment of the pay band will be on a case-by-case basis. The classification conversion will be performed by the servicing Civilian Personnel Office, and each employee will receive a Notification of Personnel Action, Standard Form 50, documenting the change from GS to the demonstration project. Employees will continue to be able to initiate a classification appeal as described in the operating procedures.

H. Promotion

One comment was received related to promotion eligibility.

Comment: One commenter suggested that the minimum score of "30" to be eligible for a competitive promotion is too high.

Response: We considered the suggestion to lower the minimum performance score of "30" required for promotion eligibility. Scores of 10 and higher are considered "acceptable performance" and scores of 21 and

higher earn a performance payout. Setting a minimum score of 30 for promotion sets the requirement higher than the score for a performance payout and may discourage the use of scores in the 21 to 29 range. Accordingly, the minimum performance score for promotion has been changed from "30" to "21" in III.E.1. "Promotions."

I. Reduction in Force (RIF)

One comment was received regarding RIF.

Comment: One commenter asked what criteria is used during a RIF.

Response: Existing RIF procedures will be followed with slight modifications. Separate competitive areas will be established for demonstration project employees at each geographic location. Within each competitive area, competitive levels will be established based on the occupational family (DB, DE, DK), pay band, occupational series, *etc.* In order to determine who is affected in a RIF, employees are listed in RIF retention order based on tenure group, veterans' preference and adjusted length of Federal service, in that sequence. An employee's length of service is adjusted by receiving additional years of service based on the last three total performance scores during the preceding four years (*e.g.*, 48–50 = 10 years, 45–47 = 9 years, and so on; refer to II.H.3.). A score below 20 adds no credit for RIF. Under the demonstration project, the adjusted service computation date is calculated by adding the additional years, not by averaging.

J. Historical Analysis

Two comments were received concerning demonstration project data results.

Comment: One commenter questioned acceptance of the demonstration project in comparison to the GS system beyond anecdotal evidence and inquired whether surveys were conducted at other demonstration project sites. Another commenter asserted that CERDEC has not presented data showing a more effective organization under the demo project.

Response: The Office of Personnel Management (OPM) started conducting surveys of STRL personnel demonstration projects as far back as 1996 and have several reports, all of which include CERDEC data subsequent to its implementation, on their Web site at *http://www.opm.gov/aps/about/reports/index.aspx.* According to the 2006 report, "historic data for past demonstration projects" * * * "show support grows slowly over time and that it takes at least five years to gain the support of two-thirds of the participating employees. Typically, support stabilizes at the two-thirds level, and that level is considered a benchmark with respect to the change efforts these demonstration projects represent."

K. Miscellaneous Comments

There were ten comments in this area as follows:

(1) Positive Comment

One commenter voiced support of the demonstration and remarked that the flexibilities afforded will help the Center achieve greater effectiveness.

(2) Administrative Changes/Technical Updates

Two comments were received related to administrative changes and technical updates to the **Federal Register** document.

Comments: One commenter advised that updates throughout the document were needed to reference ECBC rather than CECOM RDE and to reflect legal or regulatory changes. The same commenter also suggested that the occupational series listing in Appendix B be revised to include those series employed at ECBC.

Response: A number of changes were made to the final **Federal Register** to include ECBC as the name of the organization; its organizational and workforce information; approval authorities; and technical modifications to conform to changes in the law and governing regulations. In addition, some areas have been re-formatted for clarity and to improve readability. Throughout the document changes have been made to clarify and provide consistent use of pay terminology. Minor revisions have been made to Appendix C: Performance Elements to be consistent with the descriptions currently in use by CERDEC.

(3) Resources

One comment was received regarding staffing requirements for the project.

Comment: One commenter asked what additional staffing requirements (personnel, software) are required to implement the project.

Response: There is currently one civilian who is assigned overall demonstration project management responsibility for ECBC. This employee is assisted by a part-time contractor. Staffing requirements may be adjusted over the course of the project as necessary. Each directorate/office will continue to process personnel actions through their respective human resources analyst. It is expected that various working groups beyond the Personnel Management Board will be established to contribute to various components and phases of the project.

As to software, ECBC is planning to adopt an existing automated system, developed at Fort Monmouth, NJ. It's a Web-based tool that supports development of position descriptions and all actions in support of the pay-for-performance rating process. The application enables employees to input objectives and record accomplishments, raters to score the performance, and higher-level supervisors to review employee scores and analyze scoring trends to achieve greater consistency across organizational lines.

(4) Reference to the National Security Personnel System (NSPS)

Five comments were received that made reference to NSPS.

Comment: Two comments cited quotes from publications relating to fairness under the NSPS pay-for-performance system. Two comments cited quotes from articles and one comment referenced the 2008 National Defense Authorization Act (NDAA) concerning inclusion of bargaining unit members under NSPS. Management will continue to comply with the labor relation provisions of 5 U.S.C. 4703(f) and 7117 concerning inclusion of bargaining unit employees.

With regard to references concerning inclusion of bargaining unit members under NSPS, collective bargaining rights are granted under Federal law and the demonstration project does not impede those rights. ECBC is committed to meeting its bargaining obligation under the law.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** shall be available for use by all STRLs listed in section 9902(c)(2) of title 5, United States Code, as redesignated in section 1105 of Public Law 111–84, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register;** and the fulfilling of any collective bargaining obligations.

Dated: December 17, 2009.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

Table of Contents

I. Executive Summary

This project adopts with some modifications the STRL personnel management demonstration project, designed by the then named U.S. Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) organizations, with participation and review by the Department of the Army (DA) and DoD. After implementation of the CECOM RDE demonstration project, CECOM reorganized. Its laboratory, the Communications-Electronics Research Development and Engineering Center (CERDEC), was realigned under RDECOM. At the same time, the ECBC was also realigned under RDECOM. The ECBC includes the ECBC organization at the Edgewood Area of Aberdeen Proving Ground, employees matrixed to the Joint Program Executive Office for Chemical/Biological Defense (JPEO–CBD) and ECBC employees with duty stations at other sites.

The ECBC provides integrated science, technology and engineering solutions to address chemical and biological vulnerabilities and threats. ECBC's core competency is working with chemical and biological agents at all stages of the materiel life cycle. ECBC maintains the following fundamental capabilities:

(1) Chemistry and Bioscience of Chemical and Biological Warfare.
(2) Inhalation Toxicology.
(3) Aerosol Physics.
(4) Filtration Sciences.
(5) Agent Spectroscopy/Algorithm Development.
(6) Chemical and Biological Testing and Evaluation.
(7) Chemical and Biological Materiel Acquisition.
(8) Agent Handling and Surety.
(9) Chemical Munitions Field Operations.

In order to sustain these unique capabilities, the ECBC must be able to hire, retain and continually motivate enthusiastic, innovative, and highly-educated scientists and engineers, supported by skilled business management and administrative professionals as well as a skilled administrative and technical support staff.

The goal of the project is to enhance the quality and professionalism of the ECBC workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the ECBC mission, adjust the workforce for change, and improve workforce satisfaction. This demonstration project extends the CERDEC demonstration project to ECBC. The CERDEC project built on the concepts, and uses much of the same language, as the demonstration projects developed by the Army Research Laboratory (ARL); the Aviation and Missile Research, Development, and Engineering Center (AMRDEC); the Navy's "China Lake;" and the National Institute of Standards and Technology (NIST). The results of the project will be evaluated within five years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan without the approval of the ODUSD(CPP). The provisions of DoDI 1400.37, are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Present System

The current Civil Service GS system has existed in essentially the same form since the 1920's. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation and geographic location.

The need to change the current hiring system is essential as ECBC must be able to recruit and retain scientific, engineering, acquisition support and other professionals and skilled technicians. ECBC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high-quality employees.

Finally, current limitations on training, retraining and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy "China Lake" and NIST demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the ECBC workforce will facilitate:

(1) Increased quality in the workforce and resultant products,

(2) Increased timeliness of key personnel processes,

(3) Increased retention of "excellent performers,"

(4) Increased success in recruitment of personnel with critical skills,

(5) Increased management authority and accountability,

(6) Increased satisfaction of customers, and

(7) Increased workforce satisfaction with the personnel management system.

An evaluation model was developed for the Director, Defense, Research and Engineering (DDR&E) in conjunction with STRL service representatives and the OPM. The model will measure the effectiveness of this demonstration project, as modified in this plan, and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

The RDECOM ECBC is comprised of the ECBC at the Edgewood Area of Aberdeen Proving Ground, Maryland, ECBC employees matrixed to JPEO–CBD and ECBC employees geographically dispersed at the locations shown in Appendix A. It should be noted that some sites currently employ fewer than ten people and that the sites may change should ECBC reorganize or realign. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 1,100 ECBC civilian employees under title 5, U.S.C. in the occupations listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS), Department of Army (DA) and Army Command centrally funded interns and students employed under the Student Career Experience Program. Employees on temporary appointments will not be covered in the demonstration project.

Department of Army, Army Command centrally funded, and local interns (hired prior to implementation of the project) will not be converted to the demonstration project until they reach their full performance level. They will also continue to follow the TAPES performance appraisal system. Local interns hired after implementation of the project will be covered by all terms of the demonstration project.

The National Federation of Federal Employees (NFFE), Federal District 1, Local 178 and the American Federation of Government Employees (AFGE) Local 15 represent a majority of ECBC employees. Of those employees assigned to ECBC, approximately 87% are represented by a labor union.

To foster union acceptance of ECBC's proposed personnel demonstration project, initial discussions with the local NFFE union began in May 2006. Later that same month, at ECBC's invitation, the NFFE Local 178 participated in a presentation briefed by CERDEC which covered the major aspects of their personnel demonstration project plan. Subsequent to this meeting, senior leadership for both ECBC and NFFE Local 178 had changed. ECBC's new Technical Director continued to support the former Director's initiative to adopt a personnel demonstration project and committed to the effort. In July 2008, senior management arranged for another meeting with NFFE which included the new local president and regional representative to re-introduce and discuss key features of the project plan.

In October 2008, ECBC began similar discussions with the AFGE Local 15. ECBC has maintained on-going communication with the Unions regarding its intent to pursue approval for a laboratory personnel demonstration project. The unions have received updates as specific phases of the project have evolved and have been invited to attend town hall meetings and smaller information sessions provided to the workforce. ECBC will continue to fulfill its obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. Sections 4703(f) and 7117.

F. Project Design

The ECBC has been a DOD STRL since June 1995. This status authorized ECBC to participate in all of the STRL initiatives, to include the authority to carry out personnel demonstration projects. In December 2005, RDECOM Headquarters asked ECBC of their intent to pursue a personnel demonstration project. In-depth discussions with both CERDEC and NSRDEC resulted in an ECBC Laboratory Demonstration decision brief to its senior leadership in April 2006. At the conclusion of that briefing, ECBC senior leadership voted to move toward adopting CERDEC's existing laboratory personnel demonstration project. Subsequently, the ECBC submitted a request to adopt the CERDEC demonstration project. The CERDEC demonstration project was the most recently approved demonstration project, used an inclusive approach for its design, and benefitted from the experiences of prior STRL demonstration projects. After the enactment of the National Defense Authorization Act for Fiscal Year 2008 providing for full implementation of the personnel demonstration project, the DoD announced ECBC's intent to adopt the CERDEC demonstration project in 73 FR 73248, December 2, 2008.

G. Personnel Management Board

ECBC has created a Personnel Management Board to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board are senior leaders appointed by the ECBC Technical Director. As needed, ad hoc members, (such as labor counsel, human resource representatives, *etc.*) will serve as advisory members to the board.

The board will execute the following:

(1) Determine the composition of the pay-for-performance pay pools in accordance with the guidelines of this proposal and internal procedures;

(2) Review operation of pay pools and provide guidance to pay pool managers;

(3) Oversee disputes in pay pool issues;

(4) Formulate and execute the civilian pay budget;

(5) Manage the awards pools;

(6) Determine hiring and promotion base pay as well as exceptions to pay-for-performance base pay increases;

(7) Conduct classification review and oversight, monitoring and adjusting classification practices and deciding board classification issues;

(8) Approve major changes in position structure;

(9) Address issues associated with multiple pay systems during the demonstration project;

(10) Establish Standard Performance Elements and Benchmarks;

(11) Assess the need for changes to demonstration project procedures and policies;

(12) Review requests for Supervisory/Team Leader Base Pay Adjustments and provide recommendations to the appropriate Center Director;

(13) Ensure in-house budget discipline;

(14) Manage the number of employees by occupational family and pay band;

(15) Develop policies and procedures for administering Developmental Opportunity Programs;

(16) Ensure that all employees are treated in a fair and equitable manner in accordance with all policies, regulations and guidelines covering this demonstration project; and

(17) Monitor the evaluation of the project.

III. Personnel System Changes

A. Pay Banding

The design of the ECBC pay banding system takes advantage of the many reviews performed by DA and DoD. The design has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the Navy's "China Lake" experiment and NIST. The pay banding system will replace the current GS structure. Currently, the fifteen grades of the GS are used to classify positions and, therefore, to set pay. The GS covers all white-collar work-administrative, technical, clerical and professional. Changes in this rigid structure are required to allow flexibility in hiring, developing, retaining, and motivating the workforce.

1. Occupational Families

Occupations with similar characteristics will be grouped together into one of three occupational families with pay band levels designed to facilitate pay progression. Each occupational family will be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. These pay bands will replace individual grades and will not be the same for each occupational family. Each occupational family will be divided into three to five pay bands with each pay band covering the same pay range now covered by one or more GS grades. Employees track into an occupational family based on their current series as provided in Appendix B. With the exception of the Engineering and Science Pay Band III and IV *, employees are initially assigned to the highest band in which their grade fits. For example a Management Analyst, GS–343–12, in the Business and Technical occupational family is assigned to Pay Band III as illustrated in Figure 1. The upper and lower pay rate for base pay of each band is defined by the GS rate for the grade and step as indicated in Figure 1 except for Pay Band V of the E&S occupational family (refer to III.A.3.). Comparison to the GS grades was used in setting the upper and lower base pay dollar limits of the pay band levels. However, once employees are moved into the demonstration project, GS grades will no longer apply. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following three occupational families:

Engineering and Science (E&S) (Pay Plan DB): This occupational family includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations research analysts and computer scientists. Specific course work or educational degrees are required for these occupations. Five bands have been established for the E&S occupational family:

(1) Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

(2) Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

(3) Band III * is a full-performance technical track covering GS–12, step 1 through GS–14, step 10.

(4) Band IV * includes both senior technical positions along with supervisors/managers covering GS–14, step 1 through GS–15, step 10.

(5) Band V is a senior scientific-technical manager. The pay range is: Minimum base pay is 120 percent of the minimum base pay of GS–15; maximum base pay is Level IV of the Executive Schedule (EX–IV); and maximum adjusted base pay is Level III of the Executive Schedule (EX–III).

* Bands III and IV overlap at the end and start points. These two bands have been designed following a feature used by the Navy's "China Lake" project. Upon conversion into the demonstration project, employees in the E&S family currently at grade GS–14 will be assigned to either Band III or Band IV based on a review of the duties and responsibilities of the position as compared to the classification criteria.

Business & Technical (B&T) (Pay Plan DE): This occupational family includes such positions as computer specialists, equipment specialists, quality assurance specialists, telecommunications specialists, engineering and electronics technicians, procurement coordinators, finance, accounting, administrative computing, and management analysis. Employees in these positions may or may not require specific course work or educational degrees. Four bands have been established for the B&T occupational family:

(1) Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

(2) Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

(3) Band III is a full performance track covering GS–12, step 1 through GS–13, step 10.

(4) Band IV is a senior technical/manager track covering GS–14, step 1 through GS–15, step 10.

General Support (GEN) (Pay Plan DK): This occupational family is composed of positions for which specific course work or educational degrees are not required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office automation clerks, and budget/program/computer assistants. Three bands have been established for the GEN occupational family:

(1) Band I includes entry-level positions covering GS–1, step 1 through GS–4, step 10.

(2) Band II includes full-performance positions covering GS–5, step 1 through GS–8, step 10.

(3) Band III includes senior technicians/assistants/secretaries covering GS–9 step 1 through step 10.

2. Pay Band Design

The pay bands for the occupational families and how they relate to the current GS framework are shown in Figure 1.

FIGURE 1—PAY BAND CHART

Occupational family	Equivalent GS grades				
	I	II	III	IV	V
E&S	GS–01—GS–04	GS–05—GS–11	GS–12—GS–14	GS–14—GS–15	>GS–15.
Business & Technical	GS–01—GS–04	GS–05—GS–11	GS–12—GS–13	GS–14—GS–15.	
General Support	GS–01—GS–04	GS–05—GS–08	GS–9.		

Employees will be converted into the occupational family and pay band that corresponds to their GS/GM series and grade. With respect to conversion of Engineering and Science GS–14 positions, placement to a DB–III or DB–IV will be based on a review of the duties and responsibilities of the position as compared to the classification criteria. Each employee converted to the demonstration project is assured, upon conversion, an initial place in the system without loss of pay. New hires will ordinarily be placed at the lowest base pay rate in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance base pay within a band. As the rates of the GS are increased due to the annual general pay increases, the upper and lower base pay rates of the pay bands will also increase. Since pay progression through the bands depends directly on performance, there will be no scheduled Within-Grade Increases (WGIs) or Quality Step Increases (QSIs) for employees once the pay banding system is in place. Special rate schedules will no longer be applicable to demonstration project employees. Special provisions have been included to ensure no loss of pay upon conversion (*See* III.E.9. Staffing Supplements).

3. Pay Band V

The pay banding plan expands the pay banding concept used at "China Lake" and NIST by creating Pay Band V for the E&S occupational family. This pay band is designed for Senior Scientific Technical Managers (SSTM). The current definitions of Senior Executive Service (SES) and Scientific and Professional (ST) positions do not fully meet the needs of the ECBC organization.

The SES designation is appropriate for executive level managerial positions whose classification exceeds GS–15. The primary competencies of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are designed for bench research scientists and engineers. These positions require a very high level of technical expertise and have little or no supervisory responsibilities.

The ECBC has positions that may warrant classification above GS–15 because of their technical expertise requirements. These positions have characteristics of both SES and ST classifications. Most of these positions are responsible for supervising other GS–15 positions, including lower level supervisors, non-supervisory engineers and scientists, and in some cases ST positions. The supervisory and managerial requirements exceed those appropriate for ST positions.

Management considers the primary requirement for these positions to be knowledge of and expertise in the specific scientific and technology areas related to the mission of their organization, rather than the executive leadership qualifications that are characteristic of the SES. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders who possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as STs is not an option because the managerial and supervisory responsibilities cannot be ignored.

Pay Band V will apply to a new category of positions designated as Senior Scientific Technical Managers (SSTM). Positions so designated will include those requiring scientific/engineering technical expertise and full managerial and supervisory authority. Their scientific/engineering technical expertise and responsibilities warrant classification above the GS–15 level.

Current GS–15 positions will convert into the demonstration project at Pay Band IV. After conversion these positions will be reviewed against established criteria to determine if the positions should be reclassified to Pay Band V. Other positions possibly meeting criteria for designation as SSTM will be reviewed on a case-by-case basis. The pay range for SSTM positions is: minimum base pay is 120 percent of the minimum base pay of GS–15; maximum rate of base pay is Level IV of the Executive Schedule (EX–IV); and maximum adjusted base pay is Level III of the Executive Schedule (EX–III). Adjusted base pay is base rate plus locality or staffing supplement as appropriate.

Vacant SSTM positions will be filled competitively to ensure that selectees are preeminent technical leaders in specialty fields who also possess substantial managerial and supervisory abilities. Panels will be created to assist in filling SSTM positions. Panel members typically will be SES members, ST employees and later those designated as SSTMs. In addition, General Officers and recognized technical experts from outside ECBC may also serve as appropriate. The panel will apply criteria developed largely from the OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level and other OPM guidance related to positions exceeding the GS–15 level. The purpose of the panel is to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review.

SSTM positions will be subject to limitations imposed by DoD. SSTM positions will be established only in a STRL that employs scientists, engineers, or both. Incumbents of these positions will work primarily in their professional technical capacity on research and development and secondarily, will perform managerial or supervisory duties.

The final component of Pay Band V is the management of all Pay Band V assets. Specifically, this authority will be exercised at the DA level, and includes the following: authority to classify, create, or abolish positions within the limitations imposed by DoD; recruit and reassign employees in this pay band; set pay and appraise performance under this project's pay-for-performance system.

B. Classification

1. Occupational Series

The present GS classification system has over 400 occupational series, which are divided into 23 occupational groupings. ECBC currently has positions in approximately 65 occupational series that fall into 16 occupational groupings.

All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

ECBC will use CERDEC's fully automated classification system modeled after the Navy's "China Lake" and ARL's automated systems. ARL developed a Web-based automated classification system that can create standardized, classified position descriptions under the new pay banding system in a matter of minutes. The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM position classification standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the competencies required. New position descriptions will replace the current DA job descriptions. The classification standard for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide data element information pertinent to the job. The computer-assisted process will produce information necessary for position descriptions. The new descriptions will be easier to prepare, minimize the amount of writing time and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes (narrative descriptions) will be used to further differentiate types of work and the competencies required for particular positions within an occupational family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria. As a general rule, the FLSA status can be matched to occupational family and pay band as indicated in Figure 2. For example, positions classified in Pay Band I of the E&S occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers whose primary duty meet the definitions outlined in the OPM GS Supervisory Guide. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. Supervisors with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities to the classification standards for each pay band and the 5 CFR 551 FLSA criteria. Additionally, the advice and assistance of the servicing CPAC will be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the CPAC.

FIGURE 2—FLSA STATUS

[Pay bands]

Occupational family	I	II	III	IV	V
E&S	N	N/E	E	E	E
B&T	N	N/E	E	E	
GEN	N	N	E		

N—Non-Exempt from FLSA; E—Exempt from FLSA.

N/E—Exemption status determined on a case-by-case basis.

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

The ECBC Technical Director will have delegated classification authority and may, in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented on the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. Time periods for cases processed under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a pay schedule; or matters grievable under an administrative or negotiated grievance procedure, or an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPAC providing personnel service and will include copies of appropriate demonstration project criteria.

C. Pay for Performance

1. Overview

The purpose of the pay-for-performance system is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the ECBC workforce. It is essential for the development of a highly productive workforce and to provide management at the lowest practical level, the authority, control, and flexibility needed to achieve a quality organization and meet mission requirements. The pay-for-performance system allows for more employee involvement in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of

performance, facilitates employee career progression, and provides an understandable and rational basis for pay changes by linking pay and performance.

The pay-for-performance system uses annual performance payouts that are based on the employee's total performance score rather than within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same pay band (*i.e.*, there are no within-band promotions) and performance awards. The normal rating period will be one year. The minimum rating period will be 120 days. Pay-for-performance payouts can be in the form of increases to base pay and/or in the form of bonuses that are not added to base pay but rather are given as a lump sum bonus. Other awards such as special acts, time-off awards, *etc.*, will be retained separately from the pay-for-performance payouts.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project.

2. Performance Objectives

Performance objectives define a target level of activity, expressed as a tangible, measurable objective, against which actual achievement can be compared. These objectives will specifically identify what is expected of the employee during the rating period and will typically consist of three to ten results-oriented statements. The employee and his/her supervisor will jointly develop the employee's performance objectives at the beginning of the rating period. These are to be reflective of the employee's duties/responsibilities and pay band along with the mission/organizational goals and priorities. Objectives will be reviewed annually and revised upon changes in pay reflecting increased responsibilities commensurate with pay increases. Use of generic one-size-fits-all objectives will be avoided, as performance objectives are meant to define an individual's specific responsibilities and expected accomplishments. In contrast, performance elements as described in the next paragraph will identify generic performance characteristics, against which the accomplishment of objectives will be measured. As a part of this demonstration project, training focused on overall organizational objectives and the development of performance objectives will be held for both supervisors and employees. Performance objectives may be jointly modified, changed or deleted as appropriate during the rating cycle. As a general rule, performance objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

3. Performance Elements

Performance elements define generic performance characteristics that will be used to evaluate the employee's success in accomplishing his/her performance objectives. The use of generic characteristics for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives. This pay-for-performance system will utilize those performance elements provided in Appendix C. All elements are critical. A critical performance element is defined as an attribute of job performance that is of sufficient importance that performance below the minimally acceptable level requires remedial action and may be the basis for removing an employee from his/her position. Non-critical elements will not be used. Each of the performance elements will be assigned a weight, which reflects its importance in accomplishing an individual's performance objectives. A minimum weight is set for each performance element. The sum of the weights for all of the elements must equal 100.

A single set of performance elements will be used for evaluating the annual performance of all ECBC personnel covered by this plan. This set of performance elements may evolve over time, based on experience gained during each rating cycle. This evolution is essential to capture the critical characteristics the organization encourages in its workforce toward meeting individual and organizational objectives. This is particularly true in an environment where technology and work processes are changing at an increasingly rapid pace. The ECBC Personnel Management Board will annually review the set of performance elements and set them for the entire organization before the beginning of the rating period. The following is an initial set of performance elements along with their minimum weight:

(1) Technical Competence (Minimum Weight: 15%).

(2) Interpersonal Skills (Minimum Weight: 10%).

(3) Management of Time and Resources (Minimum Weight: 15%).

(4) Customer Satisfaction (Minimum Weight: 10%).

(5) Team/Project Leadership (Minimum Weight: 15%).

(6) Supervision/Equal Employment Opportunity (EEO) (Minimum Weight: 25%).

All employees will be rated against the first four performance elements. Team/Project Leadership is mandatory for team leaders (within this document "team leader" refers to non-supervisory team leaders as determined by the OPM GS Leader Grade Evaluation Guide). Supervision/EEO is mandatory for all managers/supervisors. At the beginning of the rating period, pay pool managers will review the objectives and weights assigned to employees within the pay pool, to verify consistency and appropriateness.

4. Performance Feedback and Formal Ratings

The most effective means of communication is person-to-person discussion between supervisors and employees of requirements, performance goals and desired results. Employees and supervisors alike are expected to actively participate in these discussions for optimum clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the performance objectives and elements. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent, task specific, discussions may be appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations will be appropriate.

The employee will provide a list of his/her accomplishments to the supervisor at both the mid-point and end of the rating period. An employee may elect to provide self-ratings on the performance elements and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will permit the supervisor to fully evaluate accomplishments during the rating period.

At the end of the rating period, following a review of the employee's accomplishments, the supervisor will rate each of the performance elements by assigning a score between 0 and 50. Benchmark performance standards have

been developed that describe the level of performance associated with a score. Using these benchmarks, the supervisor decides where (at any point on a scale of 0 to 50) the performance of the employee fits and assigns an appropriate score. It should be noted that these scores are not discussed with the employee or considered final until all scores are reconciled and approved by the pay pool manager. The element scores will then be multiplied by the element-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each element will then be totaled to determine the employee's overall appraisal score and rounded to a whole number as follows: if the digit to the right of the decimal is between five and nine, it should be rounded to the next higher whole number; if the digit to the right of the decimal is between one and four, it should be dropped.

A total score of 10 or above will result in a rating of acceptable. A total score of 9 or below will result in a rating of unacceptable, and requires the employee be placed on a Performance Improvement Plan (PIP) immediately or following a temporary assignment. A score of 9 or below in a single element will also result in a rating of unacceptable, and requires the employee be placed on a PIP. A new rating of record will be issued if the employee's performance improves to an acceptable level at the conclusion of the PIP.

5. Unacceptable Performance

Informal employee performance reviews will be a continuous process so that corrective action, to include placing an employee on a PIP, may be taken at any time during the rating cycle. Whenever a supervisor recognizes an employee's performance on one or more performance elements is unacceptable, the supervisor should immediately inform the employee. Efforts will be made to identify the possible reasons for the unacceptable performance. An employee who is on a PIP is not eligible to receive the general pay increase (refer to III.C.13.).

As an informal first step, the supervisor and employee may explore a temporary assignment to another unit in the organization. This recognizes that conflicts sometimes occur between a supervisor and an employee, or that an employee may be assigned to a position for which he/she is not suited. The supervisor is under no obligation to explore this option prior to taking more formal action. If the temporary assignment is not possible or has not worked out, and the employee continues to perform at an unacceptable level or has received an unacceptable rating, written notification outlining the unacceptable performance will be provided to the employee. At this point an opportunity to improve will be structured in a PIP. The supervisor will identify the items/actions that need to be corrected or improved, outline required time frames (no less than 30 days) for such improvement, and provide the employee with any available assistance as appropriate. Progress will be monitored during the PIP, and all counseling sessions will be documented.

If the employee's performance is acceptable at the conclusion of the PIP, no further action is necessary. If a PIP ends prior to the end of the annual performance cycle and the employee's performance improves to an acceptable level, the employee is appraised again at the end of the annual performance cycle.

If the employee fails to improve during the PIP, the employee will be given notice of proposed appropriate action. This action can include removal from the Federal service, placement in a lower pay band with a corresponding reduction in pay (demotion), reduction in pay within the same pay band, or change in position or occupational family. For the most part, employees with an unacceptable rating will not be permitted to remain at their current pay and may be reduced in pay band. Reductions in base pay within the same pay band or changes to a lower pay band will be accomplished with a minimum of a five-percent decrease in an employee's base pay.

Note: Nothing in this subsection will preclude action under 5 U.S.C. chapter 75, when appropriate.

All relevant documentation concerning a reduction in pay or removal based on unacceptable performance will be preserved and made available for review by the affected employee or a designated representative. As a minimum, the record will consist of a copy of the notice of proposed personnel action, the employee's written reply, if provided, or a summary when the employee makes an oral reply. Additionally, the record will contain the written notice of decision and the reasons therefore along with any supporting material (including documentation regarding the opportunity afforded the employee to demonstrate improved performance).

If the employee's performance deteriorates to an unacceptable level, in any element, within two years from the beginning of a PIP, follow-on actions may be initiated with no additional opportunity to improve. If an employee's performance is at an acceptable level for two years from the beginning of the PIP, and performance once again declines to an unacceptable level, the employee will be given an additional opportunity to improve, before management proposes follow-on actions.

6. Reconciliation Process

Following the initial scoring of each employee by the rater, the rating officials in an organizational unit, along with their next level of supervision, will meet to ensure consistency and equity of the ratings. In this step, each employee's performance objectives, accomplishments, preliminary scores and pay are compared. Through discussion and consensus building, consistent and equitable ratings are reached. Managers will not prescribe a distribution of total scores. The pay pool manager will then chair a final review with the rating officials who report directly to him or her to validate these ratings and resolve any scoring issues. If consensus cannot be reached in this process, the pay pool manager makes all final decisions. After this reconciliation process is complete, scores are finalized. Payouts proceed according to each employee's final score and adjusted base pay. Upon approval of this plan, implementing procedures and regulations will provide details on this process to employees and supervisors.

7. Pay Pools

ECBC employees will be placed into pay pools. Pay pools are combinations of organizational elements (*e.g.*, Directorates, Divisions, Branches, Teams, *etc.*) that are defined for the purpose of determining performance payouts under the pay-for-performance system. The guidelines in the next paragraph are provided for determining pay pools. These guidelines will normally be followed. However, the ECBC Technical Director may deviate from the guidelines if there is a compelling need to do so and document their rationale in writing.

The ECBC Technical Director will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Supervisory personnel will be placed in a pay pool separate from subordinate non-supervisory personnel. Team leaders classified by the GS Leader Grade Evaluation Guide will be included in a supervisory pay pool.

Those team leaders who have project responsibility but who do not actually lead other workers will be included in a non-supervisory pay pool. Neither the pay pool manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the performance payout are based on the established formal payout calculations.

Funds within a pay pool available for performance payouts are calculated from anticipated pay increases under the existing system and divided into two components, base pay and bonus. The funds within a pay pool used for base pay increases, are those that would have been available from within-grade increases, quality step increases and promotions (excluding the costs of promotions still provided under the banding system). This amount will be defined based on historical data and will be set at no less than two percent of total adjusted base pay annually. The funds available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. This amount will be defined based on historical data and at no less than one percent of total adjusted base pay annually. The sum of these two factors is referred to as the pay pool percentage factor. The ECBC Personnel Management Board will annually review the pay pool funding and recommend adjustments to the ECBC Technical Director to ensure cost discipline over the life of the demonstration project. Cost discipline is assured within each pay pool by limiting the total base pay increase to the funds available, based on what would have been available in the GS system from within-grade increases, quality step increases and within-band promotions. The ECBC Technical Director may reallocate the amount of funds assigned to each pay pool as necessary to ensure equity and to meet unusual circumstances.

8. Performance Payout Determination

The performance payout an employee will receive is based on the total performance score from the pay-for-performance assessment process. An employee will receive a performance payout as a percentage of adjusted base pay. This percentage is based on the number of shares that equates to their final appraisal score. Shares will be awarded on a continuum as follows:

Score = Shares
50 = 3
40 = 2
30 = 1
21 = .1
10 – 20 = 0
< = 9 = 0 (Performance Improvement Plan required).

Fractional shares will be awarded for scores that fall in between these scores. For example: A score of 38 will equate to 1.8 shares, and a score of 44 will equate to 2.4 shares.

The value of a share cannot be exactly determined until the rating and reconciliation process is completed and all scores are finalized. The share value is expressed as a percentage. The formula that computes the value of each share uses base pay rates and is based on (1) the sum of the base pay of all employees in the pay pool times the pay pool percentage factor, (2) the employee's base pay, (3) the number of shares awarded to each employee in the pay pool, and (4) the total number of shares awarded in the pay pool. This formula assures that each employee within the pool receives a share amount equal to all others in the same pool who are at the same rate of base pay and receiving the same score. The formula is shown in Figure 3.

Figure 3. Formula

$$\text{Share value} = \frac{\text{Sum of base pay of employees in pool} * \text{pay pool percentage factor}}{\text{Sum of (base pay} * \text{shares earned) for each employee}}$$

An individual payout is calculated by first multiplying the shares earned by the share value and multiplying that product by base pay. An adjustment is then made to account for locality pay or staffing supplement.

A pay pool manager is accountable for staying within pay pool limits. The pay pool manager makes final decisions on base pay increases and/or bonuses to individuals based on rater recommendation, the final score, the pay pool funds available, and the employee's pay.

9. Base Pay Increases and Bonuses

The amount of money available for performance payouts is divided into two components, base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus, such that all of the allocated funds are disbursed as intended. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited or capped. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band, when the mid-point rule applies (*see* below) or when the Significant Accomplishment/ Contribution rule applies (*see* below). Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the total payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the base pay for any purpose (*e.g.*, lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15/step 10, except for employees in Pay Band V of the E&S occupational family. In this case, the pay range is as noted in III.A.3.

If the organization determines it is appropriate, it may re-allocate a portion (up to the maximum possible amount) of the unexpended base pay funds for capped employees to uncapped employees. This re-allocation will be determined by the pay pool manager. Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the employee's projected bonus payment. Thus, the employee's total performance payout is unchanged.

In addition, a pay pool manager may request approval from the Personnel Management Board for use of an Extraordinary Achievement Recognition. Such recognition grants a base pay increase and/or bonus to an employee that is higher than the one

generated by the compensation formula for that employee. Examples that might warrant consideration are extraordinary achievements or accelerated compensation for a local intern. The funds available for an Extraordinary Achievement Recognition are separately funded within the constraints of the organization's budget.

10. Mid-Point Rule

To provide added performance incentives as an employee progresses through a pay band, a mid-point rule will be used to determine base pay increases. The mid-point rule dictates that any employee must receive a score of 30 or higher for his/her base pay to cross the mid-point of the base pay range for his/her pay band. Also, once an employee's base pay exceeds the mid-point, the employee must receive a score of 30 or higher to receive any additional base pay increases. Any amount of an employee's performance payout, not paid in the form of a base pay increase because of the mid-point rule, will be paid as a bonus. This rule effectively raises the standard of performance expected of an employee once the mid-point of a band is crossed. This applies to all employees in every occupational family and pay band.

11. Significant Accomplishment/ Contribution Rule

The purpose of this rule is to maintain cost discipline while ensuring that employee payouts are in consonance with accomplishments and levels of responsibility. The rule will apply only to employees in E&S Pay Band III whose base pay falls within the top 15 percent of the band. For employees meeting these criteria, the following provisions will apply:

(1) If an employee's score falls in the top third of scores received in his/her pay pool, he/she will receive the full allowable base pay increase portion of the performance payout. The balance of the payout will be paid as a lump sum bonus.

(2) If an employee's score falls in the middle third of scores received in his/her pay pool, the base pay increase portion will not exceed one percent of base pay. The balance of the payout will be paid as a lump sum bonus.

(3) If an employee's appraisal score falls in the bottom third of scores received in his/her pay pool, the full payout will be paid as a lump sum bonus.

12. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the performance award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off. The funds available to be used for traditional 5 U.S.C. awards are separately funded within the constraints of the organization's budget.

While not directly linked to the pay-for-performance system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing the diverse mission of ECBC. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. Under the demonstration project, a team may elect to distribute such awards among themselves.

Thus, a team leader or supervisor may allocate a sum of money to a team for outstanding performance, and the team may decide the individual distribution of the total dollars among themselves. The Commanding General, RDECOM will have the authority to grant special act awards to covered employees of up to $10,000 lAW the criteria of AR 672–20, Incentive Awards. This authority may be delegated to the Technical Director, ECBC.

13. General Pay Increase

Employees, who are on a PIP at the time pay determinations are made, do not receive performance payouts or the annual general pay increase. An employee who receives an unacceptable rating of record will not receive any portion of the general pay increase or RIF service credit until such time as his/her performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the general pay increase will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment. These actions may result in a base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

14. Reverse Feedback

Employee feedback to supervisors is considered essential for the success of the pay-for-performance system. A feedback instrument for subordinates to anonymously evaluate the effectiveness of their supervisors is being developed and shall be implemented as part of the demonstration project. Supervisors and their managers will be provided the results of that feedback in a format that does not identify individual raters or ratings. The data will be aggregated into a summary and used to establish both personal and organizational performance development goals. The use of this type of instrument will help focus attention on desired leadership behaviors, structure the feedback in a constructive manner, and offset the power imbalance that often prevents supervisors from getting useful feedback from their employees.

15. Grievances

An employee may grieve the performance rating/score received under the pay-for-performance system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings, must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover performance rating grievances must file under those negotiated procedures.

16. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

D. Hiring Authority

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family will be determined using the OPM Operating Manual for Qualification Standards for GS Positions. Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the E&S occupational family, Pay Band II individuals must meet the basic requirements for a GS–5 as specified in the OPM Qualification Standard for Professional and Scientific Positions.

Selective factors may be established for a position in accordance with the OPM Qualification Standards Operating Manual, when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

Competitive service positions will be filled through Merit Staffing and through direct-hire authority or under Delegated Examining. Recent legislative changes provide for delegation of direct-hire authority for shortage category positions under the Defense Acquisition Workforce Improvement Act (DAWIA) at certain levels as well as direct hire authority for qualified candidates with an advanced degree to scientific and engineering positions within 5 U.S.C. 9902(c)(2) STRL laboratories as redesignated under section 1105 of Public Law 111–84. Where delegated to the laboratory level, direct-hire authority will be exercised in accordance with the requirements of the delegation of authority. The "Rule of Three" will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score.

3. Legal Authority

For actions taken under the auspices of the demonstration project, the legal authority, Public Law 103–337, as amended, will be used. For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

4. Revisions to Term Appointments

ECBC conducts a variety of projects that range from three to six years. The current four-year limitation on term appointments often forces the termination of term employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers.

ECBC will continue to have career and career-conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration project, ECBC will have the added authority to hire individuals under a modified term appointment. These appointments will be used to fill positions for a period of more than one year, but not more than a total of five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR 316 in that they may be made for a period not to exceed five, rather than four years. The Technical Director is authorized to extend a term appointment one additional year.

Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional appointment at a later date; (2) have served two years of continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position; and (4) be performing at the acceptable level of performance with a current score of 30 or greater.

Employees serving under regular term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointments if they (1) have served two years of continuous service in the term position; (2) are selected under merit promotion procedures for the permanent position; and (3) are performing at the acceptable level of performance with a current score of 30 or greater (or equivalent if not yet rated under the demonstration project). Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous. Employees serving under regular or modified term appointments under this plan will be covered by the plan's pay-for-performance system.

5. Extended Probationary Period

The current one-year probationary period will be extended to three years for all newly hired permanent career-conditional employees in the E&S occupational family. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct. The three-year probationary period will apply only to new hires subject to a probationary period.

If a probationary employee's performance is determined to be satisfactory at a point prior to the end of the three-year probationary period, a supervisor has the option of ending the probationary period at an earlier date, but not before the employee has completed one year of continuous service. If the probationary period is terminated before the end of the three-year period, the immediate supervisor will provide written reasons for his/her decision to the next level of supervision for concurrence prior to implementing the action.

Aside from extending the time period for all newly hired permanent career-conditional employees in the E&S occupational family, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee appointed prior to the implementation date will not be affected.

6. Termination of Probationary Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor shall terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice shall, at a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's performance or conduct, or those conditions arising before employment that support the termination.

7. Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR part 315. Employees who have successfully completed the initial probationary period will be required to complete an additional one-year probationary period for initial appointment to a supervisory position. If, during this probationary

period, the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance, the employee will be returned to a comparable position of no lower pay than the position from which promoted or reassigned.

8. Volunteer Emeritus Corps

Under the demonstration project, the ECBC Director will have the authority to offer retired or separated employees voluntary positions. The ECBC Director may re-delegate this authority.. Voluntary Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The volunteer's Federal retirement pay (whether military or civilian) is not affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period.

The Voluntary Emeritus Corps will ensure continued quality services while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the ECBC community. The program will be beneficial during manpower reductions, as employees accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the Voluntary Emeritus Corps, a volunteer must be recommended by an ECBC manager to the Director or delegated authority. Not everyone who applies is entitled to an emeritus position. The responsible official will document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established among the volunteer, the responsible official and the CPAC. The agreement must be finalized before the assumption of duties and shall include:

(1) A statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

(2) A statement that the volunteer will be considered a Federal employee only for the purpose of injury compensation;

(3) The volunteer's work schedule;

(4) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(5) Support provided by the organization (travel, administrative support, office space, and supplies);

(6) A statement of duties;

(7) A statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

(8) A provision allowing either party to void the agreement with two working days written notice;

(9) The level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

(10) A provision that any publication(s) resulting from his/her work will be submitted to the ECBC Technical Director for review and approval;

(11) A statement that he/she accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

(12) A statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

(13) A statement that he/she will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services; and,

(14) A statement that he/she agrees to disclose any inventions made in the course of work performed at ECBC. The ECBC Technical Director has the option to obtain title to any such invention on behalf of the U.S. Government. Should the ECBC Technical Director elect not to take title, the ECBC shall at a minimum retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government.

Exceptions to the provisions in this procedure may be granted by the ECBC Technical Director on a case-by-case basis.

E. Internal Placement

1. Promotion

A promotion is the movement of an employee to a higher pay band in the same occupational family or to another pay band in a different occupational family, wherein the band in the new family has a higher maximum base pay than the band from which the employee is moving. The move from one band to another must result in an increase in the employee's base pay to be considered a promotion. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual competencies, qualifications and the needs of the organization. Supervisors may consider promoting employees at any time, since promotions are not tied to the pay-for-performance system. Progression within a pay band is based upon performance base pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified below, promotions will be processed under competitive procedures in accordance with Merit System Principles and requirements of the local merit promotion plan.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of "acceptable" with a score of 21 or better, or equivalent under a different performance appraisal system. If an employee does not have a current performance rating, the employee will be treated the same as an employee with an "acceptable" rating as long as there is no documented evidence of unacceptable performance.

2. Reassignment

A reassignment is the movement of an employee from one position to a different position within the same occupational family and pay band or to another occupational family and pay band wherein the band in the new family has the same maximum base pay. The employee must meet the qualifications requirements for the occupational family and pay band.

3. Demotion or Placement in a Lower Pay Band

A demotion is a placement of an employee into a lower pay band within the same occupational family or placement into a pay band in a different occupational family with a lower maximum base pay. Demotions may be for cause (performance or conduct) or for reasons other than cause (*e.g.*, erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from RIF procedures).

4. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with no change in base pay, within broad descriptions, consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

5. Details

Under this plan employees may be detailed to a position in the same band (requiring a different level of expertise and qualifications) or lower pay band (or its equivalent in a different occupational family) for up to one year. Details may be implemented through an official personnel action to cover the one-year period. Details to a position in a higher pay band up to 180 days will be made non-competitively. Beyond 180 days requires competitive procedures.

6. Exceptions to Competitive Procedures

The following actions are excepted from competitive procedures:

(1) Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a permanent basis within the competitive service.

(2) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(3) A position change permitted by reduction-in-force procedures.

(4) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(5) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(6) A promotion due to the reclassification of positions based on accretion (addition) of duties.

(7) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(8) Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

(9) Impact of person in the job and Factor IV process (application of the Research Grade-Evaluation Guide, Equipment Development Grade Evaluation Guide, Part III, or similar guides) promotions.

F. Pay Setting

1. General

Pay administration policies will be established by the Personnel Management Board. These policies will be exempt from Army Regulations or RDECOM local pay fixing policies but will conform to basic governmental pay fixing policy. Employees whose performance is acceptable will receive the full annual general pay increase and the full locality pay. ECBC may make full use of recruitment, retention and relocation payments as currently provided for by OPM.

Pay band and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR 536, except as waived or modified in section IX, the waiver section of this plan. The ECBC Technical Director may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

2. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the base pay of Level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B. In addition, each pay band will have its own pay ceiling, just as grades do in the current system. Base pay rates for the various pay bands will be directly keyed to the GS rates, except as noted in III.A.3. for the Pay Band V of the Engineer and Scientist occupational family. Other than where retained rate applies, base pay will be limited to the maximum base pay payable for each pay band.

3. Pay Setting for Appointment

Upon initial appointment, the individual's pay may be set at the lowest base pay in the pay band or anywhere within the band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on pay setting for new hires will be established by the Personnel Management Board.

Highest Previous Rate (HPR) will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Use of HPR will be at the supervisor's discretion, but if used, HPR is subject to policies established by the Personnel Management Board.

4. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be six percent or the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of a pay increase for a promotion will not exceed $10,000, or other such amount as established by the Personnel Management Board. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. For employees assigned to occupational categories and geographic areas covered by special rates, the minimum base pay rate in the pay band to which promoted is the minimum base pay for the corresponding special rate or locality rate, whichever is greater. For employees covered by a staffing supplement, the demonstration staffing adjusted pay is considered base pay for promotion calculations. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established

by the Personnel Management Board. In no case may those adjustments increase the base pay for the position of record beyond the applicable pay range maximum base pay rate.

5. Pay Setting for Reassignment

A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, authority or for other compelling reasons. Such an increase is subject to the specific guidelines established by the Personnel Management Board.

6. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a five percent decrease in base pay. Employees demoted for reasons other than cause (*e.g.*, erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in section IX of this plan.

Employees who receive an unacceptable rating or who are on a PIP at the time pay determinations are made, do not receive performance payouts or the general pay increase. This action may result in a base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse performance based action, nor will band retention provisions apply.

7. Supervisory and Team Leader Pay Adjustments

Supervisory and team leader pay adjustments may be approved by the ECBC Technical Director based on the recommendation of the Personnel Management Board to compensate employees with supervisory or team leader responsibilities. Only employees in supervisory or team leader positions as defined by the OPM GS Supervisory Guide or GS Leader Grade Evaluation Guide may be considered for the pay adjustment. These pay adjustments are funded separately from performance pay pools. These pay adjustments are increases to base pay, ranging up to ten percent of that pay rate for supervisors and for team leaders. Pay adjustments are subject to the constraint that the adjustment may not cause the employee's base pay to exceed the pay band maximum base pay. Criteria to be considered in determining the pay increase percentage include:

(1) Needs of the organization to attract, retain, and motivate high-quality supervisors/team leaders;

(2) Budgetary constraints;

(3) Years and quality of related experience;

(4) Relevant training;

(5) Performance appraisals and experience as a supervisor/team leader;

(6) Organizational level of position; and

(7) Impact on the organization.

The pay adjustment will not apply to employees in Pay Band V of the E&S occupational family.

After the date of conversion into the demonstration project, a pay adjustment may be considered under the following conditions:

(1) New hires into supervisory/team leader positions will have their initial rate of base pay set at the supervisor's discretion within the pay range of the applicable pay band. This rate of pay may include a pay adjustment determined by using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory/team leader position that is within the employee's current pay band may also be considered for a base pay adjustment. If a supervisor/team leader is already authorized a base pay adjustment and is subsequently selected for another supervisor/team leader position within the same pay band, then the base pay adjustment will be re-determined.

Upon initial conversion into the demonstration project into the same or substantially similar position, supervisors/team leaders will be converted at their existing base rate of pay and will not be eligible for a base pay adjustment.

The supervisor/team leader pay adjustment will be reviewed annually, with possible increases or decreases based on the appraisal scores for the performance element, Team/Project Leadership or Supervision/EEO. The initial dollar amount of a base pay adjustment will be removed when the employee voluntarily leaves the position. The cancellation of the base pay adjustment under these circumstances is not an adverse action and is not subject to appeal. If an employee is removed from a supervisory/team leader position for personal cause (performance or conduct), the base pay adjustment will be removed under adverse action procedures. However, if an employee is removed from a non-probationary supervisory/team leader position for conditions other than voluntary or for personal cause, then grade and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX.

8. Supervisory/Team Leader Pay Differentials

Supervisory and team leader pay differentials may be used by the ECBC Technical Director to provide an incentive and reward supervisors and team leaders as defined by the OPM GS Supervisory Guide and GS Leader Grade Evaluation Guide. Pay differentials are not funded from performance pay pools. A pay differential is a cash incentive that may range up to ten percent of base pay for supervisors and for team leaders. It is paid on a pay period basis with a specified not-to-exceed (NTE) of one year or less and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory/Team Leader Pay Adjustments. The pay differential will not apply to employees in Pay Band V of the E&S occupational family.

The pay differential may be considered, either during conversion into or after initiation of the demonstration project, if the supervisor/team leader has subordinate employees in the same pay band. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

After initiation of the demonstration project, all personnel actions involving a supervisory/team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the ECBC Technical Director. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

9. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted base pay for the banded GS grades (*i.e.*, the maximum GS locality rate) to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. For employees being

converted into the demonstration project, total pay immediately after conversion will be the same as immediately before (excluding the impact of any WGI buy-in), but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total pay .

The staffing supplement is calculated as follows. Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted base pay rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base pay rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base pay rate plus the staffing supplement. This amount will equal the employee's former GS adjusted base pay rate. Simplified, the formula is this:

$$\text{Staffing factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS unadjusted rate corresponding to that special rate}}$$

$$\text{Demonstration base pay rate} = \frac{\text{Former GS adjusted base pay rate (specialty or locality rate)}}{\text{Staffing factor}}$$

$$\text{Staffing supplement} = \text{Demonstration base pay rate} * (\text{staffing factor} - 1)$$

$$\text{Pay upon conversion} = \text{Demonstration base pay rate} + \text{staffing supplement (sum will equal existing rate)}$$

Staffing supplement = Demonstration base pay rate * (staffing factor − 1)

Pay upon conversion = Demonstration base pay rate + staffing supplement (sum will equal existing rate)

If an employee is in a band where the maximum GS adjusted base pay rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base pay rate is derived by dividing the employee's former GS adjusted base pay rate (the higher of locality rate or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted base pay rate will equal the employee's former GS adjusted base pay rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

Application of the staffing supplement is normally intended to maintain pay comparability for GS employees entering the demonstration project. However, the staffing supplement formulas must be compatible with non-Government employees entering the demonstration project and also be adaptable to the special circumstances of employees already in the demonstration project. The following principles will govern the modifications necessary to the staffing supplement calculations to apply the staffing supplement to circumstances other than a GS employee entering the demonstration project. No adjustment under these provisions will provide an increase greater than that provided by the special salary rate table. An increase provided under this authority is not an equivalent increase, as defined by 5 CFR 531.403. These principles are stated with the understanding that the necessary conditions exist that require the application of a staffing supplement:

(1) If a non-Government employee is hired into the demonstration project, then the employee's adjusted base pay will be used for the term, "former GS adjusted base pay rate" to calculate the demonstration base pay rate.

(2) If a current employee is covered by a new or modified special salary rate table, then the employee's current demonstration base pay rate is used to calculate the staffing supplement percentage. The employee's new demonstration adjusted base pay rate is the sum of the current demonstration base pay rate and the calculated staffing supplement.

(3) If a current employee is in an occupational category that is covered by a special salary rate table and subsequently, the occupational category becomes covered by a different special salary rate table with a higher value, then the following steps must be applied to calculate a new demonstration base pay rate:

Step 1. To obtain a relevance factor, divide the staffing factor that will become applicable to the employee by the staffing factor that would have applied to the employee.

Step 2. Multiply the relevance factor resulting from step 1 by the employee's current demonstration adjusted base pay rate to determine a new demonstration adjusted base pay rate.

Step 3. Divide the result from step 2 by the applicable staffing factor to derive a new demonstration base pay rate. This new demonstration base pay rate will be used to calculate the staffing supplement and the new demonstration adjusted base pay.

(4) If, after the establishment of a new or adjusted special salary rate table, an employee enters the demonstration (whether converted/hired from GS or hired from outside Government) prior to this intervention, then the employee's adjusted base pay is used for the term "former GS adjusted base pay rate" to calculate the demonstration base pay rate. This principle prevents double compensation due to the single event of a new or adjusted special salary rate table.

(5) If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's adjusted base pay may be reviewed and adjusted to accommodate the rate increase provided by the special salary rate table. The

review may result in a one-time base pay increase if the employee's adjusted base pay equals or is less than the highest special salary grade and step that exceeds the comparable locality grade and step. Demonstration project operating procedures will identify the officials responsible to make such reviews and determinations. The applicable staffing supplement will be calculated by determining the percentage difference between the highest step 10 special salary rate and the comparable step 10 locality rate and applying this percentage to the demonstration base pay rate.

An established base pay rate plus the staffing supplement will be considered adjusted base pay for the same purposes as a locality rate under 5 CFR 531.610, *i.e.*, for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training, rotational job assignments, developmental assignments to Army Materiel Command/Army/DoD, and self-directed study via correspondence courses and local colleges and universities. Each developmental opportunity must result in a product, service, report or study that will benefit the ECBC or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in base pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (*i.e.*, with temporarily assigned, detailed or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The Personnel Management Board will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities.

(a) *Sabbaticals.* The ECBC Technical Director has the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit employees to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the ECBC mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; research; self-directed or guided study; and on-the-job work experience with public, private, commercial, or private non-profit organizations.

One paid sabbatical of up to twelve months in duration or one unpaid sabbatical of up to six months in a calendar year may be granted to an employee in any seven-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the ECBC for a period of three times the length of the sabbatical. If an employee voluntarily leaves the ECBC organization before the service obligation is completed he/she is liable for repayment of expenses incurred by ECBC that are associated with training during the sabbatical. Expenses do not include salary costs. The ECBC Technical Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

(b) *Critical Skills Training (Training for Degrees).* The ECBC Director has the authority to approve academic degree training consistent with 5 U.S.C 4107. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or requiring critical skills.

Academic degree training will ensure continuous acquisition of advanced specialized knowledge essential to the organization, and enhance our ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that such decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue in service in ECBC for a period of three times the length of the training period. If an employee voluntarily leaves ECBC before the service obligation is completed, he/she is liable for repayment of expenses incurred by ECBC that are related to the critical skills training. Expenses do not include salary costs. The ECBC Technical Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

H. Reduction-in-Force (RIF) Procedures

RIF procedures will be used when an ECBC employee faces separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of re-employment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days. The procedures in 5 CFR part 351 will be followed with slight modifications pertaining to the competitive areas, assignment rights, the calculation of adjusted service computation date and grade/pay band retention. Modified term appointment employees are in Tenure Group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

1. Competitive Areas

Separate competitive areas for RIF purposes will be established at each geographic location. Separate RIF competitive areas for demonstration and non-demonstration project employees will be established at each geographic location. Bumps and retreats will occur only within the same competitive area and only to positions for which the employee meets all qualification standards including medical and/or physical qualifications. Within each competitive area, competitive levels will be established based on the occupational family, pay band and series which are similar enough in duties and qualifications that employees can perform the duties and responsibilities of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected.

2. Assignment Rights

An employee may displace another employee by bump or retreat to one band below the employee's existing band. A preference eligible with a compensable service-connected disability of 30 percent or more may retreat to positions two bands (or equivalent to five grades) below his/her current band.

3. Crediting Performance in RIF

Reductions in force are accomplished using the existing procedures with the retention factors of: tenure, veterans' preference and length of service as adjusted by performance ratings, in that order. However, the additional RIF service credit for performance will be based on the last three total performance scores during the preceding four years and will be applied as follows:

Total performance scores = years of service credit
48–50 = 10
45–47 = 9
42–44 = 8
39–41 = 7
36–38 = 6
33–35 = 5
30–32 = 4
27–29 = 3
24–26 = 2
20–23 = 1

A score of below 20 adds no credit for RIF retention. (Note: The additional years of service credit are added, not averaged. Ratings given under non-demonstration systems will be converted to the demonstration-rating scheme and provided the equivalent rating credit.)

Employees who have been rated under different patterns of summary rating levels will receive RIF appraisal credit based on the following:

If there are any ratings to be credited for the RIF given under a rating system, which includes one or more levels above fully successful (Level 3), employee will receive:

10 years for Level 5
7 years for Level 4
3 years for Level 3

If an employee comes from a system with no levels above Fully Successful (Level 3), they will receive credit based on the demonstration project's modal score for the employee's competitive area.

In some cases, an employee may not have three ratings of record. If an employee has fewer than three annual ratings of record, then for each missing rating, an average of the scores received for the past four years will be used. When the score is calculated to be a decimal, it should be rounded to the next higher whole number using the method described in paragraph III.C.4. For an employee who has no ratings of record, all credit will be based on the repeated use of a single modal rating from the most recently completed appraisal period on record.

An employee who has received a written decision that their performance is unacceptable has no bump or retreat rights. An employee who has been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice has not received a performance rating in the position to which demoted, will receive the same additional retention service credit granted for a level 3 rating of record. An employee who has received an acceptable rating following a PIP will have that rating considered as the current rating of record.

An employee with a current unacceptable rating of record has assignment rights only to a position held by another employee who has an unacceptable rating of record.

4. Pay Band and Pay Retention

Pay band and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR 536, except as waived or modified in section IX of this plan.

IV. Implementation Training

Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. Pay banding, a new job classification and performance management system all represent significant cultural change to the organization. Training will be tailored to address employee concerns and to encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project.

A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

(1) An overview of the demonstration project personnel system.
(2) How employees are converted into and out of the system.
(3) Pay banding.
(4) The pay-for-performance system.
(5) Defining performance objectives.
(6) How to assign weights.
(7) Assessing performance—giving feedback.
(8) New position descriptions.
(9) Demonstration project administration and formal evaluation.

Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

V. Conversion

A. Conversion to the Demonstration Project

Conversion from current GS/GM grade and pay into the new pay band system will be accomplished during implementation of the demonstration project. Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate pay band without loss of pay on conversion.

Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the modified term appointment if all requirements in III.D.4. (Revisions to Term Appointments) have been satisfied. Position announcements, *etc.*, will not be required for these term appointments.

Employees who enter the demonstration project later by lateral transfer, reassignment or realignment will be subject to the same pay conversion rules. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are covered by special salary rates prior to entering the demonstration project will no longer be considered a special rate employee under the demonstration project. Special conversion rules apply to special salary rate employees, which are described in III.F.9. (Staffing Supplements). These employees will, therefore, be eligible for full locality pay or a staffing supplement. The adjusted base pay of these employees will not change. Rather, the employees will receive a new adjusted base pay rate computed under the staffing supplement rules in section III.F.9. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in adjusted base pay.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the

position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the grade or pay band that corresponds to the position of record. When a temporary promotion is terminated, pay will be determined based on the position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Personnel Management Board. In no case may those adjustments increase the pay for the position of record beyond the applicable pay band maximum base pay. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

During the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion, and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent as defined below.

Under the GS pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of conversion. As under the current system, supervisors will be able to withhold these partial step increases if the employee's performance is below an acceptable level of competence.

Rules governing WGIs will continue in effect until conversion. Adjustments to the employee's base salary for WGI equity will be computed as of the effective the date of conversion. WGI equity will be acknowledged by increasing base pay by a prorated share based upon the number of full weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. Employees at step 10, or receiving retained rates, on the day of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. Employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

Employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment will be subject to the same pay conversion rules as above. Specifically, adjustments to the employee's base pay for a step increase and a non-competitive career ladder promotion will be computed as a prorated share of the current value of the step or promotion increase based upon the number of full weeks an employee has completed toward the next higher step or grade at the time the employee moves into the project.

B. Conversion Out of the Demonstration Project

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rate of pay to the GS-equivalent rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.*, promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(1) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

(a) The GS base schedule,

(b) The locality rate schedule for the locality pay area in which the position is located, or

(c) The appropriate special rate schedule for the employee's occupational series, as applicable.)

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(2) If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

(3) If the employee's adjusted base pay under the demonstration project is lower than the applicable step 4 adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step 4 adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step 4 adjusted base pay rate of the second highest grade, the employee is converted to that grade.

(4) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step 4 adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade.

(5) *Exception:* If the employee's adjusted base pay under the demonstration project exceeds the maximum adjusted base pay rate of the grade assigned under the above-described step 4 rule but fits in the adjusted base pay rate range for the next higher applicable grade (*i.e.*, between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(6) *Exception:* An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project

rates of pay to GS rates of pay in accordance with the following rules:

(1) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(2) An employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is converted to a GS-adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

(a) The GS base schedule,

(b) An applicable locality rate schedule, or

(c) An applicable special rate schedule.

(3) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.*, same step position).

(4) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (*i.e.*, same step position).

(5) *E&S Pay Band V Employees:* An employee in Pay Band V of the E&S occupational family will convert out of the demonstration project at the GS–15 level. Procedures will be developed to ensure that employees entering Pay Band V understand that if they leave the demonstration project and their adjusted base pay under the demonstration project exceeds the highest applicable GS–15, step 10 rate, there is no entitlement to retained pay. Their GS equivalent rate will be deemed to be the rate for GS–15, step 10. For those Pay Band V employees paid below the adjusted GS–15, step 10 rate, the converted rates will be set in accordance with paragraph 2.

(6) *Employees with Pay Retention:* If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

C. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing CPACs will continue to process personnel-related actions and provide consultative and other appropriate services.

D. Automation

ECBC will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

An automated tool will be used to support computation of performance related pay increases and awards and other personnel processes and systems associated with this project.

E. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides instructions for adopting other STRL flexibilities, making minor changes to an existing demonstration project, and requesting new initiatives.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration project. ECBC, DA and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission and any potential adverse impact on any employee groups. Major changes and modifications to the interventions would be made if formative evaluation data warranted and will be published in the **Federal Register** to the extent required. At the five-year point, the demonstration will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.*, organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

Appendix D shows an intervention model for the evaluation of the demonstration project. The model is designated to evaluate two levels of organizational performance: intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (*i.e.*, cost, quality, timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (*i.e.*, downsizing, changes in

mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers:

(1) The extent to which the HR changes are given a fair trial period;

(2) The extent to which the changes are implemented; and

(3) The extent to which the changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (*e.g.*, attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit Systems Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

The intervention model at Appendix D will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or "intervention" that will be measured and shows:

(1) The expected effects of the intervention,

(2) The corresponding measures, and

(3) The data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific intervention, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (*e.g.*, the job market, legislation; and internal support systems) or support factors (*e.g.*, training, automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a title 5 U.S.C. comparison group will be compiled from the Civilian Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

(1) Workforce data;

(2) Personnel office data;

(3) Employee attitude surveys;

(4) Focus group data;

(5) Local site historian logs and implementation information;

(6) Customer satisfaction surveys; and

(7) Core measures of organizational performance.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Table 1. Project evaluation costs are not expected to continue beyond the first five years unless the results warrant further evaluation.

TABLE 1—PROJECTED DEVELOPMENTAL COSTS

[In thousands of dollars]

	FY09	FY10	FY11	FY12	FY13
Training	0K	25K	15K	10K	5K.
Project Evaluation	0K	0K	15K	15K	15K.
Automation	50K	50K	40K	40K	40K.
Totals	50K	75K	70K	65K	60K.

IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain title 5 U.S.C. provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S.C.

Chapter 31, section 3111: Acceptance of Volunteer Service. Waived to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Chapter 31, section 3132: The Senior Executive Service: Definitions and Exclusions. Waived as necessary to allow for the Pay Band V of the E&S Occupational Family.

Chapter 33, subchapter 1, section 3318(a): Competitive Service, Selection from Certificate. Waived to the extent necessary to eliminate the requirement for selection using the "Rule of Three."

Chapter 33, section 3324: Appointments to Positions Classified Above GS–15. Waived the requirement for OPM approval of appointments to positions classified above GS–15.

Chapter 33, section 3341: Details. Waived as necessary to extend the time limits for details.

Chapter 41, section 4108(a)–(c): Employee Agreements; Service After Training. Waived to the extent necessary to require the employee to continue in the service of ECBC for the period of the required service and to the extent necessary to permit the Director, ECBC, to waive in whole or in part a right of recovery.

Chapter 43, section 4302: Waived to the extent necessary to substitute "pay band" for "grade."

Chapter 43, section 4303: Waived to the extent necessary to (1) substitute "pay band" for "grade" and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of section 4303(a)–(d).

Chapter 43, section 4304(b)(1) and (3): Responsibilities of the OPM. Waived in its entirety to remove the responsibilities of the OPM with respect to the performance appraisal system.

Chapter 51, sections 5101–5112: Classification. Waived as necessary to allow for the demonstration project pay banding system.

Chapter 53, sections 5301, 5302 (8) and (9), 5303 and 5304: Pay Comparability System. Sections 5301, 5302, and 5304 are waived to the extent necessary to allow (1) demonstration project employees to be treated as GS employees; (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay; and (3) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Chapter 53, section 5305: Special Pay Authority. Waived to the extent necessary to allow for use of a staffing supplement in lieu of the special pay authority.

Chapter 53, sections 5331–5336: General Schedule Pay Rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and Pay Retention. Waived to the extent necessary to (1) replace "grade" with "pay band;" (2) allow demonstration project employees to be treated as GS employees; (3) provide that pay band retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; and to movements to a lower pay band as a result of not receiving the annual GPI due to a rating of record of "Unacceptable;" (4) provide that an employee on pay retention whose rating of record is "Unacceptable" is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (5) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; and (6) ensure that for employees of Pay Band V of the E&S occupational family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of base pay for GS–15, step 10 (*i.e.*, there is no entitlement to retained rate). This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. Waived to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the E&S occupational family.

Chapter 55, section 5547 (a)–(b): Limitation on premium pay. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation, bonuses, retention allowances and supervisory differentials. Waived to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) employees in Pay Band V of the E&S occupational family to be treated as ST employees.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost-of-living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace "grade" with "pay band."

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates to demonstration project pay, as long as

total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position.

B. Waivers to Title 5, CFR

Part 300, sections 300.601 through 605: Time-in-Grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, section 315.801(a), 315.801(b)(1), (c), and (e) and 315.802(a) and (b)(1): Probationary period and Length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 315, section 315.901: Statutory requirement. Waived to the extent necessary to replace "grade" with "pay band."

Part 316, section 316.301: Purpose and duration. Waived to the extent necessary to allow for term appointments for more than four years.

Part 316, section 316.303: Tenure of term employees. Waived to the extent necessary to allow term employees to acquire competitive status.

Part 332, section 332.404: Order of selection from certificates. Waived to the extent necessary to eliminate the requirement for selection using the "Rule of Three."

Part 335, section 335.103: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 351.402(b): Competitive area. Waived to the extent necessary to allow for separate competitive areas for demonstration project and non-demonstration project employees.

Part 351.403: Competitive level. Waived to the extent necessary to replace "grade" with "pay band."

Part 351, section 351.504: Credit for performance. Waived to the extent necessary to revise the method for adding years of service based on performance.

Part 351, section 351.701: Assignment involving displacement. Waived to the extent that bump and retreat rights are limited to one pay band with the exception of 30 percent preference eligibles who are limited to two pay bands (or equivalent of five grades), and to limit the assignment rights of employees with an unacceptable current rating of record to a position held by another employee with an unacceptable rating of record.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the ECBC Technical Director to determine requirements related to continued service agreements.

Part 430, subpart B: Performance Appraisal for GS, Prevailing Rate, and Certain Other Employees. Waived to the extent necessary to be consistent with the demonstration project's pay-for-performance system.

Part 432: Performance based reduction in grade and removal actions. Modified to the extent that an employee may be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level and reduced in pay band level without a reduction in pay based on unacceptable performance. Also, modified to delete reference to critical element. For employees who are reduced in pay band level without a reduction in pay, sections 432.105 and 432.106(a) do not apply.

Part 432, section 432.102: Coverage. Waived to the extent that the term "grade level" is replaced with "pay band."

Part 432, sections 432.104: Addressing unacceptable performance. References to "critical elements" are deleted as all elements are critical and adding that the employee may be "reduced in pay band level, or pay, or removed" if performance does not improve to an acceptable level during a reasonable opportunity period.

Part 432, section 432.105(a) (2): Proposing and taking action based on unacceptable performance. Waive "If an employee has performed acceptably for 1 year" to allow for "within two years from the beginning of a PIP."

Part 511, subpart A: General Provisions, and subpart B: Coverage of the GS. Waived to the extent necessary to allow for the demonstration project classification system and pay banding structure.

Part 511, section 511.601: Applicability of regulations. Classification appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from title 5, are covered by the classification appeal process outlined in this section, as amended below.

Part 511, section 511.603(a): Right to appeal. Waived to the extent necessary to substitute "pay band" for "grade."

Part 511, section 511.607(b): Non-Appealable Issues. Add to the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate occupational families and the demonstration project classification criteria.

Part 530, subpart C: Special rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, subparts B: Determining Rate of Basic Pay. Waived to the extent necessary to allow for pay setting and pay-for-performance under the provisions of the demonstration project.

Part 531, subparts D and E: Within-Grade Increases and Quality Step Increases. Waived in its entirety.

Part 531, subpart F: Locality-Based Comparability Payments. Waived to the extent necessary to allow (1) demonstration project employees, except employees in Pay Band V of the E&S occupational family, to be treated as GS employees; (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay; and (3) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Part 536: Grade and Pay Retention: Waived to the extent necessary to (1) replace "grade" with "pay band;" (2) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; (3) allow demonstration project employees to be treated as GS employees; (4) provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of "Unacceptable;" (5) provide that an employee on pay retention whose rating of record is "Unacceptable" is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (6) ensure that for employees of Pay Band V in the E&S occupational family, pay retention provisions are

modified so that no rate established under these provisions may exceed the rate of base pay for GS–15, step 10 (*i.e.*, there is no entitlement to retained rate); and (7) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement. This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the E&S occupational family.

Part 575, subparts A, B, C, and D: Recruitment Incentives, Relocation Incentives, Retention Incentives and Supervisory Differentials. Waived to the extent necessary to allow (1) employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS and (2) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Non-foreign Areas. Waived to the extent necessary to allow (1) demonstration project employees to be treated as employees under the GS and (2) employees in Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 752, section 752.401: Coverage. Waived to the extent necessary to replace "grade" with "pay band," and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for his/her pay band.

Part 752, section 752.401(a)(4): Coverage. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position or decreases in the amount of a supervisory or team leader pay adjustment based on the annual review.

APPENDIX A: ECBC EMPLOYEES BY DUTY LOCATION

[Totals exclude SES, ST, DCIPS and FWS employees]

Duty Location	Employees	Servicing personnel office
Aberdeen Proving Ground, MD	969	NE Region.
Rock Island, IL	99	NC Region.
Pine Bluff, AK	23	NE Region.
Patrick AFB, FL	1	NE Region.
Anniston, AL	1	NE Region.
Total All Employees	1093	

Appendix B: Occupational Series by Occupational Family

I. Engineering & Science

0401 General Natural Resources Management and Biological Sciences Series.
0403 Microbiology Series.
0413 Physiology Series.
0415 Toxicology Series.
0801 General Engineering Series.
0803 Safety Engineering Series.
0819 Environmental Engineering Series.
0830 Mechanical Engineering Series.
0850 Electrical Engineering Series.
0854 Computer Engineering Series.
0855 Electronics Engineering Series.
0858 Biomedical Engineering Series.
0861 Aerospace Engineering Series.
0893 Chemical Engineering Series.
0896 Industrial Engineering Series.
1301 General Physical Science Series.
1306 Health Physics Series.
1310 Physics Series.
1320 Chemistry Series.
1515 Operations Research Series.
1520 Mathematics Series.
1530 Statistics Series.
1550 Computer Science Series.

II. Business/Technical

0018 Safety and Occupational Health Management Series.
0028 Environmental Protection Specialist Series.
0080 Security Administration Series.
0110 Economist Series.
0301 Miscellaneous Administration and Program Series.
0340 Program Management Series.
0341 Administrative Officer Series.
0342 Support Services Administration Series.
0343 Management and Program Analysis Series.
0346 Logistics Management Series.
0404 Biological Science Technician Series.
0501 Financial Administration and Program Series.
0510 Accounting Series.
0560 Budget Analysis Series.
0640 Health Aid and Technician Series.
0690 Industrial Hygiene Series.
0802 Engineering Technician Series.
0856 Electronics Technician Series.
1001 General Arts and Information Series.
1060 Photography Series.
1071 Audiovisual Production Series.
1083 Technical Writing and Editing Series.
1084 Visual Information Series.
1102 Contracting Series.
1150 Industrial Specialist Series.
1311 Physical Science Technician Series.
1410 Librarian Series.
1412 Technical Information Services Series.
1670 Equipment Specialist Series.
1910 Quality Assurance Series.
2001 General Supply Series.
2032 Packaging Series.
2210 Information Technology Management Series.

III. General Support

0303 Miscellaneous Clerk and Assistant

Series.
0318 Secretary Series.
0335 Computer Clerk and Assistant Series.
0344 Management Clerical and Assistance Series.
0503 Financial Clerical and Technician Series.
0525 Accounting Technician Series.
0561 Budget Clerical and Assistance Series.
1411 Library Technician Series.
2005 Supply Clerical and Technician Series.

Appendix C: Performance Elements

Each performance element is assigned a minimum weight. The total weight of all elements in a performance plan must equal 100. The supervisor assigns each element a weight represented as a percentage of the 100 in accordance with individual duties/responsibilities objectives and the organization's mission and goals. All employees will be rated against the first four performance elements listed below. Those employees whose duties require team leader responsibilities will be rated on element 5. All managers/supervisors will be rated on element 6.

1. Technical Competence

The extent to which an employee demonstrates: the technical knowledge, skills, abilities and initiative to produce the quality and quantity of work as defined in individual performance objectives and assigned tasks; innovation and improvement in addressing technical challenges; sound decisions and recommendations that get the desired results; the ability to solve technical problems; initiative to maintain/increase their technical skills through professional growth, training, and/or developmental/special assignments. Minimum Weight: 15%.

2. Interpersonal Skills

The employee's demonstrated ability to: provide or exchange ideas and information; listen effectively so that resultant actions show complete comprehension; coordinate actions to include and inform appropriate personnel of decisions and actions; be an effective team player; be considerate of differing viewpoints; exhibit willingness to compromise on areas of difference for win-win solutions; exercise tact and diplomacy; maintain effective relationships both within and external to the organization; readily give assistance and show appropriate respect and courtesy. Minimum Weight: 10%.

3. Management of Time and Resources

The extent to which an employee demonstrates ability to: meet schedules/milestones, prioritize/balance tasks; utilize and, where appropriate, properly control available resources (to include for supervisors: allocates/monitors resources and equitably distributes work to subordinates appropriately); execute contract management responsibilities; respond to changing requirements and re-direction; create/implement new ideas to improve work efficiencies. Minimum Weight: 15%.

4. Customer Satisfaction

The extent to which an employee: achieves customer and mission goals/objectives; provides acceptable solutions/ideas in response to customer needs; understands and manages customers' expectations, constraints and sensitivities; demonstrates customer care through facilitating, responsive, courteous and reliable actions; promotes relationships of trust and respect; markets to potential customers/develops new customers and programs within the scope of job responsibility. Minimum Weight: 10%.

5. Team/Project Leadership

The extent to which a team/project leader: ensures that the organization's/project's strategic plan, mission, vision and values are communicated into the team/project plans, products and services; provides guidance/direction to organization/project personnel; leads the team to achieve project objectives; coordinates/balances workload among team/project personnel; informs the supervisor of team/project/individual work accomplishments, problems, and training needs; resolves simple, informal complaints, informs supervisor of performance management issues/problems. (Mandatory for non-supervisory team leaders optional for project leaders and program managers.) Minimum Weight: 15%.

6. Supervision and EEO

The extent to which a supervisor: leads, manages, plans, communicates and assures implementation of strategic/operational goals and objectives of the organization; develops individual performance objectives, evaluates performance, evaluates performance by defining expectations, gives feedback and provides recognition; initiates personnel actions to recruit, select, promote and/or reassign employees in a timely manner; develops subordinates using positive motivational techniques on job expectations, training needs, and attainment of career goals; recognizes and rewards quality performance; takes corrective action to resolve performance or conduct issues; applies EEO and Merit System Principles, and creates a positive, safe and challenging work environment; ensures appropriate internal controls to prevent fraud, waste or abuse and safeguards assigned property/resources. (Mandatory for managers//supervisors). Minimum Weight: 25%.

Appendix D—Intervention Model

Intervention	Expected Effects	Measures	Data Sources
1. Compensation:			
a. Paybanding	Increased organizational flexibility	Perceived flexibility	Attitude survey.
	Reduced administrative workload, paperwork reduction.	Actual/perceived time savings	Personnel office data, PME results, attitude survey.
	Advanced in-hire rates	Starting salaries of banded v. non-banded employees.	Workforce data.
	Slower pay progression at entry levels.	Progression of new hires over time by band, career path.	Workforce data.
	Increased pay potential	Mean salaries by band, group, demographics.	Workforce data.
		Total payroll costs	Personnel office data.
	Increased satisfaction with advancement.	Employee perceptions of advancement.	Attitude survey.
	Increased pay satisfaction	Pay satisfaction, internal/external equity.	Attitude survey.
	Improved recruitment	Offer/acceptance ratios; Percent declinations.	Personnel office data.
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness.	Attitude survey.
		Cost as a percent of payroll	Workforce data.
c. Pay differentials/adjustments.	Increased incentive to accept supervisory/team leader positions.	Perceived motivational power	Attitude survey.
2. Performance Management:			
a. Cash awards/bonuses	Reward/motivate performance	Perceived motivational power	Attitude survey.
	To support fair and appropriate distribution of awards.	Amount and number of awards by group, demographics.	Workforce data.
		Perceived fairness of awards	Attitude survey.

APPENDIX D—INTERVENTION MODEL—Continued

Intervention	Expected Effects	Measures	Data Sources
		Satisfaction with monetary awards	Attitude survey.
b. Performance based pay progression.	Increased pay-performance link ...	Perceived pay-performance link ...	Attitude survey.
		Perceived fairness of ratings	Attitude survey
	Improved performance feedback ..	Satisfaction with ratings	Attitude survey.
		Employee trust in supervisors	Attitude survey.
		Adequacy of performance feedback.	Attitude survey.
	Decreased turnover of high performers/Increased turnover of low performers.	Turnover by performance rating scores.	Workforce data.
	Differential pay progression of high/low performers.	Pay progression by performance scores, career path.	Workforce data.
	Alignment of organizational and individual performance objectives and results.	Linkage of performance objectives to strategic plans/goals.	Performance objectives, strategic plans.
	Increased employee involvement in performance planning and assessment.	Perceived involvement	Attitude survey/focus groups.
		Performance management	Personnel regulations.
c. New appraisal process	Reduced administrative burden	Employee and supervisor perceptions of revised procedures.	Attitude survey.
	Improved communication	Perceived fairness of process	Focus groups.
d. Performance development	Better communication of performance expectations.	Feedback and coaching procedures used.	Focus groups.
		Time, funds spent on training by demographics.	Personnel office data Training records.
	Improved satisfaction and quality of workforce.	Perceived workforce quality	Attitude survey.
3. "White Collar" Classification:			
a. Improved classification systems with generic standards.	Reduction in amount of time and paperwork spent on classification.	Time spent on classification procedures.	Personnel office data.
		Reduction of paperwork/number of personnel actions (classification/promotion).	Personnel office data.
	Ease of use	Managers' perceptions of time savings, ease of use.	Attitude survey.
b. Classification authority delegated to managers.	Increased supervisory authority/accountability.	Perceived authority	Attitude survey.
	Decreased conflict between management and personnel staff.	Number of classification disputes/appeals pre/post.	Personnel records.
		Management satisfaction with service provided by personnel office.	Attitude survey.
	No negative impact on internal pay equity.	Internal pay equity	Attitude survey.
c. Dual career ladder	Increased flexibility to assign employees.	Assignment flexibility	Focus groups, surveys.
	Improved internal mobility	Perceived internal mobility	Attitude survey.
	Increased pay equity	Perceived pay equity	Attitude survey.
	Flatter organization	Supervisory/non-supervisory ratios.	Workforce data
			Attitude survey.
	Improved quality of supervisory staff.	Employee perceptions of quality or supervisory.	Attitude survey.
4. Modified RIF:			
	Minimize loss of high performing employees with needed skills.	Separated employees by demographics, performance scores.	Workforce data/Attitude survey/focus group.
	Contain cost and disruption	Satisfaction with RIF process	Attitude survey/focus group.
		Cost comparison of traditional vs. Modified RIF.	Personnel office/budget data.
		Time to conduct RIF-personnel office data.	Personnel office data.
		Number of Appeals/reinstatements.	Personnel office data.
5. Hiring Authority:			
a. Delegated Examining	Improved ease and timeliness of hiring process.	Perceived flexibility in authority to hire.	Attitude survey.
	Improved recruitment of employees in shortage categories.	Offer/accept ratios	Personnel office data.
	.....	Percent declinations	Personnel office data.

APPENDIX D—INTERVENTION MODEL—Continued

Intervention	Expected Effects	Measures	Data Sources
	.....	Timeliness of job offers	Personnel office data.
	.....	GPAs of new hires, educational levels.	Personnel office data.
	Reduced administrative workload/ paperwork reduction.	Actual/perceived skills	Attitude survey.
b. Term Appointment Authority	Increased capability to expand and contract workforce.	Number/percentage of conversions from modified term to permanent appointments.	Workforce data.
			Personnel office data.
c. Flexible Probationary Period	Expanded employee assessment	Average conversion period to permanent status.	Workforce data.
			Personnel office data.
		Number/percentage of employees completing probationary period.	Workforce data.
			Personnel office data.
	.....	Number of separations during probationary period.	Workforce data.
			Personnel office data
6. Expanded Development Opportunities:			
a. Sabbaticals	Expanded range of professional growth and development.	Number and type of opportunities taken.	Workforce data.
	Application of enhanced knowledge and skills to work product.	Employee and supervisor perceptions.	Attitude survey.
b. Critical Skills Training	Improved organizational effectiveness.	Number and type of training	Personnel office data.
			Personnel office data
		Placement of employees, skills imbalances corrected.	Attitude survey.
		Employee and supervisor perceptions.	Attitude survey/focus group.
		Application of knowledge gained from training.	
7. Combination Of All Interventions:			
All	Improved organizational effectiveness.	Combination of personnel measures.	All data sources.
	Improved management of workforce.	Employee/Management job satisfaction (intrinsic/extrinsic).	Attitude survey.
	Improved planning	Planning procedures	Strategic planning documents.
		Perceived effectiveness of planning procedures.	Attitude survey.
	Improved cross functional coordination.	Actual/perceived coordination	Organizational charts.
	Increased product success	Customer satisfaction	Customer satisfaction surveys.
	Cost of innovation	Project training/development costs (staff salaries, contract cost, training hours per employee).	Demo project office records Contract documents.
8. Context:			
Regionalization	Reduced servicing ratios/costs	HR servicing ratios	Personnel office data, workforce data.
		Average cost per employee served.	Personnel office data, workforce data.
	No negative impact on service quality.	Service quality, timeliness	Attitude survey/focus groups.

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Tuesday,
December 29, 2009

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32
2009–2010 Refuge-Specific Hunting and Sport Fishing Regulations—Additions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS-R9-NSR-2009-0023]
[93270-1265-0000-4A]

[RIN 1018-AW49]

2009–2010 Refuge-Specific Hunting and Sport Fishing Regulations—Additions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to add two refuges to the list of areas open for hunting and/or sport fishing programs and increase the activities available at eight other refuges for the 2009–2010 season. One refuge will see a decrease in activities and another refuge will see no net change in activities for the 2009–2010 season.

DATES: We will accept comments received or postmarked on or before January 28, 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-NSR-2009-0023.
- U.S. mail or hand delivery: Public Comments Processing, Attn: RIN 1018-AW49; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in "Available Information for Specific Refuges" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358-2397; Fax (703) 358-2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the "Statutory Authority" section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the language of existing regulations.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k-4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act, which built upon the Administration Act in a manner that provides an "organic act" for the Refuge System, are similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s)

for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

Amendments to Existing Regulations

This document proposes to codify in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

TABLE 1 – CHANGES FOR 2009-2010 HUNTING/FISHING SEASON

National Wildlife Refuge	State	Migratory Bird Hunting	Upland Game Hunting	Big Game Hunting	Fishing
Hillside	MS	Previously published	Previously published	B (turkey)	Previously published
Holt Collier	MS	Closed	Previously published	C	Closed
Mathews Brake	MS	F	Previously published	Previously published	Previously published
Morgan Brake	MS	Previously published	Previously published	A/B (hog)	Previously published
Panther Swamp	MS	D	Previously published	E	Previously published
Yazoo	MS	C	Previously published	Previously published	Closed
Nisqually	WA	G	Closed	Closed	Previously published
Turnbull	WA	H	Closed	H (elk)	Closed
Waccamaw	SC	A	A	A	Previously published
Lake Andes	SD	H	H	H	Closed
Red River	LA	A	A	A/B (hog, turkey)	Previously published
San Luis	CA	A	Previously published	Closed	Previously published

A. = Refuge already open to activity but added new land which increased activity
B. = Refuge already open to activity but added new species to hunt
C. = Refuge already opened to activity but expanded the activity through increased type of hunt (e.g., youth waterfowl)/different weaponry now allowed
D. = Refuge already opened to activity, added new land but adjusted hunt days, so *no net increase*
E. = No increase in hunt days; rather a redistribution of hunt area/days to make for safer, quality hunt
F. = *Decrease* in hunter days due to limiting of weekend waterfowl hunters
G. = New activity on a refuge previously opened to other activities
H. = New refuge opened, new activity

In the State of Mississippi, we revised the public hunting plan and propose the following changes for the Theodore Roosevelt National Wildlife Refuge Complex (comprising of six refuges: Hillside, Holt Collier, Mathews Brake, Morgan Brake, Panther Swamp, and Yazoo NWRs):

- Revision of the hunt plan for Holt Collier NWR (which is currently covered by the Yazoo NWR hunt plan) reflecting different weaponry and changing 14 days of the hunt from archery to archery/muzzleloader for big game hunting;
- For Panther Swamp NWR: addition of deer hunting using muzzleloaders and modern weapons and waterfowl hunting on 2,900 acres of the Carter Unit; on the recently acquired 761-acre tract, expansion of deer and feral hog hunting (with no corresponding increase in hunters); and a redistribution/reduction of waterfowl hunting areas/hunt days throughout the refuge, including the Carter Unit and recently acquired 761-acre tract;
- Addition of turkey hunting on Hillside NWR;
- Addition of youth waterfowl hunting allowed on Yazoo NWR;
- Limited weekend waterfowl hunt participation at Mathews Brake NWR, decreasing the number of hunters; and
- Increase in deer/feral hog hunting on 366 acres at Morgan Brake NWR.

On Waccamaw NWR in South Carolina we added six new refuge parcels and propose to increase all allowable hunting activities on 1,905 acres and feral hog hunting on 1,200

acres. On Nisqually NWR in Washington we have added 191 acres of tidal flats that we propose to open to migratory bird hunting. On Red River NWR in Louisiana we have added approximately 6,000 acres of land that we propose to open to all three hunting activities, and we propose to add feral hog and turkey hunting. On San Luis NWR in California we have added approximately 2,000 acres of land (East Bear Creek Unit) that we propose to open for migratory game bird hunting.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the internet at: *http://www.epa.gov/ost/fish/*.

Plain Language Mandate

In this proposed rule we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using "you" to refer to the reader and "we" to refer to the Refuge System, using the word "allow" instead of "permit" when we do not require the use of a permit for an activity, and using active voice (i.e., "We restrict entry into the refuge" vs. "Entry into the refuge is restricted").

Request for Comments

You may submit comments and materials on this proposed rule by any one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the DATES section.

We will post your entire comment on *http://www.regulations.gov*. 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. We will post all hardcopy comments on *http://www.regulations.gov*.

Public Comment

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. The process of opening refuges is done in stages, with the fundamental work being performed on the ground at the refuge and in the community where the program is administered. In these stages, the public is given other opportunities to comment, for example, on the comprehensive conservation plans and the compatibility determinations. The second stage is this document, when we publish the proposed rule in the **Federal Register** for additional comment, commonly for a 30–day comment period.

There is nothing contained in this annual regulation outside the scope of the annual review process where we determine whether individual refuges need modifications, deletions, or additions made to them. We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30–day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

We considered providing a 60–day, rather than a 30–day, comment period. However, we determined that an additional 30–day delay in processing these refuge-specific hunting and sport fishing regulations would hinder the effective planning and administration of our hunting and sport fishing programs. Such a delay would jeopardize enacting amendments to hunting and sport fishing programs in time for implementation this year and/or early next year, or shorten the duration of these programs.

Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

When finalized, we will incorporate these regulations into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be a specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, use fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e.,

small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule adds two national wildlife refuges to the list of refuges open to hunting, increases hunting activities on eight national wildlife refuges, decreases activities at one national wildlife refuge and has a net change of zero at one national wildlife refuge. As a result, visitor use for wildlife-dependent recreation on these national wildlife refuges will change. If the refuges establishing new hunting programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 3,675 user days of hunting (Table 2). Because the participation trend is flat in hunting activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2. ESTIMATED CHANGE IN HUNTING OPPORTUNITIES IN 2009/2010

Refuge	Additional Hunting Days	Additional Hunting Expenditures
Hillside	90	$9,635
Holt Collier	150	$16,059
Mathews Brake	-200	($21,412)
Morgan Brake	25	$2,677
Panther Swamp	0	0
Yazoo	100	$10,706
Nisqually	700	$74,942
Turnbull	95	$10,171
Waccamaw	75	$8,030
Lake Andes	180	$19,271
Red River	1,600	$171,297
San Luis	860	$92,072
Total	*3,675*	*$393,448*

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2006 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $393,000 in hunting-related expenditures (Table 2). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of waterfowl hunting. Using a national impact multiplier for hunting activities (2.67) derived from the report "Economic Importance of Hunting in America" yields a total economic impact of approximately $1.1 million (2008 dollars) (Southwick Associates, Inc., 2007). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be "new" money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $1.1 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of $210,000 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may be impacted from some increased or decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around national wildlife refuges qualify as small businesses (Table 3). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately $210,000 to be spent in total in the refuges' local economies. The maximum increase ($1.1 million if all spending were new money) at most would be less than 1 percent for local retail trade spending.

TABLE 3. COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2009/2010 (THOUSANDS, 2008 DOLLARS)

Refuge/County(ies)	Retail Trade in 2002 (2008 $)	Estimated Maximum Addition from New Activities	Addition as % of Total	Establishments in 2007	Establ. With < 10 emp in 2007
Hillside					
Holmes, MS	$112,887.5	$4.5	0.004%	79	56
Holt Collier					
Washington MS	$723,963.8	$7.5	0.001%	281	201
Mathews Brake					
Leflore, MS	$364,678.3	-$10.0	-0.003%	183	136
Morgan Brake					
Holmes, MS	$112,887.5	$1.3	0.001%	79	56
Panther Swamp					
Yazoo, MS	$229,806.9	$0.0	0%	91	66
Yazoo					
Washington, MS	$723,963.8	$5.0	0.001%	281	201
Nisqually					
Thurston, WA	$2,676,041.6	$35.2	0.001%	794	535
Turnbull					
Spokane, WA	$5,825,795.2	$4.8	0%	1,698	1,105
Waccamaw					
Horry, SC	$3,858,832.9	$1.3	0%	1,681	1,239
Georgetown, SC	$669,980.1	$1.3	0%	371	275
Marion, SC	$286,986.1	$1.3	0%	151	112
Lake Andes					
Charles Mix, SD	$76,157.9	$9.0	0.012%	61	45
Red River					
Natchitoches Parish, LA	$375,577.5	$80.4	0.021%	149	101
San Luis					
Merced, CA	$1,917,683.1	$43.2	0.002%	582	395

With the small change in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Would not have an annual effect on the economy of $100 million or more. The minimal impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule would have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs would occur. The Service does not have

information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost would be small. We do not expect this proposed rule to affect the supply or demand for hunting opportunities in the United States and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States–based enterprises to compete with foreign–based enterprises. This proposed rule represents only a small proportion of recreational spending at national wildlife refuges. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This regulation would affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this proposed rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation would clarify established regulations and result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule would increase activities at eight refuges and open two new refuges, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination with Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018-0102 and 1018-0140). See 50 CFR 25.23 for information concerning that approval. 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.

Endangered Species Act Section 7 Consultation

We comply with Section 7 of the ESA when developing Comprehensive Conservation Plans (CCPs) and step-down management plans (which would include hunting and/or fishing plans) for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. Section 7 consultation has been completed on each of the affected refuges.

National Environmental Policy Act

We analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 Departmental Manual (DM) 6, Appendix 1.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10). Concerning the actions that are the subject of this proposed rulemaking, NEPA has been complied with at the project level where each proposal was developed. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (516 DM 3.2A). An Environmental Assessment, along with a Finding of No Significant Impact, was completed for each refuge in this proposed rulemaking except for Nisqually NWR. For Nisqually, we completed a Categorical Exclusion, along with an Environmental Action Statement. The proposed action in Nisqually is to open 191 acres already open to hunting to allow boat access for hunting; the impact from this proposed action was previously analyzed in Nisqually NWR's Final CCP and EIS from 2004.

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. If the specific refuge you are interested in is not mentioned below, then contact the appropriate Regional offices listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231-6214.

Turnbull National Wildlife Refuge, 26010 South Smith Road, Cheney, Washington, 99004, (509) 235-4723.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248-7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713-5401.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679-7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; Telephone (413) 253-8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236-8145.

Lake Andes National Wildlife Refuge, 38672 291 Street, Lake Andes, SD 57356, (605) 487-7603.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W-2606, Sacramento, California 95825; Telephone (916) 414-6464.

Primary Author

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List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd-668ee, and 715i.

2. Amend §32.7 by:

a. Adding Lake Andes National Wildlife Refuge, in alphabetical order, in the State of South Dakota; and

b. Adding Turnbull National Wildlife Refuge, in alphabetical order, in the State of Washington.

3. Amend §32.24 by revising paragraphs A.9. through A.12. and adding paragraph A.13. of San Luis National Wildlife Refuge to read as follows:

§32.24 California.

* * * * *

San Luis National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

9. We restrict hunters in the spaced zone area of the East Bear Creek Unit to their assigned zone except when they are traveling to and from the parking area, retrieving downed birds, or when shooting to retrieve crippled birds.

10. Access to the Frietas Unit free-roam hunting area is by boat only with a maximum of 5 mph. Prohibited boats include air-thrust and/or inboard water-thrust types.

11. We prohibit the use of motorized boats in the free-roam units with the exception of the Frietas Unit.

12. We do not allow vehicle trailers of any type or size to be in the refuge hunt areas at any time or to be left unattended at any location on the refuge.

13. Dogs must remain under the immediate control of their owners at all times (see §26.21(b) of this chapter.

* * * * *

4. Amend §32.37 by revising paragraphs A., B., and C. of Red River National Wildlife Refuge to read as follows:

§32.37 Louisiana.

* * * * *

Red River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl (duck, goose, coot, gallinule, rail, and snipe), woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit.

2. We allow waterfowl hunting until 12 p.m. (noon) during the State season.

3. We allow dove hunting on the days noted in the refuge brochure.

4. Hunters may enter the refuge no earlier than 4 a.m.

5. We prohibit hunting within 100 feet (30 m) of the maintained rights of way of roads, from or across ATV trails, and from above-ground oil, gas, or electrical transmission facilities.

6. We prohibit leaving boats, blinds, and decoys unattended.

7. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

8. Youth hunters under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters.

9. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that pay other individual(s), pays or promises to pay directly or indirectly for service rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

B. Small Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, coyote, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A7, and A8 (to hunt small game) apply.

2. We allow hunting of raccoon and opossum during the daylight hours of rabbit and squirrel season. We allow night hunting during December and January. We prohibit the selling of raccoon and opossum taken on the refuge for human consumption.

3. We allow the use of dogs to hunt squirrel and rabbit during January and February.

4. To use horses and mules to hunt raccoon and opossum at night, hunters must first obtain a Special Use Permit at the refuge office.

5. Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

6. We allow coyote hunting during all open refuge hunts with weapons legal for the ongoing hunt.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hogs, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A7, and A8 (to hunt big game) and B6 apply.
2. We allow general gun deer hunting on the days noted. We allow archery deer hunting during the entire State season.
3. The daily bag limit is one either-sex deer. State season limit applies.
4. Deer hunters must wear hunter orange as per State deer hunting regulations on Wildlife Management Areas.
5. Each youth hunter under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than one youth hunter.
6. We prohibit possession or distribution of bait while in the field and hunting with the aid of bait, including any grain, salt, mineral, or any nonnatural occurring food attractant on the refuge.
7. We allow hog hunting during all open refuge hunts with weapons legal for the ongoing hunt.
8. We allow turkey hunting on the days noted in the brochure.

* * * * *

5. Amend §32.43 by:

a. Revising Hillside National Wildlife Refuge;

b. Revising Holt Collier National Wildlife Refuge;

c. Revising Mathews Brake National Wildlife Refuge;

d. Revising Morgan Brake National Wildlife Refuge;

e. Revising Panther Swamp National Wildlife Refuge; and

f. Revising Yazoo National Wildlife Refuge to read as follows:

§32.43 Mississippi.

* * * * *

Hillside National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, merganser, coot, and dove in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.
2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.
3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.
4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).
5. We prohibit possession of alcoholic beverages (see §32.2(j)).
6. We prohibit use of plastic flagging tape.
7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).
8. We are open for hunting during the State season except during the muzzleloader deer hunt.
9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.
10. We allow ATVs only on designated trails (see §27.31 of this chapter) (see refuge brochure map) from September 15 through February 28.
11. You may possess or use only approved nontoxic shot (see §32.2(k)) while in the field.
12. You may take migratory birds with shotguns shooting only approved nontoxic shot.
13. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.
14. We allow goose, duck, merganser and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.
15. There is no early teal season.
16. We open for dove hunting the first and second State seasons. The first two Saturdays of the first season require a Limited Hunt Permit assigned by random computer drawing. At the end of the hunt you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year. Contact the refuge headquarters for specific dates and open areas.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A11 apply.
2. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.
3. We allow squirrel, rabbit, and quail hunting with dogs in February.
4. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.
5. Beginning the first day after the deer muzzleloader hunt, we restrict entry into the Turkey Point area until March 1.
6. With exception for raccoon hunting, we limit refuge ingress and egress to the period of 4 a.m. to 1½ hours after legal sunset.
7. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A11, and B5 through B7 apply.
2. During all gun and muzzleloader deer hunts: all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.
3. We prohibit organized drives for deer.
4. Hunting or shooting within or adjacent to open fields and tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.
5. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (See refuge brochure map). You are considered hunting if you occupy a stand or blind or have an arrow nocked in a bow.
6. We designate deer check station dates, locations, and requirements in the refuge brochure.
7. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree in which metal objects have been screwed or driven (see §32.2(i)). Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt. Hunters may place turkey blinds the day of the hunt and remove them after each day's hunt.
8. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

9. Turkey hunting opportunities will consist of three limited draw hunts within the State season time frame. These hunts require a Limited Hunt Permit assigned by random computer drawing. At the end of the hunt you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year. Contact refuge headquarters for specific requirements, hunts, and application dates.

10. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

11. We prohibit all other public use on the refuge during all gun and muzzleloader deer hunts.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during the gun and muzzleloader deer hunt.

2. We allow fishing in the borrow ponds along the north levee (see refuge brochure map) throughout the year except during the gun and muzzleloader deer hunt.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We prohibit fishing from bridges.

6. We allow frogging during the State bullfrog season.

7. We allow ATVs on designated trails (see §27.31 of this chapter) (see refuge brochure map) September 15 through February 28.

8. With the exception for frogging during the State season, we limit refuge ingress and egress for fishing to the period of 4 a.m. to 1½ hours after legal sunset.

Holt Collier National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. We allow hunting of rabbit and furbearers on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the muzzleloader deer hunt.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

11. We allow rabbit and quail hunting with dogs in February.

12. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

13. With exception for raccoon hunting, we limit refuge ingress and egress to the period of 4 a.m. to 1½ hours after legal sunset.

14. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B7, B9, and B10 apply.

2. During the muzzleloader deer hunt all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

3. We prohibit organized drives for deer.

4. Hunting or shooting within or adjacent to open fields and or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

5. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

6. We designate deer check station dates, locations, and requirements in the refuge brochure.

7. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects (see §32.2(i)). Hunters must place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt.

8. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

9. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

10. We prohibit all other public use on the refuge during muzzleloader deer hunts.

D. Sport Fishing. [Reserved]

Mathews Brake National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, merganser, and coot in accordance with State regulations subject to the following conditions:

1. We allow hunting during the open State season. The first 2 days of the season and all weekends, with the exception of youth weekends, are limited draw hunts. These hunts require a Limited Hunt Permit assigned by random computer drawing. At the end of the hunt you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year. Contact refuge headquarters for specific requirements, hunts, and application dates.

2. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

3. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

4. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

5. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

6. We prohibit possession of alcoholic beverages (see §32.2(j)).

7. We prohibit use of plastic flagging tape.

8. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. You may possess or use only approved nontoxic shot (see §32.2(k)) while in the field.

11. You may take migratory birds with shotguns shooting only approved nontoxic shot.

12. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

13. We allow goose, duck, merganser, and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

14. There is no early teal season.

15. Beginning the day before duck season opens and ending the last day of duck season, we close refuge waters to all public use from 1 p.m. until 4 a.m.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2 through A10 apply.

2. We allow shotguns with only approved nontoxic shot (see §32.2(k)) and .22 and .17 caliber rimfire rifles for taking small game.

3. We allow squirrel and rabbit hunting with dogs in February.

4. During the rabbit hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

5. Beginning the day before duck season opens and ending the last day of duck season, we close refuge waters to all public use from 1 p.m. until 4 a.m.

6. We prohibit horses and mules.

7. Beginning the day before waterfowl season, we restrict hunting to the waterfowl hunting area (see refuge brochure map).

C. Big Game Hunting. We allow archery hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2 through A10, A16, and B7 apply.

2. We allow archery hunting October 1 through January 31.

3. State bag limits apply.

4. We prohibit organized drives for deer.

5. Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

6. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

7. We designate deer check station dates, locations, and requirements in the refuge brochure.

8. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects (see §32.2(i)). A hunter may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions: 1. We allow fishing in all refuge waters throughout the year, except in the waterfowl sanctuary, which we close from the first day of duck season through March 15 (see refuge brochure map).

2. Beginning the day before duck season opens and ending March 1, we close refuge waters to all public use from 1 p.m. until 4 a.m.

3. We prohibit trot lines, limb lines, jugs, seines, and traps.

4. We allow frogging during the State bullfrog season.

5. With the exception for frogging during the State season, we limit refuge ingress and egress for fishing to the period from 4 a.m. to 1½ hours after legal sunset.

Morgan Brake National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, merganser, and coot on the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the muzzleloader deer hunt.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. We allow ATVs only on designated trails (see §27.31 of this chapter) (see refuge brochure map) from September 15 through February 28.

11. You may possess or use only approved nontoxic shot (see §32.2(k)) while in the field.

12. You may take migratory birds with shotguns shooting only approved nontoxic shot.

13. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

14. We allow goose, duck, merganser, and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

15. There is no early teal season.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A11 apply.

2. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

3. We allow squirrel, rabbit and quail hunting with dogs in February.

4. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

5. Beginning the first day after the deer muzzleloader hunt, we restrict hunting through the remainder of the season(s) to the designated waterfowl hunting area (see refuge brochure map).

6. With exception for raccoon hunting, we limit refuge ingress and egress to the period of 4 a.m. to 1½ hours after legal sunset.

7. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions: 1. Conditions A1 through A7, A9 through A11, and B5 through B7 apply.

2. During muzzleloader deer hunts all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

3. We prohibit organized drives for deer.

4. Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

5. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

6. We designate deer check station dates, locations, and requirements in the refuge brochure.

7. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt. Hunters may place turkey blinds the day of the hunt and remove them after each day's hunt.

8. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

9. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

10. We prohibit all other public use on the refuge during all muzzleloader deer hunts.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during the muzzleloader deer hunt.

2. From November 16 to February 28 we allow fishing in refuge waters north of Providence Road.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We allow frogging during the State bullfrog season.

6. With the exception for frogging during the State season, we limit refuge ingress and egress for fishing to the period of 4 a.m. to 1½ hours after legal sunset.

7. Conditions A2 through A10 apply.

* * * * *

Panther Swamp National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, merganser, and coot in accordance with State regulations subject to the following regulations:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the limited draw hunts.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. We allow ATVs on designated trails (see §27.31 of this chapter) (see refuge brochure map) from September 15 through February 28.

11. You may possess or use only approved nontoxic shot (see §32.2(k)) while in the field.

12. You may take migratory birds with shotguns shooting only approved nontoxic shot.

13. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

14. We allow goose, duck, merganser, and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

15. There is no early teal season.

16. We allow hunting of snow geese during the Light Goose Conservation order seasons by Special Use Permit.

17. Waterfowl hunting in Unit 1 will be on Monday, Tuesday, and Wednesday. Waterfowl hunting in Unit 2 will be Friday, Saturday, and Sunday (see Refuge Brochure for details).

18. We reserve the last weekend of December for youth waterfowl hunting. One adult hunter age 21, who we also allow to hunt, must accompany each youth hunter age 15 and under.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting during the open State season except during limited draw hunts.

2. Conditions A1 through A12 apply.

3. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

4. We allow squirrel, rabbit, and quail hunting with dogs in February.

5. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

6. Beginning the first day after the last limited draw deer hunt until March 1, we restrict all entry into the lower twist area.

7. With exception for raccoon hunting, we limit refuge ingress and egress to the period of 4 a.m. to 1½ hours after legal sunset.

8. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A7, A9 through A12, and B6 and B8 apply.

2. We allow shotguns shooting only approved nontoxic shot (see §32.2(k)) and archery equipment for turkey hunting.

3. You must immediately tag all deer harvested prior to moving it during limited hunts; we provide the tags.

4. During all gun and muzzleloader deer hunts all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

5. We prohibit organized drives for deer.

6. Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

7. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

8. We designate deer check station dates, locations, and requirements in the refuge brochure.

9. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt. Hunters may place turkey blinds the day of the hunt and remove them after each day's hunt.

10. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

11. The limited draw hunts require a Limited Hunt Permit assigned by random computer drawing. At the end of the hunt you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year. Contact refuge headquarters for specific requirements, hunts, and application dates.

12. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

13. We prohibit all other public use on the refuge during all limited draw hunts.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during all limited draw hunts.

2. We open waters between the East and West levee, the Landside Ditch, and the portion of Panther Creek adjacent to the West Levee year-round except during limited draw hunts.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We allow frogging during the State bullfrog season.

6. With the exception for frogging during the State season, refuge ingress and egress for fishing is limited to the period of 4 a.m. to 1½ hours after legal sunset.

7. Conditions A1 through A10 apply.

* * * * *

Yazoo National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, merganser, coot, and dove on the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the muzzleloader deer hunt.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. You may possess only approved nontoxic shot (see §32.2(k)) while in the field.

11. You may take migratory birds with shotguns shooting only approved nontoxic shot.

12. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

13 We allow goose, duck, merganser, and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

14. There is no early teal season.

15. We allow hunting of snow geese during the Light Goose Conservation Order seasons by Special Use Permit.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting during the open State season except during limited draw hunts.

2. Conditions A1 through A9 and A11 apply.

3. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

4. We allow rabbit and quail hunting with dogs in February.

5. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

6. With exception for raccoon hunting, refuge ingress and egress is limited to the period of 4 a.m. to 1½ hours after legal sunset.

7. We prohibit horses and mules.

8. We allow rabbit hunting on the Herron and Brown Tracts. Contact refuge headquarters for hunt dates, maps, and additional information.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A7, A9 through A12, B6 and B7 apply.

2. We allow shotguns shooting only approved nontoxic shot (see §32.2(k)) and archery equipment for turkey hunting.

3. You must immediately tag all deer harvested prior to moving it during limited hunts; we provide the tags.

4. During all gun and muzzleloader deer hunts all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

5. We prohibit organized drives for deer.

6. Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

7. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

8. We designate deer check station dates, locations, and requirements in the refuge brochure.

9. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt. Hunters may place turkey blinds the day of the hunt and remove them after each day's hunt.

10. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

11. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

12. We prohibit all other public use on the refuge during all limited draw hunts.

13. We allow archery deer hunting on the Herron and Brown Tracts. Contact refuge headquarters for hunt dates, maps, and additional information.

D. Sport Fishing. [Reserved]

6. Amend §32.60 by revising paragraphs A.2., A.4., A.6., A.10., B., C.15., C.16., C.19., and D. of Waccamaw National Wildlife Refuge to read as follows:

§32.60 South Carolina.

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Waccamaw National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. An adult at least age 21 must supervise all youth hunters age 15 and under. Youth hunters must have successfully completed a State-approved hunter education course.

* * * * *

4. We allow scouting Monday through Friday during the waterfowl season. Anyone scouting may not possess a firearm and must be off the refuge by 2 p.m.

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6. We prohibit permanent blinds (see §27.93 of this chapter). Hunters must remove portable blinds and decoys at the end of each day's hunt.

* * * * *

10. We prohibit hunting on any unit for wildlife species not officially opened to hunting or entering any areas posted as "Closed" or "No Hunting Zones."

B. Upland Game Hunting. We allow hunting of gray squirrel, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A9, and A10 apply.

2. We allow hunting only on days designated annually by the refuge within the State season. We allow upland game hunting only on designated refuge areas within Refuge Unit 1.

3. We require nontoxic shot in shotguns. We allow .22-caliber rimfire rifles.

C. Big Game Hunting. * * *

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15. We allow hunters to use flagging to mark the site of hunter entry from roads or trails and again at the stand site. We allow hunters to use clothes pins with reflective tape between entry and stand sites to mark the route to the stand. Hunters must label all such markers with their full name and remove them at the end of the hunt.

16. We require hunters to wear an outer garment visible above the waist that contains a minimum of 500 square inches (3,250 cm^2) of solid, fluorescent-orange material at all times during big game hunts except for wild turkey.

* * * * *

19. We limit turkey hunts to annual quota hunts. We will select hunters by a random drawing. The selected hunters must possess signed Refuge Turkey Hunt Permits at all times during the hunt.

* * * * *

D. Sport Fishing. We allow fishing in accordance with State regulations.

7. Amend §32.61 by adding Lake Andes National Wildlife Refuge in alphabetical order to read as follows:

§32.61 South Dakota.

* * * * *

Lake Andes National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on designated areas of the refuge in accordance with State regulations.

B. Upland Game Hunting. We allow upland game hunting on designated areas of the refuge in accordance with State regulations.

C. Big Game Hunting. We allow big game hunting on designated areas of the refuge in accordance with State regulations.

D. Sport Fishing. [Reserved]

* * * * *

8. Amend §32.67 by:

a. Adding paragraph A. of Nisqually National Wildlife Refuge; and

b. Adding Turnbull National Wildlife Refuge in alphabetical order to read as follows:

§32.67 Washington.

* * * * *

Nisqually National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to possess and carry no more than 25 approved nontoxic shells while hunting in the field (see §32.2(k)).

2. Hunters may access the hunt areas by boat only. The maximum speed limit is 5 miles per hour for boats in all refuge waters.

* * * * *

Turnbull National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, and coot within 50 yards (45 m) of hunting sites designated by the refuge manager on the north side of Upper Turnbull Slough in accordance with State regulations subject to the following conditions:

1. We only allow waterfowl (duck, goose, coot) hunting during the State's Youth Migratory Bird Hunt.

2. We prohibit the use of motorized boats.

3. We prohibit the construction or use of permanent blinds, pit blinds, stands, or scaffolds.

4. We only allow authorized vehicles on designated routes of travel and require hunters to park in designated parking area (see §27.31(h) of this chapter). We prohibit ATVs and ORVs.

5. Hunters may possess and carry no more than 25 nontoxic shotshells per hunter per day while in the field (see §32.2(k)).

6. We prohibit shooting or discharging any firearm from, across, or along a

public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

7. We allow hunter access from 2 hours before legal sunrise until 1 hour after legal sunset.

8. Hunters must possess a nontransferable refuge special access permit that names hunters, their hunt partners, and accompanying adult.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of elk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We conduct the refuge hunt by State permit only. We require hunters to possess and carry current Washington State elk licenses, valid for the refuge hunt unit, and a refuge special access permit.

2. We allow only authorized vehicles on designated routes of travel and require hunters to park in designated parking areas. We prohibit ATVs and ORVs.

3. We allow access from 2 hours before legal sunrise until 5 hours after legal sunset. Hunters needing additional time for retrieval must notify refuge staff or a State fish and wildlife officer.

4. We prohibit possession of a bow with the arrow nocked within any safety zone or closed area.

5. Safety zones of 500 feet (150 m) are in effect around existing structures. We prohibit shooting from or into any safety zone or Closed Area.

6. One person may assist hunters only during elk retrieval. We require this person to remain with the hunter at all times during retrieval. We require all hunters/helpers to possess a nontransferable refuge special access permit.

7. Refuge staff or a State Fish and Wildlife Officer must accompany hunters during retrieval of a wounded elk that moves outside the hunt unit in Closed Areas.

8. Hunters must use nontoxic ammunition or remove or bury the visceral remains of harvested animals.

D. Sport Fishing. [Reserved]

* * * * *

Dated: December 9, 2009

Thomas L. Stickland

Assistant Secretary for Fish and Wildlife and Parks

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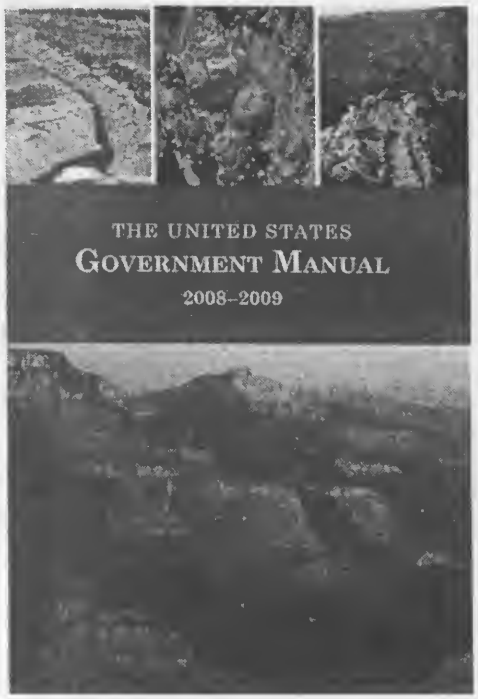

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