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

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 251

[FNS–2009–0026]

RIN 0584–AD94

The Emergency Food Assistance Program: Amendments to Requirements Regarding the Submission of State Plans and Allowability of Certain Administrative Costs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations for The Emergency Food Assistance Program (TEFAP) by making State plans permanent, which is intended to reduce the administrative burden on States; and by explicitly designating the processing of donated wild game as an allowable use of TEFAP administrative funds, which is intended to increase the amount and variety of protein-rich foods available to program participants. These changes are required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill).

DATES: This rule is effective on March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Rogelio Carrasco at *Rogelio.Carrasco@fns.usda.gov* or by telephone at (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to enactment of the 2008 Farm Bill on June 18, 2008, § 202A of the Emergency Food Assistance Act of 1983 (the EFAA), 7 U.S.C. 7501 *et seq.,* required TEFAP State agencies to submit operating plans to USDA for approval every four years (7 U.S.C. 7503). This statutory requirement was reflected in program regulations at 7 CFR 251.6(b). The regulation required States to submit a plan for Fiscal Year 2001 by August 15, 2000. Thereafter, the States were required to submit a plan every four years. Section 4201(b) of the Farm Bill amended Section 202A of the EFAA by making State plans permanent. This change was implemented by policy memorandum on July 16, 2008. This final rule amends 7 CFR 251.6(b) to make State plans permanent, bringing program regulations into compliance with the EFAA, as amended. This rule also deletes 251.6(c), Amendments, and moves the contents of the paragraph into 251.6(b).

Prior to enactment of the Farm Bill on June 18, 2008, § 204(a)(1) of the EFAA did not specifically include the processing of donated wild game as an allowable use of TEFAP administrative funds. Section 204(a)(1) and 7 CFR 251.8(e) did allow State agencies and eligible recipient agencies to use administrative funds to pay for certain direct and indirect costs associated with foods secured from sources other than TEFAP. While this section does not specifically address donations of wild game, it does allow the costs associated with transport, storage, handling, repackaging, processing, and distribution of foods secured from sources outside of TEFAP, as long as those foods are ultimately distributed to eligible recipient agencies for distribution to needy people. As a matter of policy, FNS included donated wild game under the category of foods secured from other sources. Section 4201(c)(2) of the 2008 Farm Bill amended Section 204(a)(1) of the EFAP Act to specifically allow the use of TEFAP administrative funds to process and distribute donated wild game. This clarification was reflected in a policy memorandum on July 16, 2008. This final rule amends 7 CFR 251.8(e)(1)(i) to reflect that TEFAP administrative costs can be used to defray the eligible direct and indirect costs associated with donated wild game. This amendment will bring program regulations into compliance with the EFAA, as amended.

II. Procedural Matters

A. Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

B. Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities. Making State plans permanent will only affect the State agencies that administer TEFAP, and will decrease their administrative burden. Allowing the use of TEFAP administrative funds to process donations of wild game will only affect entities that accept such donations, and only to the extent that they choose to use their funds in that manner.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

D. Executive Order 12372

TEFAP is listed in the Catalog of Federal Domestic Assistance under Nos. 10.568 and 10.569. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this program is excluded from the scope of Executive Order 12372 which

requires intergovernmental consultation with State and local officials.

E. Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agencies' considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

F. Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

G. Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods in food distribution programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

H. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain any information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

I. E-Government Act Compliance

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

J. Good Cause Determination

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The language of Sections 4201(b) and 4201(c)(2) of the Farm Bill, which amend Sections 202A and 204(a)(1) of the EFAA, respectively, is clear and leaves no room for discretion. Consequently, that language also renders 7 CFR 251.6(b) and 7 CFR 251.8(e)(1) inconsistent with the Sections 202A and 204(a)(1) of the EFAA, respectively. This final rule will bring program regulations into compliance with the EFAA. Thus, FNS has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and opportunity for public comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(b), finds that good cause exists for making this action effective without prior public comment.

List of Subjects in 7 CFR Part 251

Food assistance programs, Grant programs-social programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR Part 251 is amended as follows:

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

■ 1. The authority citation for 7 CFR Part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516.

■ 2. Section 251.6 is amended by revising paragraph (b) to read as follows:

§ 251.6 Distribution plan.

* * * * *

(b) *Plan submission and amendments.* Once approved, State plans are permanent. State agencies must submit amendments to the distribution plan when necessary to reflect any changes in program operations or administration as described in the plan, or at the request of FNS, to the appropriate FNS Regional Office.

* * * * *

■ 3. Section 251.8 is amended by revising paragraph 251.8(e)(1)(i) to read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(e) * * *

(1) * * *

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities (including donated wild game); except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

* * * * *

Dated: November 20, 2009.

Julia Paradis,

Administrator, Food, Nutrition, and Consumer Services.

[FR Doc. E9–28611 Filed 11–27–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE303; Special Conditions No. 23–243–SC]

Special Conditions: Embraer S.A., Model EMB–505; High Altitude Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. Model EMB–505 airplane. This airplane will have a novel or unusual design feature(s) associated with the operation at altitudes not previously envisioned. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 12, 2009. We must receive your comments by December 30, 2009.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, *Attn:* Rules Docket No. CE303, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE303. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Leslie B. Taylor, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4134; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. 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 about these special conditions. You may 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 by 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 let you know we received your comments on these special conditions, send us 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 October 9, 2006, Embraer S.A. applied for a type certificate for their new Model EMB–505. The EMB–505 is a twin engine jet which has applied for type certification in the commuter category. As such, the airplane is proposed to be type certificated in the commuter category of 14 CFR part 23 (and comparable Brazilian requirements RBHA 23) by exemption from 14 CFR 23.3(d). The EMB–505 is predominantly of metallic construction and is a conventionally configured low-wing monoplane with a T-tail and tricycle landing gear. The airplane's maximum takeoff weight is 17,490 pounds. The V_{MO}/M_{MO} is 320 KCAS/M .78 with a maximum operating altitude of 45,000 feet. Requested operations are day/night VFR/IFR and icing operations.

The FAA issues high altitude special conditions for normal, commuter and transport category airplanes when the certificated altitude exceeds human physiological limits.

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitudes. Crack growth data is used to prescribe an inspection program which will detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 23.571, Amendment 23–55. The cabin altitude after failure may not exceed specified limits.

In order to ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above 37,000 feet can result in cabin altitudes that approach the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Embraer S.A. must show that the Model EMB–505 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–55, thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model EMB–505 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–505 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory

adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they 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, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Embraer S.A. Model EMB–505 will incorporate the following novel or unusual design features:

Operations at altitudes not envisioned by 14 CFR part 23.

Applicability

As discussed above, these special conditions are applicable to the Model EMB–505. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model, Model EMB–505, of airplane. 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 airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer S.A. Model EMB–505 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer S.A. Model EMB–505 airplanes.

1. Pressure Vessel Integrity

a. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

b. Inspection schedules and procedures must be established to ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

c. For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Embraer must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

2. Ventilation

In lieu of the requirements of § 23.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. Air Conditioning

In addition to the requirements of § 23.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

a. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

b. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. Pressurization

In addition to the requirements of § 23.841, the following apply:

a. The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

b. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), *etc.*) that affects pressurization.

(3) Complete loss of thrust from all engines.

c. In showing compliance with paragraphs 4a and 4b of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

5. Oxygen Equipment and Supply

a. In addition to the requirements of § 23.1441(d), the following applies: A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator must be provided for the flightcrew. It must be shown that each quick-donning mask can, with one hand and within 5 seconds, be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand.

b. In addition to the requirements of § 23.1443, the following applies: A

continuous flow oxygen system must be provided for each passenger.

c. In addition to the requirements of § 23.1445, the following applies: If the flightcrew and passengers share a common source of oxygen, a means to separately reserve the minimum supply required by the flightcrew must be provided.

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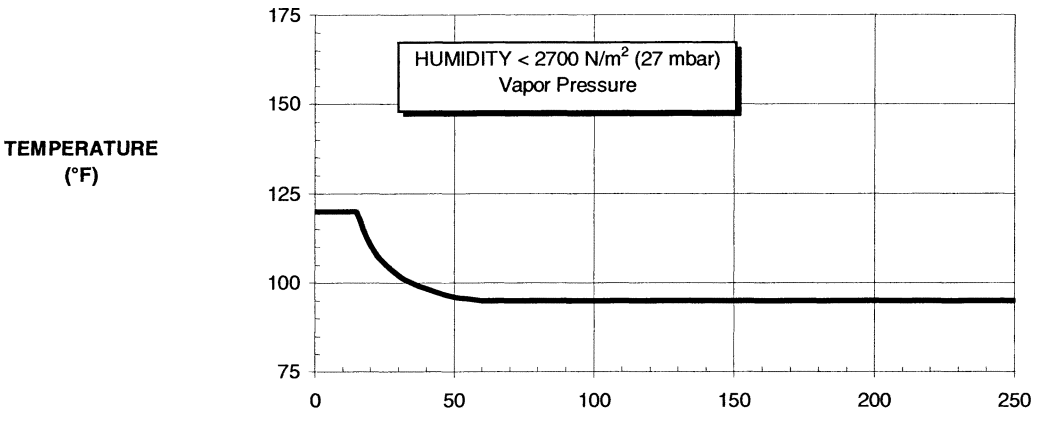
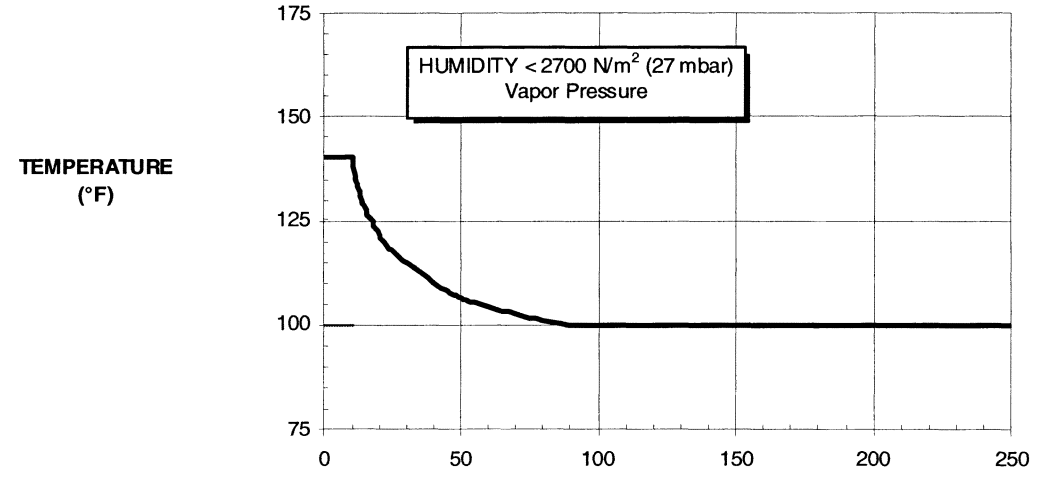


TIME - TEMPERATURE RELATIONSHIP
FIGURE 1



TIME - TEMPERATURE RELATIONSHIP
FIGURE 2

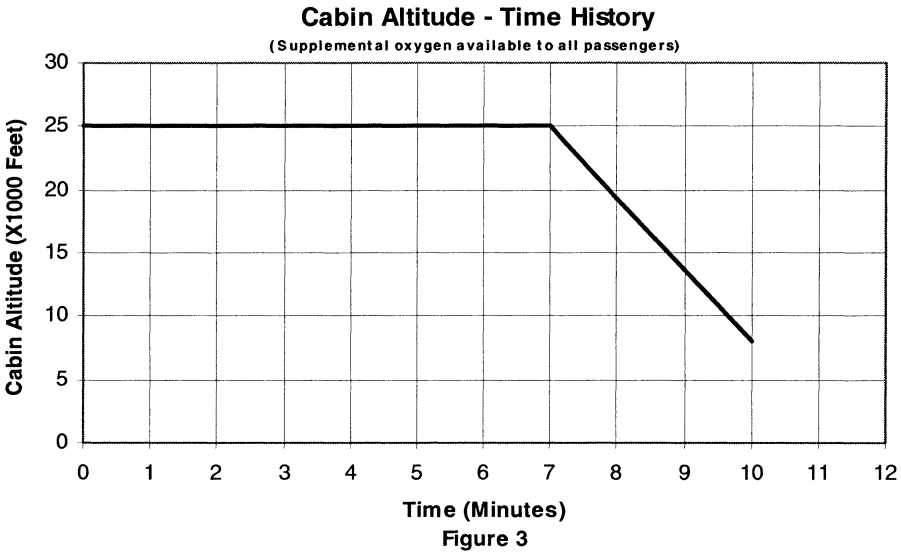


Figure 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

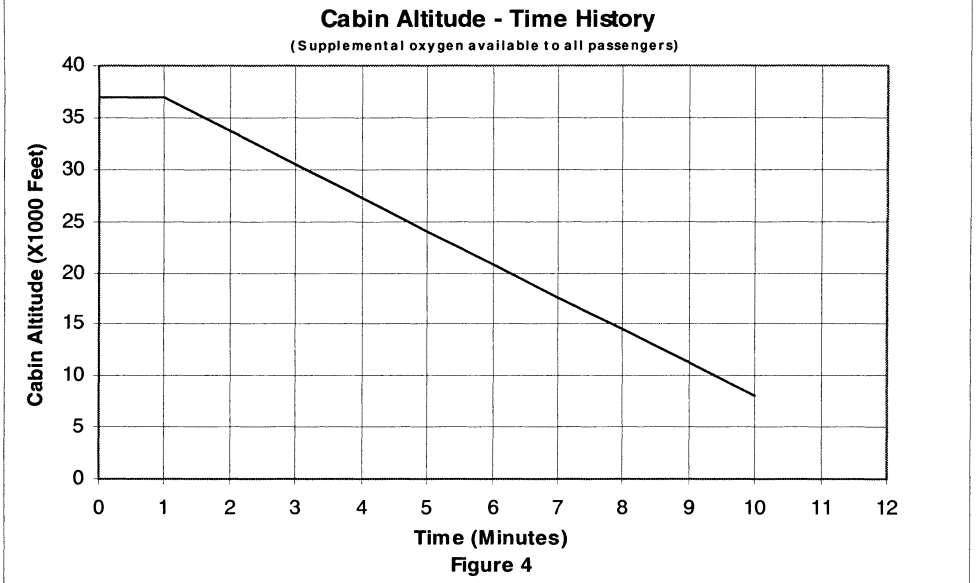


Figure 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Kansas City, Missouri on November 12, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28204 Filed 11–27–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1096; Directorate Identifier 2009–CE–056–AD; Amendment 39–16105; AD 2009–24–13]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 525A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Model 525A airplanes. This AD requires you to repetitively inspect the thrust attenuator paddle assemblies for loose and damaged fasteners and for cracks. This AD also requires you to replace loose or damaged fasteners and replace cracked thrust attenuator paddles found during any inspection. This AD results from reports of fatigue cracks found in thrust attenuator paddles. We are issuing this AD to detect and correct loose and damaged fasteners and cracks in the thrust attenuator paddles, which could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

DATES: This AD becomes effective on December 15, 2009.

On December 15, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by January 14, 2010.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *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.

To get the service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; *telephone:* (316) 517–6000; *fax:* (316) 517–8500; *Internet: http://www.cessna.com.*

To view the comments to this AD, go to *http://www.regulations.gov.* The docket number is FAA–2009–1096; Directorate Identifier 2009–CE–056–AD.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4155; *fax:* (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We received reports of fatigue cracks found in thrust attenuator paddles on Cessna Model 525A airplanes.

Four incidents of thrust attenuator paddles departing from airplanes have been reported. In two cases, the thrust attenuator paddles hit the rudder and caused structural damage to the rudder.

The thrust attenuator paddles are attached to the aft fuselage. The attachment fasteners fatigue and break.

It is also possible that a failed thrust attenuator paddle could depart the airplane and hit and damage the elevator.

This condition, if not corrected, could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

Relevant Service Information

We reviewed Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009. The service information describes procedures for inspecting and modifying the thrust attenuator paddle assemblies.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires repetitively inspecting the thrust attenuator paddle assemblies for loose and damaged fasteners and for cracks. This AD also requires replacing loose or damaged fasteners and replacing cracked thrust attenuator paddles.

This is considered interim action. Cessna is working on a design improvement to change the attachment fasteners from the currently used counter sunk rivets to universal head rivets. The FAA will consider taking additional rulemaking action to supersede this AD and terminate the above repetitive inspections when Cessna completes the design change, and the FAA approves it as addressing the unsafe condition.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the thrust attenuator paddles attached to the aft fuselage and the attachment fasteners are subject to fatigue. Fatigue in these parts could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2009–1096; Directorate Identifier 2009–CE–056–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 concerning this AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2009–24–13 Cessna Aircraft Company: Amendment 39–16105; Docket No. FAA–2009–1096; Directorate Identifier 2009–CE–056–AD.

Effective Date

(a) This AD becomes effective on December 15, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 525A airplanes, serial numbers 0001 through 0244, that are certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 78: Engine Exhaust.

Unsafe Condition

(e) This AD results from reports of fatigue cracks found in thrust attenuator paddles. We are issuing this AD to detect and correct cracks in the thrust attenuator paddles, which could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

Compliance

(f) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Visually inspect the left and right thrust attenuator paddle assemblies to determine if there are any missing, loose, or damaged fasteners and to determine if there are any cracks in the paddle.	Within the next 60 days after December 15, 2009 (the effective date of this AD) or within the next 30 hours time-in-service (TIS) after December 15, 2009 (the effective date of this AD), whichever occurs first. Repetitively inspect thereafter at intervals not to exceed 150 hours TIS.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.
(2) If you do not find any cracks in the thrust attenuator paddles during any inspection required in paragraph (f)(1) of this AD, install any missing fasteners, and replace any loose or damaged fasteners.	Before further flight after the inspection required in paragraph (f)(1) of this AD. Continue with the repetitive inspections specified in paragraph (f)(1) of this AD.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.
(3) If cracks are found during any inspection required in paragraph (f)(1) of this AD, do a surface eddy current inspection of the thrust attenuator paddles and the fastener hole(s) to determine the length of the cracks(s).	Before further flight after the inspection required in paragraph (f)(1) of this AD in which cracks are found.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.

Actions	Compliance	Procedures
(4) If the cracks identified in paragraph (f)(3) of this AD meet or exceed the limits specified in paragraph 3 of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, replace the thrust attenuator paddle and attachment hardware, as applicable.	(i) If the conditions of paragraph 3.A.(1) of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, are met, replace before further flight after the inspection required in paragraph (f)(3) of this AD. After the replacement, continue with the repetitive inspections specified in paragraph (f)(1) of this AD. (ii) If the conditions of paragraph 3.A.(2) of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, are met, replace within the next 150 hours TIS after the inspection required in paragraph (f)(3) of this AD. After the replacement, continue with the repetitive inspections specified in paragraph (f)(1) of this AD.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* T.N. Baktha, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4155; *fax:* (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; *telephone:* (316) 517–6000; *fax:* (316) 517–8500; *Internet: http://www.cessna.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

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

Issued in Kansas City, Missouri, on November 19, 2009.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28234 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0328; Directorate Identifier 2008–NE–44–AD; Amendment 39–16103; AD 2009–24–11]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF34–1A, CF34–3A, and CF34–3B Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GE CF34–1A, CF34–3A, and CF34–3B series turbofan engines. This AD requires removing from service certain part number (P/N) and serial number (SN) fan blades within compliance times specified in this AD, inspecting the fan blade abradable rub strip on certain engines for wear, inspecting the fan blades on certain engines for cracks, inspecting the aft actuator head hose fitting for correct position, and, if necessary, repositioning the hose fitting. This AD results from a report of an under-cowl fire and a failed fan blade. We are issuing this AD to prevent failure of certain P/N and SN fan blades and aft actuator head hoses, which could result in an under-cowl fire and subsequent damage to the airplane.

DATES: This AD becomes effective January 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2010.

ADDRESSES: You can get the service information identified in this AD from General Electric Company, GE–Aviation, Room 285, 1 Newmann Way, Cincinnati, OH 45215, telephone (513) 552-–3272; fax (513) 552–3329; *e-mail: geae.aoc@ge.com.* The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: john.frost@faa.gov;* telephone (781) 238–7756; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF34–1A, CF34–3A, and CF34–3B series turbofan engines. We published the proposed AD in the **Federal Register** on April 8, 2009 (74 FR 15896). That action proposed to require removing from service certain P/N and SN fan blades within compliance times specified in the proposed AD, inspecting the fan blade abradable rub strip on certain engines for wear, inspecting the fan blades on certain engines for cracks, inspecting the aft actuator head hose fitting for correct position, and, if necessary, repositioning the hose fitting.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Modify Wording in Compliance Paragraphs (f)(2) Through (f)(6)(ii)

One commenter requests that we modify the wording in proposed AD compliance paragraphs (f)(2) through (f)(6)(ii), by adding words that the actions required by GEAE SB CF34–AL S/B 72–0250 apply only to those engines that have not had the actions of GEAE SB CF34–AL S/B 72–0245 performed. The commenter states that GEAE SB CF34–AL S/B 72–0250 only applies to fan blades with SNs listed in GEAE SB CF34–AL S/B 72–0245.

We do not agree. The proposed AD stated in paragraph (f) that only fan blade SNs listed in GEAE SB CF34–AL S/B 72–0245 are affected. That paragraph is now paragraph (h) in this AD, as we recodified the AD paragraphs to add clarification in response to another comment we received. We did not change the AD.

Request for Eddy Current Inspection (ECI) for Fan Blades That Have More than 1,200 Cycles-In-Service (CIS)

Bombardier Flexjet and GE Aviation request that we also include an ECI in the AD for fan blades that have more than 1,200 CIS on the effective date of the AD.

We agree. We changed proposed AD paragraph from ''(g)(3) For fan blades, P/N 6018T30P14, with more than 850 cycles-since-new (CSN), but fewer than 1,200 CSN on the effective date of this AD, within 350 CIS after the effective date of this AD, perform an initial ECI of the fan blades for cracks'' to ''(k)(3) For fan blades, P/N 6018T30P14, with more than 850 CSN, perform an initial ECI of the fan blades for cracks within 350 CIS after the effective date of this AD'' in this AD.

Under-Cowl Fire Determination of Cause Not Consistent

GE Aviation states that, in the Discussion section of the proposed AD, the statement that it was not possible to determine the cause of the under-cowl fire was not consistent with the GE fire investigation. GE stated that their fire investigation concluded that the most probable cause of the under-cowl fire was the separation of the variable geometry aft actuator head hose from the fuel control.

We do not agree. The exact cause of the fire could not be determined due to the thermal damage. We did not change the AD.

Clarification of Gearbox Separation Statement

GE Aviation states that, in the Discussion section of the proposed AD, the statement that the gearbox separated from the engine needs clarification. GE Aviation states that the gearbox is designed to uncouple from the engine during high-load events such as a fan blade out, and the gearbox is secured to the engine by secondary restraint cables. This uncoupling occurred on the left-hand mount, and should not have contributed to the hose failure if the hose was properly aligned.

We do not agree. The wording is factually correct, and we did not state that the separation caused the fire. We did not change the AD.

Claim That the Fire Event Was a Controlled Fire

GE Aviation claims that the event that this AD results from was a ''controlled fire'' as the fire had been put out and did not create a hazard for the airplane.

We do not agree. The fire continued to burn unabated until the unidentified fuel source was exhausted. We did not change the AD.

Recommendation To Include GE Remote Diagnostics

GE Aviation and Mesaba Airlines recommend that GE Remote Diagnostics be included in proposed AD compliance paragraph (f)(6) as an alternate method of compliance (AMOC) for monitoring blade health. GE Aviation also recommends that we allow a recurrent ECI at 600-cycle intervals for consistency between the Regional Jet and Business Jet operators. GE Aviation states that the fan blade tang cracking algorithms developed by GE have been validated analytically, as well as in the field, and contributed substantially to finding three cracked blades during 2008.

We do not agree. We cannot include the GE Remote Diagnostics program, because it is a program outside regulatory control. Further, the program cannot replace a visual inspection to verify fan blade cracks. Finally, no GE service bulletin requirement or FAA requirement exists for ECI of the fan blades operating in engines in the Regional Jet operations. We did not change the AD.

Request To Revise the Wording in Proposed AD Compliance Paragraphs (f) and (g)

GE Aviation requests that we revise the wording in proposed AD compliance paragraphs (f) and (g) to clarify our instructions related to operators who fly a Regional Jet with a CF34–3A1 engine in a Business jet application. The commenter states that GEAE SB CF34–AL S/B 72–0245 and SB CF34–AL S/B 72–0250 apply to a small number of Business Jet operators with the CF34–3A1 engine, who fly under the Regional jet manual.

We agree. We changed the compliance section in this AD by adding the requested information and by recodifying the paragraphs.

Request To Correct a Typographical Error

GE Aviation requests that we correct a service bulletin issue date in paragraph (f), to be July 30, 2008.

We agree. We corrected the date in the AD, which is now in paragraph (h).

Request To Remove Inspection of Rubstrips at CSN

Mesaba Airlines requests that we remove the requirements to inspect the fan blade rub strips on fan blades with more than 1,200 CSN, within 20 CIS of the AD effective date, and on fan blades with fewer than 1,200 CSN, by 1,220 CSN. The commenter requests that we add a rub strip inspection every 75 CIS or 100 hours-in-service, until the fan blades are replaced. The commenter states that it is difficult to know the CSN on each fan blade.

We do not agree. To reduce the risk of fan blade failure, the rub strips need to be inspected as required in the AD. We did not change the AD.

Include a Process for Determining Fan Blade Cyclic Limits

Mesaba Airlines states that the FAA should include a process for determining cyclic limits if the fan blades CIS were not established when the fan blades were introduced into service.

We do not agree. If operators do not track fan blade time or CIS, they will need to apply for an alternative method

of compliance (AMOC) to this AD. We did not change the AD.

Request for Separate ADs

Mesaba Airlines requests that we issue separate ADs for the Regional Jet fleet and the Business Jet fleet. The commenter feels the proposed AD is far too complex.

We do not agree. The compliance section in the proposed AD is sufficiently direct. We did not change the AD.

Request To Define Terms

Mesaba Airlines requests that we define the terms ''CSLI'' and ''HSLI'' in the proposed AD compliance section.

In response, we note that we already did, and direct Mesaba Airlines to paragraph (f)(6) in the proposed AD, and in this AD, to compliance paragraph (h)(6).

Request To Not Include Service Bulletin Requirements

Mesaba Airlines requests that we not include the requirements of paragraph 3.A.(2)(d) of GEAE SB CF34–AL S/B 72–0250 in the AD.

We agree. We did not include those requirements in the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 1,966 engines installed on airplanes of U.S. registry. We estimate that the fan blade inspection and replacement requirement will affect 300 of these engines, and the actuator head hose inspection would affect 1,662 engines. We also estimate that it will take 0.5 work-hour per engine to inspect the fan blade abradable rub strip, 6 work-hours per engine to visually inspect the fan blades, 11 work-hours per engine to perform an eddy current inspection of the fan blades, and 0.25 work-hour per engine to inspect the actuator head hose fitting, and that the average labor rate is $80 per work-hour. Required parts will cost $51,106,600. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $51,184,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–24–11 General Electric Company: Amendment 39–16103. Docket No. FAA–2009–0328; Directorate Identifier 2008–NE–44–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–1A, CF34–3A, CF34–3A1, CF34–3A2, CF34–3B, and CF34–3B1 turbofan engines. These engines are installed on, but not limited to, Bombardier Canadair Models CL–600–2A12, CL–600–2B16, and CL–600–2B19 airplanes.

Unsafe Condition

(d) This AD results from a report of an under-cowl fire and a failed fan blade. We are issuing this AD to prevent failure of certain part number (P/N) and serial number (SN) fan blades and aft actuator head hoses, which could result in an under-cowl fire and subsequent damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

CF34–3A1 and CF34–3B1 Engines

(f) For CF34–3A1 engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 22,000 CSN; and

(g) For CF34–3A1 engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN that are in compliance with GE Aircraft Engines (GEAE) Service Bulletin (SB) CF34–AL S/B 72–0147, dated May 21, 2003, Revision 01, dated October 17, 2003, Revision 02, dated August 5, 2004, or Revision 3, dated August 28, 2003; and

(h) For CF34–3B1 engines with fan blades, P/Ns 6018T30P14 or 4923T56G08, that have a fan blade SN listed in Appendix A of GEAE SB CF34–AL S/B 72–0245, Revision 01, dated July 30, 2008;

(i) Do the following for the engines meeting the criteria in paragraph (f), (g), or (h) of this AD, as applicable:

(1) Remove fan blades from service within 4,000 cycles-in-service (CIS) after the effective date of this AD or by December 31, 2010, whichever occurs first.

Initial Visual Inspection of the Fan Blade Abradable Rub Strip for Wear

(2) For fan blades with 1,200 or more cycles-since-new (CSN) on the effective date of this AD, perform an initial visual inspection of the fan blade abradable rub strip for wear within 20 CIS after the effective date of this AD. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment

Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(3) For fan blades with fewer than 1,200 CSN on the effective date of this AD, perform an initial visual inspection of the fan blade abradable rub strip for wear within 1,220 CSN. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(4) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008.

(5) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Repetitive Visual Inspection of the Fan Blade Abradable Rub Strip for Wear

(6) Within 75 cycles-since-last inspection (CSLI) or 100 hours-since-last-inspection (HSLI), whichever occurs later, perform a visual inspection of the fan blade abradable rub strip for wear. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(i) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008.

(ii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Inspection of the Aft Actuator Head Hose Fitting on CF34–3A1 and CF34–3B1 Engines

(7) Within 750 hours time-in-service (TIS) after the effective date of this AD, visually inspect and, if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB CF34–AL S/B 73–0046, Revision 02, dated August 27, 2008, to perform the inspection.

CF34–1A, CF34–3A, CF34–3A2, CF34–3B, and CF34–3A1 Engines

(j) For CF34–3A1 engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN, that are not in compliance with GEAE SB CF34–AL S/B 72–0147, dated May 21, 2003, Revision 01, dated October 17, 2003, Revision 02, dated August 5, 2004, or Revision 3, dated August 28, 2003; and

(k) For CF34–1A, CF34–3A, CF34–3A2, and CF34–3B engines with fan blades, P/N 6018T30P14 or P/N 4923T56G08, that have a fan blade SN listed in Appendix A of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008;

(l) Do the following for the engines meeting the criteria in paragraph (j) or (k) of this AD as applicable:

(1) Remove fan blades, P/N 6018T30P14, from service within 2,400 CSN.

(2) Remove fan blades, P/N 4923T56G08, from service within 1,200 CIS since the bushing repair of the fan blade hole.

Initial Eddy Current Inspection of the Fan Blades

(3) For fan blades, P/N 6018T30P14, with more than 850 CSN, perform an initial eddy current inspection (ECI) of the fan blades for cracks within 350 CIS after the effective date of this AD. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(4) For fan blades, P/N 6018T30P14, with 850 or fewer CSN on the effective date of this AD, perform an initial ECI of the fan blades for cracks within 1,200 CSN. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(5) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Repetitive ECI of the Fan Blades

(6) For fan blades, P/N 6018T30P14, within 600 CSLI, perform an ECI of the fan blades for cracks. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(7) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Initial Visual Inspection of the Fan Blade Abradable Rub Strip for Wear

(8) For engines with fan blades, P/N 6018T30P14, installed that have a fan blade SN listed in Appendix A of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, with 1,200 or more CSN on the effective date of this AD, and that haven't had an ECI of the fan blades for cracks, do the following:

(i) Perform an initial inspection of the fan blade abradable rub strip for wear within 20 CIS after the effective date of this AD. Use paragraph 3.A.(1) of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(ii) If you find a continuous 360 degree rub indication, before further flight, perform a visual inspection of the fan blades for cracks. Use paragraphs 3.A(2)(a) or 3.A(2)(b) of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(iii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Repetitive Inspection of the Fan Blade Abradable Rub Strip for Wear

(9) For engines with fan blades, P/N 6018T30P14, installed, if you have performed an ECI of the fan blade, you don't need to inspect the fan blade abradable rub strip for wear.

(10) For engines with fan blades, P/N 6018T30P14, installed, within 75 CSLI or 100 HSLI, whichever occurs later, do the following:

(i) Perform a visual inspection of the fan blade abradable rub strip for wear. Use paragraph 3.A.(1) of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(ii) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008.

(iii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Inspection of the Aft Actuator Head Hose Fitting on CF34–3A1 and CF34–3B Engines

(11) For CF34–3A1 engines, within 300 hours TIS after the effective date of this AD, visually inspect and, if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, to perform the inspection.

(12) For CF34–3B engines, within 400 hours TIS after the effective date of this AD, visually inspect and, if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, to perform the inspection.

Credit for Previous Actions

(m) Inspections previously performed using the following GEAE SBs meet the requirements specified in the indicated paragraphs:

(1) CF34–AL S/B 72–0250, dated August 15, 2008, meet the requirements specified in paragraphs (i)(2) through (i)(4) of this AD.

(2) CF34–AL S/B 73–0046, Revision 01, dated July 1, 2008, or earlier issue, meet the requirements specified in paragraph (i)(7) of this AD.

(3) CF34–BJ S/B 72–0229, dated April 10, 2008, meet the requirements specified in paragraphs (l)(3) and (l)(4) of this AD.

(4) CF34–BJ S/B 72–0231, Revision 01, dated October 1, 2008, or earlier issue, meet the requirements specified in paragraphs (l)(10)(i) and (l)(10)(ii) of this AD.

(5) CF34–BJ S/B 73–0062, Revision 01, dated July 1, 2008, or earlier issue, meet the requirements specified in paragraphs (l)(11) and (l)(12) of this AD.

Installation Prohibitions

(n) After the effective date of this AD:

(1) Do not install any fan blade into any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section life limit of 22,000 CSN if that fan blade:

(i) Was installed in a CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section life limit of 15,000 CSN; and

(ii) Is listed in Appendix A of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008; or

(iii) Is listed in Appendix A of GEAE SB CF34–BJ S/B 72–0230, Revision 01, dated July 30, 2008.

(2) Do not install any fan blade into any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section life limit of 15,000 CSN if that fan blade:

(i) Was installed in any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section life limit of 22,000 CSN and,

(ii) Is listed in Appendix A of GEAE SB CF34–AL S/B 72–0245, Revision 01, dated July 3, 2008.

Alternative Methods of Compliance

(o) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(p) Contact John Frost, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: john.frost@faa.gov;* telephone (781) 238–7756; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(q) You must use the GE Aircraft Engines service information specified in the following Table 1 to do the actions required by this AD.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin No.	Page	Revision	Date
CF34–AL S/B 73–0046 Total Pages: 8	All	02	August 27, 2008.
CF34–BJ S/B 73–0062 Total Pages: 8	All	02	August 27, 2008.
CF34–BJ S/B 72–0229 Total Pages: 158	All	01	July 30, 2008.
CF34–BJ S/B 72–0230 Total Pages: 153	All	01	July 30, 2008.
CF34–BJ S/B 72–0231 Total Pages: 8	All	02	November 26, 2008.
CF34–AL S/B 72–0245 Total Pages: 153	All	01	July 03, 2008.
CF34–AL S/B 72–0250 Total Pages: 9	All	01	November 26, 2008.

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

(2) For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Newmann Way, Cincinnati, OH 45215, telephone (513) 552–3272; fax (513) 552–3329; *e-mail: geae.aoc@ge.com.*

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

Issued in Burlington, Massachusetts, on November 18, 2009.

Peter A. White,

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

[FR Doc. E9–28236 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0886 Directorate Identifier 2009–CE–045–AD; Amendment 39–16109; AD 2009–24–15]

RIN 2120–AA64

Airworthiness Directives; SOCATA Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

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

It was noticed on assembly line an elongation of bolts connecting power leads on R700 and R701 shunts. An incorrect tightening torque value is likely to be the cause of the elongation.

This condition, if left uncorrected could lead to heating, electrical arcing or smokes and could result in an in-flight loss of electrical power.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 4, 2010.

On January 4, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 28, 2009 (74 FR 49345). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It was noticed on assembly line an elongation of bolts connecting power leads on R700 and R701 shunts. An incorrect tightening torque value is likely to be the cause of the elongation.

This condition, if left uncorrected could lead to heating, electrical arcing or smokes and could result in an in-flight loss of electrical power.

For the reason described above, this Airworthiness Directive (AD) mandates the replacement of the power lead bolts on R700 and R701 shunts.

Comments

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

Comment Issue: Costs of Compliance

Ms. Catherine Hérau, SOCATA, states the cost of the required parts (4 bolts) is $10, not $50. Consequently, the cost of the proposed AD on U.S. operators is $2,350 or $50 per product.

We agree with the commenter, and we are changing the costs of compliance in the final rule AD action to reflect the more accurate estimated costs.

Conclusion

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

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 required 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 AD.

Costs of Compliance

We estimate that this AD will affect 47 products of U.S. registry. We also estimate that it will take about 0.5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $10 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge or a lower charge for these parts. 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 this AD to the U.S. operators to be $2,350 or $50 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–24–15 SOCATA: Amendment 39–16109; Docket No. FAA–2009–0886; Directorate Identifier 2009–CE–045–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to TBM 700 airplanes, serial numbers 434 through 502, and serial numbers 504 and 505, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 24: Electric Power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It was noticed on assembly line an elongation of bolts connecting power leads on R700 and R701 shunts. An incorrect tightening torque value is likely to be the cause of the elongation.

This condition, if left uncorrected could lead to heating, electrical arcing or smokes and could result in an in-flight loss of electrical power.

For the reason described above, this Airworthiness Directive (AD) mandates the replacement of the power lead bolts on R700 and R701 shunts.

Actions and Compliance

(f) Unless already done, within the next 100 hours time-in-service after January 4, 2010 (the effective date of this AD), or within the next 12 months after January 4, 2010 (the effective date of this AD), whichever occurs first, replace the bolts of shunts R700 and R701 following DAHER–SOCATA Mandatory Service Bulletin SB 70–169, dated May 2009.

FAA AD Differences

Note: 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, Standards Office, 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:* Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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 EASA AD No.: 2009–0174, dated August 11, 2009; and DAHER–SOCATA Mandatory Service Bulletin SB 70–169, dated May 2009, for related information.

Material Incorporated by Reference

(i) You must use DAHER–SOCATA Mandatory Service Bulletin SB 70–169, dated May 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact SOCATA, 65921—TARBES Cedex 9, France; telephone: +33 6 07 32 62 24; or SOCATA NORTH AMERICA, INC., North Perry Airport, 7501 South Airport Rd., Pembroke Pines, Florida 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *Internet: http://mysocata.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

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

Issued in Kansas City, Missouri, on November 19, 2009.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28305 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1019; Directorate Identifier 2007–NE–49–AD; Amendment 39–16104; AD 2009–24–12]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. LTS101 Series Turboshaft and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Honeywell International Inc. LTS101 series turboshaft and LTP101 series turboprop engines with certain gas generator turbine discs installed. This AD requires reducing the life limits for certain gas generator turbine discs. This AD results from an error in a change to the engineering drawing for the gas generator turbine disc from which Honeywell manufactured 260 discs. We are issuing this AD to prevent rupture of the gas generator turbine disc, which could result in uncontained engine failure and damage to the aircraft.

DATES: This AD becomes effective January 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2010.

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

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *e-mail: robert.baitoo@faa.gov;* telephone (562) 627–5245; fax (562) 627–5210.

You can get the service information identified in this AD from Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 601–3099 (U.S.A.) or (602) 365–3099 (International); or go to: *https://portal.honeywell.com/wps/portal/aero.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Honeywell International Inc. LTS101 series turboshaft and LTP101 series turboprop engines with certain gas generator turbine discs installed. We published the proposed AD in the **Federal Register** on September 25, 2008 (73 FR 55456). That action proposed to require removing any disc, part number (P/N) 4–111–015–14 that has a serial number (SN) listed in Appendix 1 of Honeywell International Inc. Service Bulletin LT 101–71–00–0002, Revision 25, dated August 31, 2007, using the drawdown schedules specified in Table 1 of the proposed AD.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Add All Affected Engine Models to Compliance Paragraphs

One commenter asks us to add all affected engine models to the compliance and installation prohibition paragraphs to be consistent with the applicability paragraph.

We agree. We changed Table 1 and paragraphs (f) and (g) of this AD to specify LTS101–600, –650, and –750 series turboshaft engines.

Request To Increase the Costs To Comply With This AD

The same commenter asks us to increase the estimated Costs of Compliance. The commenter perceives that the compliance cost is underestimated.

We don't agree. The proposed AD correctly estimates 1.0 work-hour per engine to cover the time for revising the records to reflect the disc life limit reduction and drawdown schedules. The $8,000 figure in the proposed rule is the estimated prorated cost of life limit of the disc. We did not change the AD.

Reference to Revised Service Information

Since we published the proposed AD in the **Federal Register**, we determined that Honeywell International Inc. issued revised Service Bulletin (SB) LT 101–71–00–0002. We have approved that SB revision, and changed all SB references from Revision 25, dated August 31, 2007, to Revision 26, dated April 2, 2008, in this AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 260 engines installed on aircraft of U.S. registry. We also estimate that it will take 1.0 work-hour per engine to

perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $8,000 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $2,100,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–24–12 Honeywell International Inc. (Formerly AlliedSignal, Textron Lycoming, and Avco Lycoming): Amendment 39–16104. Docket No. FAA–2008–1019; Directorate Identifier 2007–NE–49–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. models LTS101–600A–2, –600A–3, –600A–3A, –650B–1, –650B–1A, –650C–2, –650C–3, –650C–3A, –750A–1, –750A–3, –750B–1, –750B–2, and –750C–1 turboshaft engines and LTP101–600A–1A and –700A–1A turboprop engines with certain gas generator turbine discs, part number (P/N) 4–111–015–14, installed. These engines are installed on, but not limited to, Eurocopter France AS350, Eurocopter Deutchland GMBH BK117, and Bell Helicopter Textron 222 helicopters; and Page Thrush, Air Tractor AT–302, Industrie Aeronautiche e Meccaniche (formerly Piaggio & Co.) P166–DL3, Pacific Aero 08–600, and Riley International R421 airplanes.

Unsafe Condition

(d) This AD results from an error in a change to the engineering drawing for the gas generator turbine disc from which Honeywell manufactured 260 discs. We are issuing this AD to prevent rupture of the gas generator turbine disc, which could result in uncontained engine failure and damage to the aircraft.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Drawdown Schedule and New Reduced Life Limit for Certain Gas Generator Turbine Discs

(f) For model LTS101–600, –650, and –750 series turboshaft engines and model LTP101–600A–1A and –700A–1A turboprop engines that have a gas generator turbine disc serial number (SN) specified in Appendix 1 of Honeywell International Inc. Service Bulletin (SB) LT 101–71–00–0002, Revision 26, dated April 2, 2008, remove the engine using the drawdown schedule specified in Table 1 of this AD.

TABLE 1—DRAWDOWN SCHEDULE

Engine Model	If disc cycle count on the effective date of this AD is	Then remove disc
(1) LTS101–600, –650, and –750 series turboshaft engines.	≤(i) Fewer than 4,940 cycles-since-new (CSN).	Before accumulating 5,040 CSN.
	(ii) 4,940 or more CSN.	Within 100 cycles-in-service (CIS).
≤(2) LTP101–600A–1A and –700A–1A turboprop engines.	(i) Fewer than 2,720 CSN.	Before accumulating 2,770 CSN.
	(ii) 2,720 or more CSN.	Within 50 CIS.

Installation Prohibitions

(g) After the effective date of this AD, don't install any model LTS101–600, –650, or –750 series turboshaft engine that has a gas generator turbine disc, P/N 4–111–015–14, with a SN listed in Appendix 1 of Honeywell International Inc. SB LT 101–71–00–0002, Revision 26, dated April 2, 2008; if that disc has 5,040 or more CSN.

(h) After the effective date of this AD, don't install any model LTP101–600A–1A or –700A–1A turboprop engine that has a gas generator turbine disc, P/N 4–111–015–14, with a SN listed in Appendix 1 of Honeywell International Inc. SB LT 101–71–00–0002, Revision 26, dated April 2, 2008; if that disc has 2,770 or more CSN.

Alternative Methods of Compliance

(i) The Manager, Los Angeles Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *e-mail: robert.baitoo@faa.gov;* telephone (562) 627–5245; fax (562) 627–5210, for more information about this AD.

Material Incorporated by Reference

(k) You must use Appendix 1 of Honeywell International Inc. Service Bulletin LT 101–71–00–0002, Revision 26, dated April 2, 2008, to determine the gas generator turbine disc serial numbers affected by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 601–3099 (U.S.A.) or (602) 365–3099 (International); or go to: *https://portal.honeywell.com/wps/portal/aero,* for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on November 18, 2009.

Peter A. White,

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

[FR Doc. E9–28235 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0870 Directorate Identifier 2009–CE–049–AD; Amendment 39–16108; AD 2009–24–14]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Model EMB–500 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

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

It has been found the possibility of elevator mass balance fasteners becoming slack under certain conditions. The loose of at least two fasteners may lead to an unbalance condition, which may induce flutter on airplane elevators.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 4, 2010.

On January 4, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 21, 2009 (74 FR 48028). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found the possibility of elevator mass balance fasteners becoming slack under certain conditions. The loose of at least two fasteners may lead to an unbalance condition, which may induce flutter on airplane elevators.

The MCAI requires replacement of the nuts of the right and left elevators mass balance fasteners.

Comments

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

Conclusion

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

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 required 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 AD.

Costs of Compliance

We estimate that this AD will affect 25 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $150 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $7,750 or $310 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–24–14 Empresa Brasileira de Aeronáutica S.A. (EMBRAER): Amendment 39–16108; Docket No. FAA–2009–0870; Directorate Identifier 2009–CE–049–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMB–500 airplanes, serial numbers 50000005, 50000006, 50000008 through 50000036, 50000038 through 50000041, 50000043 through 50000046, 50000048, and 50000053, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the possibility of elevator mass balance fasteners becoming slack under certain conditions. The loose of at least two fasteners may lead to an unbalance condition, which may induce flutter on airplane elevators. The MCAI requires replacement of the nuts of the right and left elevators mass balance fasteners.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 30 days after January 4, 2010 (the effective date of this AD), replace the nuts of the right-hand (RH) and left-hand (LH) elevators' mass balance fasteners with new ones of self-locking type bearing part number (P/N) MS21043–4. Do the replacements following Phenom by Embraer Service Bulletin No. 500–55–0001, dated July 24, 2009.

(2) As of 30 days after January 4, 2010 (the effective date of this AD), only install self-locking type nuts, P/N MS21043–4, on the RH and LH elevators' mass balance fasteners.

FAA AD Differences

Note: 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, Standards Office, 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:* Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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 Agência Nacional de Aviação Civil (ANAC) Brazilian Airworthiness Directive AD No.: 2009–09–01, dated September 3, 2009, and Phenom by Embraer Service Bulletin No. 500–55–0001, dated July 24, 2009, for related information.

Material Incorporated by Reference

(i) You must use Phenom by Embraer Service Bulletin No. 500–55–0001, dated July 24, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—PO Box: 38/2, BRASIL, *telephone:* ++55 12 3927–5383; *fax:* ++55 12 3927–2610; E-mail: *reliability.executive@embraer.com.br; Internet: http://www.embraer.com.br.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

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

Issued in Kansas City, Missouri, on November 19, 2009.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28306 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2009–N–0665]

Oral Dosage Form New Animal Drugs; Chlortetracycline Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for use of generic chlortetracycline soluble powder to make medicated drinking water for cattle, swine, chickens, and turkeys for the treatment of several bacterial diseases.

DATES: This rule is effective November 30, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Alpharma Inc., 440 Route 22, Bridgewater, NJ 08807, filed ANADA 200–441 that provides for the use of A–MYCIN (chlortetracycline) Soluble Powder to make medicated drinking water for cattle, swine, chickens, and turkeys for the treatment of several bacterial diseases. Alpharma Inc.'s A–MYCIN Soluble Powder is approved as a generic copy of Fort Dodge Animal Health, A Division of Wyeth Holdings Corp.'s AUREOMYCIN (chlortetracycline) Soluble Powder, approved under NADA 65–440. The ANADA is approved as of October 9, 2009, and the regulations are amended in 21 CFR 520.445b to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33 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.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.445b, revise paragraph (b)(2) to read as follows:

§ 520.445b Chlortetracycline powder.

* * * * *

(b) * * *

(2) Nos. 046573 and 053501 for use as in paragraph (d) of this section.

* * * * *

Dated: November 23, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–28468 Filed 11–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0985]

RIN 1625–AA00

Safety Zone; Atlantic Intracoastal Waterway, Sunset Beach, 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 Sunset Beach, North Carolina. 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 Sunset Beach, North Carolina.

DATES: This rule will be in effect from 6 a.m. on December 1, 2009 through 6 p.m. on January 31, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0985 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0985 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 it is in the public interest to have this regulation in place during the girder installation due to the hazards associated with potential falling debris and the use of heavy equipment and machinery in the waterway.

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, since 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 English Construction Company Inc. of Lynchburg, Virginia to perform bridge girder installation at the new high-level fixed highway bridge at Sunset Beach, North Carolina. The contract provides for the installation of bridge girders. The center bridge girder installation is scheduled daily from 6 a.m. on December 1, 2009 through 6 p.m. on January 31, 2010. The contractor will be utilizing a deck barge with a 50′ beam, a 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 6 a.m. until 6 p.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. 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 6 a.m. until 6 p.m. while girder installation is in progress from 6 a.m. on December 1, 2009 through 6 p.m. on January 31, 2010.

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 6 a.m. on December 1, 2009 through 6 p.m. on January 31, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. 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 affect 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, eliminates 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—SAFETY ZONES

■ 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 temporary § 165.T05–0985 to read as follows:

§ 165.T05–0985 Safety Zone; Atlantic Intracoastal Waterway, Sunset Beach, NC.

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

(b) *Location.* The following area is a safety zone: This zone includes 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 Sunset Beach, North Carolina.

(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 6 a.m. until 6 p.m. throughout the effective period from 6 a.m. on December 1, 2009 through 6 p.m. on January 31, 2010 unless cancelled earlier by the Captain of the Port. The exact daily times will be announced in Broadcast Notice to Mariners.

Dated: November 16, 2009.

J.E. Ryan,

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

[FR Doc. E9–28491 Filed 11–27–09; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–3 and CP2010–3; Order No. 325]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 21 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 30, 2009 and is applicable beginning October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 54599 (October 22, 2009).

I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 21 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On October 14, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 21 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 21 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2010–3.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2010–3.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, originally filed in Docket No. MC2009–25, authorizing the Priority Mail Contract Group; [2] (2) a redacted version of the contract; [3] (3) a requested change in the Mail Classification Schedule product list; [4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32; [5] (5) a certification of compliance with 39 U.S.C. 3633(a); [6] and (6) an application for non-public treatment of the materials filed under seal.[7] The redacted version of the contract provides that the contract is terminable on 30 days' notice by either

[1] Request of the United States Postal Service to Add Priority Mail Contract 21 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, October 14, 2009 (Request).

[2] Attachment A to the Request, reflecting Governors' Decision No. 09–6, April 27, 2009.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] Attachment F to the Request.

party, but could continue for three years from the effective date subject to annual price adjustments. Request, Attachment B.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal. The Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, certain terms and conditions, and financial projections, should remain confidential. *Id.*, Attachment F, at 2–3.[8]

In Order No. 316, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[9]

III. Comments

Comments were filed by the Public Representative.[10] No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing meets the pertinent provisions of title 39 and the relevant Commission rules. *Id.* at 1, 3. He further states that the agreement employs pricing terms favorable to the customer, the Postal Service, and thereby, the public. *Id.* at 3–4. The Public Representative also believes that the Postal Service has provided appropriate justification for maintaining confidentiality in this case. *Id.* at 3.

IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 21 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 21 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> The Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products consists of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.,* para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*, para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 21 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 21 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 21 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 21 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 21 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date. Following the scheduled termination date of the agreement, the Commission will remove the product from the Competitive Product List.

In conclusion, the Commission approves Priority Mail Contract 21 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

V. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 21 (MC2010–3 and CP2010–3) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

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[8] In its application for non-public treatment, the Postal Service requests an indefinite extension of non-public treatment of customer-identifying information. *Id.* at 7. For the reasons discussed in PRC Order No. 323, that request is denied. *See* Docket No. MC2010–1 and CP2010–1, Order Concerning Priority Mail Contract 19 Negotiated Service Agreement, October 26, 2009.

[9] PRC Order No. 316, Notice and Order Concerning Priority Mail Contract 21 Negotiated Service Agreement, October 16, 2009 (Order No. 316).

[10] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 21 Negotiated Service Agreement to the Competitive Products List, October 26, 2009 (Public Representative Comments).

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail
[Reserved for Class Description]
- Single-Piece Letters/Postcards
- [Reserved for Product Description]
- Bulk Letters/Postcards
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Parcels
- [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
- [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
- [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
- High Density and Saturation Letters
- [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
- [Reserved for Product Description]
- Carrier Route
- [Reserved for Product Description]
- Letters
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
- [Reserved for Product Description]

Periodicals
[Reserved for Class Description]
- Within County Periodicals
- [Reserved for Product Description]
- Outside County Periodicals
- [Reserved for Product Description]

Package Services
[Reserved for Class Description]
- Single-Piece Parcel Post
- [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
- [Reserved for Product Description]
- Bound Printed Matter Flats
- [Reserved for Product Description]
- Bound Printed Matter Parcels
- [Reserved for Product Description]
- Media Mail/Library Mail
- [Reserved for Product Description]

Special Services
[Reserved for Class Description]
- Ancillary Services
- [Reserved for Product Description]
- Address Correction Service
- [Reserved for Product Description]
- Applications and Mailing Permits
- [Reserved for Product Description]
- Business Reply Mail
- [Reserved for Product Description]
- Bulk Parcel Return Service
- [Reserved for Product Description]
- Certified Mail
- [Reserved for Product Description]
- Certificate of Mailing
- [Reserved for Product Description]
- Collect on Delivery
- [Reserved for Product Description]
- Delivery Confirmation
- [Reserved for Product Description]
- Insurance
- [Reserved for Product Description]
- Merchandise Return Service
- [Reserved for Product Description]
- Parcel Airlift (PAL)
- [Reserved for Product Description]
- Registered Mail
- [Reserved for Product Description]
- Return Receipt
- [Reserved for Product Description]
- Return Receipt for Merchandise
- [Reserved for Product Description]
- Restricted Delivery
- [Reserved for Product Description]
- Shipper-Paid Forwarding
- [Reserved for Product Description]
- Signature Confirmation
- [Reserved for Product Description]
- Special Handling
- [Reserved for Product Description]
- Stamped Envelopes
- [Reserved for Product Description]
- Stamped Cards
- [Reserved for Product Description]
- Premium Stamped Stationery
- [Reserved for Product Description]
- Premium Stamped Cards
- [Reserved for Product Description]
- International Ancillary Services
- [Reserved for Product Description]
- International Certificate of Mailing
- [Reserved for Product Description]
- International Registered Mail
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- Address List Services
- [Reserved for Product Description]
- Caller Service
- [Reserved for Product Description]
- Change-of-Address Credit Card Authentication
- [Reserved for Product Description]
- Confirm
- [Reserved for Product Description]
- International Reply Coupon Service
- [Reserved for Product Description]
- International Business Reply Mail Service
- [Reserved for Product Description]
- Money Orders
- [Reserved for Product Description]
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements
[Reserved for Class Description]
- HSBC North America Holdings Inc. Negotiated Service Agreement
- [Reserved for Product Description]
- Bookspan Negotiated Service Agreement
- [Reserved for Product Description]
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
- Inbound International Expedited Services 1 (CP2008–7)
- Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)

Priority Mail
- Priority Mail

Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M–Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal service Contractual Bilateral
Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Priority Mail Contract 19 (MC2010–1 and CP2010–1)
Priority Mail Contract 20 (MC2010–2 and CP2010–2)
Priority Mail Contract 21 (MC2010–3 and CP2010–3)
Outbound International
Direct Entry Parcels Contracts Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–28506 Filed 11–27–09; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0454; FRL–9086–2]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environment and Natural Resources on June 20, 2008. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR). Although the DC Circuit Court found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. EPA is continuing to approve CAIR provisions into SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or

ozone in any downwind State. CAIR establishes budgets for SO_2 and NO_X in States that contribute significantly to nonattainment of the NAAQS in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. In the SIP revision that EPA is approving today, North Carolina has met the CAIR requirements by electing to participate in the EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. Consequently, this SIP revision approval will automatically replace and withdraw the CAIR Federal Implementation Plans (FIP) currently in place for North Carolina.

DATES: *Effective Date:* The final rule is effective on November 30, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2009–0454. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deanne Grant, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9291. Ms. Grant can also be reached via electronic mail at *grant.deanne@epa.gov.* For information relating to the North Carolina SIP, please contact Ms. Nacosta Ward at (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. EPA's Action
II. Background
III. Final Action
IV. What Is the Effective Date?
V. Statutory and Executive Order Reviews

I. EPA's Action

EPA is taking final action to approve North Carolina's full SIP revision, submitted on June 20, 2008, as meeting the applicable CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administrated CAIR cap-and-trade programs addressing SO_2, NO_X annual and NO_X ozone season emissions. As a consequence of the SIP approval, the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for North Carolina are automatically withdrawn, deleting and reserving the provisions in Part 52 that establish the CAIR FIPs for North Carolina.

EPA proposed to approve North Carolina's request to amend the SIP on August 7, 2009 (74 FR 39592). In that proposal, EPA also stated that upon final approval of the SIP, the FIP would be automatically withdrawn. The comment period closed on September 8, 2009. One comment in support of this action was received, as well as one source-specific comment which was not directly related to the rulemaking. That source-specific comment was withdrawn by the commenter shortly after the public comment period closed. EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

II. Background

On June 20, 2008, North Carolina submitted a full SIP revision to meet the requirements of CAIR as promulgated on May 12, 2005. The SIP revision adopts the budgets established for the State in CAIR. The NO_X annual budget from 2009 through 2014 is 62,183 tons, and 51,819 tons from 2015 and thereafter; the NO_X ozone season budget from 2009 through 2014 is 28,392 tons, and 23,660 tons from 2015 and thereafter; and the SO_2 annual budget from 2009 through 2014 is 137,342 tons, and 96,139 tons from 2015 and thereafter. Additionally, because North Carolina has chosen to include all non-EGUs in the State's NO_X SIP call trading program, the CAIR NO_X ozone season budget will be increased annually by 2,443 tons to account for such NO_X SIP Call trading sources. These budgets are the total amounts of allowances available for allocation for each year under EPA-administered cap-and-trade programs in North Carolina.

EPA notes that, in *North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. July 11, 2008) at 916–21, the Court determined, among other things, that the State SO_2 and NO_X budgets established in CAIR were arbitrary and capricious[1]. However, the action approved today is consistent with the Court's decision to leave CAIR in place to ''temporarily preserve the environmental values covered by CAIR'' pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *North Carolina* vs. *EPA,* 550 F.3d at 1178.

As noted above, in accordance with 40 CFR 52.35 and 52.36, EPA's action approving North Carolina's SIP automatically withdraws the CAIR FIPs for SO_2, NO_X annual and NO_X ozone season emissions for North Carolina sources.

The August 7, 2009, notice proposed EPA's approval of North Carolina's methodology for allocating NO_X allowances for the NO_X annual and NO_X ozone season trading programs, which will be used to allocate NO_X allowance to sources in North Carolina, instead of the Federal allocation methodology provided in the FIP. A detailed discussion of CAIR requirements, North Carolina's CAIR submittals and EPA's rationale for approval of the North Carolina SIP revision may be found in the proposed rulemaking notice.

III. Final Action

EPA is taking final action to approve North Carolina's full CAIR SIP revision submitted on June 20, 2008. Under this SIP revision, the State is choosing to participate in the EPA-administered cap-and-trade programs for SO_2, and NO_X emissions. EPA has determined that the SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. EPA has determined that the SIP as revised will meet the requirements of CAIR. This

[1] The Court also determined that the CAIR trading programs were unlawful (*id.* at 906–8) and that the treatment of title IV allowances in CAIR was unlawful (*id.* at 921–23). For the same reasons that EPA is approving the provisions of North Carolina's SIP revision that use the SO_2 and NO_X budgets set in CAIR, EPA is also approving, as discussed below, North Carolina's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions addressing applicability, allowance allocations, and use of title IV allowances.

action also withdraws the CAIR FIP for North Carolina.

IV. What Is the Effective Date?

An expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' EPA finds that there is good cause for this approval to become effective upon publication. This action will allow the State to implement CAIR to include its non-electric generating units in the NO_X ozone season program, implement its allowance allocations and remove the opt-in provisions of the FIP.

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

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

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 January 29, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 17, 2009.

J. Scott Gordon,

Acting Regional Administrator, Region 4.

■ 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 II—North Carolina

■ 2. Section 52.1770(c), Table 1 is amended, under Subchapter 2D by:

■ a. Adding in numerical order revised entries in Section .2400 for ''.2403,'' ''.2405,'' ''.2412.''

■ b. Adding in numerical order, new entries in Section .2400 for ''.2401,'' ''.2402,'' ''.2404,'' ''.2406,'' ''.2407,'' ''.2408,'' ''.2409,'' ''.2410,'' ''.2411,'' ''.2413.''

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirement				
*	*	*	*	*
Section .2400 Clean Air Interstate Rules				
Sect. 2401	Purpose and Applicability	5/1/08	11/30/09 [Insert citation of publication].	

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Sect. 2402	Definitions	5/1/08	11/30/09 [Insert citation of publication].	
Sect .2403	Nitrogen Oxide Emissions	5/1/08	11/30/09 [Insert citation of publication].	
Sect. 2404	Sulfur Dioxide	5/1/08	11/30/09 [Insert citation of publication].	
Sect. 2405	Nitrogen Oxide Emissions During Ozone Season.	5/1/08	11/30/09 [Insert citation of publication].	
Sect. 2406	Permitting	7/1/06	11/30/09 [Insert citation of publication].	
Sect. 2407	Monitoring, Reporting, and Recordkeeping	5/1/08	11/30/09 [Insert citation of publication].	
Sect. 2408	Trading Program and Banking	7/1/06	11/30/09 [Insert citation of publication].	
Sect. 2409	Designated Representative	5/1/08	11/30/09 [Insert citation of publication].	
Sect. 2410	Computation of Time	7/1/06	11/30/09 [Insert citation of publication].	
Sect. 2411	Opt-In Provisions	7/1/06	11/30/09 [Insert citation of publication].	
Sect. 2412	New Unit Growth	5/1/08	11/30/09 [Insert citation of publication].	
Sect. 2413	Periodic Review and Reallocations	7/1/06	11/30/09 [Insert citation of publication].	

* * * * *

[FR Doc. E9–28416 Filed 11–27–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0023; FRL–9086–1]

Approval and Promulgation of Implementation Plans; Kentucky; Source-Specific Revision for Avis Rent-A-Car and Budget Rent-A-Car Facilities Located at the Cincinnati/ Northern Kentucky International Airport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve source-specific revisions to the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet's (KEEC), Kentucky Division of Air Quality (KDAQ), on February 4, 2009, for the purpose of removing Stage II vapor control requirements at Avis Rent-A-Car and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport. This revision is being taken pursuant to Section 110 of the Clean Air Act (CAA).

DATES: *Effective Date:* This rule will be effective December 30, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2009–0023. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deanne Grant, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9291. Ms. Grant can also be reached via electronic mail at *grant.deanne@epa.gov.* For information relating to the Kentucky SIP, please contact Mr. Zuri Farngalo at (404) 562–9152. Mr. Farngalo can also be reached via electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. EPA's Action
II. Background
III. Final Action
IV. Statutory and Executive Order Reviews

I. EPA's Action

EPA is taking final action to approve a source-specific SIP revision, submitted by the Commonwealth of Kentucky, through KDAQ, for the purpose of removing Stage II vapor control requirements at Avis Rent-A-Car, and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport. This approval action is based on EPA's analysis that Kentucky's request complies with Section 110 of the CAA.

In a July 27, 2009, rulemaking notice, EPA proposed approval of the aforementioned revision to the Kentucky SIP. The comment period closed on August 26, 2009, and no comments were received. A detailed discussion of Kentucky's submittal and EPA's rationale for approval of the February 4, 2009, Kentucky SIP revision may be found in the proposed rulemaking notice (74 FR 36977). EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

II. Background

On January 6, 1992, EPA designated the Cincinnati/Northern Kentucky Area as a ''moderate'' ozone nonattainment area for the 1-hour ozone standard (56 FR 56694). Therefore, pursuant to the requirements of section 182(b)(3) of the CAA, the Commonwealth of Kentucky, developed Kentucky Administrative Regulations (KAR) 401 KAR 59:174 Stage II controls at gasoline dispensing facilities, and submitted the rule to EPA for approval as part of Kentucky's ozone SIP. The rule was adopted by the Commonwealth of Kentucky on January 12, 1998, and approved by EPA into the SIP on December 8, 1998 (63 FR 67589).

On April 6, 1994, EPA promulgated regulations requiring the phase-in of on-board refueling vapor recovery (ORVR) systems on new motor vehicles (59 FR 16262, 40 CFR 86.001 and 40 CFR 86.098). As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and allows such areas to seek SIP revisions to remove such requirements from their

SIP, subject to section 110(l) of the Act. Because Kentucky is taking credit for Stage II in its maintenance plan, this action is subject to section 110(l) of the CAA, which states:

> Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

On October 29, 1999, KDAQ submitted, for EPA approval, a 1-hour ozone maintenance plan and request for redesignation of the Cincinnati/Northern Kentucky Area to attainment status. The redesignation request and maintenance plan were approved by EPA, effective June 19, 2000 (65 FR 37879). Since the Kentucky Stage II program was already in place and had been included in the Commonwealth's October 29, 1999, redesignation request and 1-hour ozone maintenance plan for the Area, KDAQ elected not to remove the program from the SIP at that time. On April 30, 2004, EPA designated the Cincinnati/Northern Kentucky Area, as nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) (69 FR 23857). The Cincinnati/Northern Kentucky Area remains designated as nonattainment for the 1997 8-hour ozone standard, although based on preliminary 2007–2008 data it looks as though the area may attain the standard.

On January 5, 2005, EPA published designations for the 1997 annual and 24-hour $PM_{2.5}$ standard (70 FR 944). The Cincinnati/Northern Kentucky Area was designated as a nonattainment area for the 1997 annual $PM_{2.5}$ standard and remains a nonattainment area for that standard. However, this same area was designated as attainment for the 1997 24-hour $PM_{2.5}$ standard. On September 21, 2006, EPA revised the 24-hour $PM_{2.5}$ standard which in turn initiated the designation process for the revised 24-hour ozone standard. The Commonwealth of Kentucky submitted a letter dated February 10, 2009, which requested that the Cincinnati/Northern Kentucky Area be classified attainment for the revised 24-hour standard based on 2006–2008 data. EPA has yet to publish the final rulemaking with the final designations for the revised 24-hour $PM_{2.5}$ standard but it is anticipated that this area will be designated attainment for the revised daily $PM_{2.5}$ standard based on 2006–2008 data.

On February 4, 2009, Kentucky submitted a SIP revision for the purpose of removing Stage II vapor control requirements at Avis Rent-A-Car, and Budget Rent-A-Car facilities at the Cincinnati/Northern Kentucky International Airport. This source-specific revision to the Kentucky SIP is approvable pursuant to Section 110 of the CAA and EPA guidance. The Commonwealth of Kentucky has confirmed that not less than 95 percent of vehicles at Avis Rent-A-Car and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport are equipped with ORVR. Kentucky has adequately demonstrated that ORVR has supplanted Stage II requirements at Avis Rent-A-Car and Budget Rent-A-Car facilities. The proposed rule provides additional information regarding Kentucky's analysis.

III. Final Action

EPA is taking final action to approve the February 4, 2009, SIP revision request from Kentucky for the purpose of removing Stage II vapor control requirements at Avis Rent-A-Car and Budget Rent-A-Car facilities. This source-specific SIP revision is consistent with Section 110 of the CAA.

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

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

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 January 29, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds, Ozone, Sulfur oxides, Nitrogen dioxide.

Dated: November 16, 2009.

J. Scott Jordon,

Acting Regional Administrator, Region 4.

■ 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 S—Kentucky

■ 2. Section 52.920(d), is amended by adding a new entry at the end of the table for ''Source-Specific SIP Revision for Avis Budget Car Rental Group,'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
*	*	*	*	*
Source-Specific SIP Revision for Avis Budget Car Rental Group.	N/A	8/9/07	11/30/09 [Insert citation of publication].	Removal of stage II requirements

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[FR Doc. E9–28421 Filed 11–27–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 440, 447, and 457

[CMS–2232–F3; CMS–2244–F4]

RIN 0938–AP72 and 0938–AP73

Medicaid Program: State Flexibility for Medicaid Benefit Packages and Premiums and Cost Sharing

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule temporarily delays the effective date of the November 25, 2008 final rule entitled, ''Medicaid Program; Premiums and Cost Sharing'' and the December 3, 2008 final rule entitled, ''Medicaid Program; State Flexibility for Medicaid Benefit Packages'' until July 1, 2010.

DATES: *Effective Date:* This action is effective December 31, 2009. The effective date of the rule amending 42 CFR part 440 published in the December 3, 2008 **Federal Register** (73 FR 73694) is delayed until July 1, 2010. The effective date of the rule amending 42 CFR parts 447 and 457 published in the November 25, 2008 **Federal Register** (73 FR 71828) is delayed until July 1, 2010.

FOR FURTHER INFORMATION CONTACT:

Frances Crystal, (410) 786–1195, for State Flexibility for Medicaid Benefit Packages.

Christine Gerhardt, (410) 786–0693, for Premiums and Cost Sharing.

SUPPLEMENTARY INFORMATION:

I. Background

A. State Flexibility for Medicaid Benefit Packages

On December 3, 2008, we published a final rule in the **Federal Register** (73 FR 73694) entitled ''Medicaid Program; State Flexibility for Medicaid Benefit Packages.'' The December 3, 2008 final rule implements provisions of section 6044 of the Deficit Reduction Act (DRA) of 2005, (Pub. L. 109–171), enacted on February 8, 2006, which amends the Social Security Act (the Act) by adding a new section 1937 related to the coverage of medical assistance under approved State plans. Section 1937 provides States increased flexibility under an approved State plan to provide covered medical assistance through enrollment of certain Medicaid recipients in benchmark or benchmark-equivalent benefit packages. The final rule set forth the requirements and limitations for this flexibility, after consideration of public comments on the February 22, 2008 proposed rule.

Subsequent to the publication of the December 3, 2008 final rule, we published an interim final rule with comment period in the **Federal Register** on February 2, 2009 (74 FR 5808) to temporarily delay for 60 days the effective date of the December 3, 2008 final rule entitled, ''Medicaid Program; State Flexibility for Medicaid Benefit Packages.'' The interim final rule also reopened the comment period on the policies set out in the December 3, 2008 final rule. We received 9 public comments in response to the February 2, 2009 interim final rule.

On February 4, 2009, the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Pub. L. 111–3) was enacted. Certain provisions of CHIPRA affect current regulations regarding State Flexibility for Medicaid Benefit Packages, including the December 3, 2008 final rule. Specifically, section 611(a)(1)(C) and section 611(a)(3) of CHIPRA amend section 1937 of the Act, to require that States provide the full range of the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) coverage benefit to children under the age of 21, rather than those under 19 as specified in the DRA of 2005, who are enrolled in benchmark or benchmark-equivalent plans. EPSDT services may be provided through a benchmark or benchmark-equivalent plan or as an additional benefit supplementing coverage under the benchmark or benchmark-equivalent plan. Section 611(a)(1)(A)(i) of CHIPRA amends section 1937 of the Act by changing the language ''Notwithstanding any other provision of this title * * *'' to read ''Notwithstanding section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and any other provision of this title which would be directly contrary to the authority * * *'' One effect of this change is to clarify that the requirement, under 42 CFR 431.53 and section 1902(a)(4) of the Act, to assure transportation for Medicaid beneficiaries in order for them to have access to covered State plan services, is applicable to States electing to provide

Medicaid through benchmark or benchmark-equivalent plans.

On April 3, 2009, we published a second final rule (74 FR 15221) in the **Federal Register** further delaying implementation of the December 3, 2008 rule until December 31, 2009 and reopening the comment period to permit additional comments on the policies set forth in the December 3, 2008 final rule and the statutory changes contained in CHIPRA. This second delay specifically requested comments on the provisions of CHIPRA enacted on February 4, 2009, which corrected language in the DRA as if these amendments were included in the DRA, and amended section 1937 of the Act, ''State Flexibility for Medicaid Benefit Packages.'' We received 7 timely items of correspondence in response to the April 3, 2009 interim final rule.

B. Premiums and Cost Sharing

On November 25, 2008, we published a final rule entitled, ''Medicaid Program; Premiums and Cost Sharing'' in the **Federal Register** (73 FR 71828) to implement and interpret sections 6041, 6042 and 6043 of the DRA, as amended by section 405 of the Tax Relief and Health Care Act of 2006 (TRHCA). These provisions amended the Social Security Act to add section 1916A which provides State Medicaid agencies with increased flexibility to impose premium and cost sharing requirements on certain Medicaid recipients. These DRA provisions specifically addressed cost sharing for non-preferred drugs and non-emergency care furnished in a hospital emergency department. The DRA was amended by TRHCA to limit cost sharing for individuals with family incomes at or below 100 percent of the Federal poverty line. The November 25, 2008 final rule integrated into CMS regulations the statutory flexibility to impose premiums and cost sharing that was added by the DRA. In addition, in the November 25, 2008 final rule, we responded to public comments on the February 22, 2008 proposed rule.

Subsequent to the publication of the November 25, 2008 final rule, we published a final rule in the **Federal Register** on January 27, 2009 (74 FR 4888) that temporarily delayed for 60 days the effective date of the November 25, 2008 final rule. The final rule also reopened the comment period on the policies set out in the November 25, 2008 final rule.

On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (the Recovery Act) was enacted subsequent to the publication of the January 27, 2009 delay of effective date. Certain provisions of the Recovery Act amended the provisions of section 1916A of the Social Security Act that were added by the DRA. As a result, the regulations published on November 25, 2008 were not consistent with statutory authority governing Medicaid and CHIP premiums and cost sharing. Specifically, under the Recovery Act, effective July 1, 2009, Medicaid and CHIP programs are prohibited from imposing premiums or other cost sharing payments on Indians who are provided services or items covered under the Medicaid State plan by Indian Health providers or through referral under contract health services. Similarly, payments to Indian Health providers or to a health care provider through referral under contract health services for Medicaid services or items furnished to Indians cannot be reduced by the amount of any enrollment fee, premium, or cost sharing that otherwise would be due from the Indians.

On March 27, 2009, we published a second final rule in the **Federal Register** (74 FR 13346) that further delayed the effective date of the November 25, 2008 final rule until December 31, 2009. The final rule reopened the comment period to give the public an additional opportunity to submit comments on the policy set forth in the final rule as well as the provisions of the Recovery Act. Comments were specifically solicited on the effect of certain provisions of the Recovery Act related to the exclusion of Indians from payments of premiums and cost sharing.

II. Provisions of the Proposed Rule and Response to Public Comments

On October 30, 2009, we published a proposed rule in the **Federal Register** (73 FR 71828) to solicit public comments on further delaying the effective date of the November 25, 2008 and the December 3, 2008 final rules (collectively, ''the 2008 final rules'') until July 1, 2010. We proposed to further delay the effective date of the 2008 final rules from December 31, 2009 to July 1, 2010 to allow us sufficient time to revise a substantial portion of the final rules based on our review and consideration of the new provision of CHIPRA, the Recovery Act, and the public comments received during the reopened comment periods. To allow time to make these revisions, the Department determined that we need several more months to fully consider the changes needed to the rules. In the proposed rule, we noted that the comments received during the reopened comment periods were complex and presented numerous policy issues, which require extensive consultation, review, and analysis. Additionally, because both CHIPRA and the Recovery Act contain provisions that impact the American Indian and Alaska Native community, we stated that the development of the final rules requires collaboration with other HHS agencies and the Tribal governments.

We believed that this time period would allow us sufficient time to further consider public comments, analyze the impact of the revisions on affected stakeholders, and develop appropriate revisions to the regulations.

We received 1 timely item of correspondence in response to the October 30, 2009 proposed rule. The comment did not directly address our proposal to delay the effective date of the 2008 final rules until July 1, 2010. The comment was limited to the exemption of the benchmark and benchmark-equivalent packages from the assurance of transportation requirements. Because the comment is outside the scope of the proposed rule on the delay of the effective dates of the 2008 final rules, but instead addresses the issue of revisions that are needed to comply with statutory changes, we will address the comment when we issue revisions to the final rule on State flexibility for Medicaid benefit packages. Because this comment highlighted the need for such revisions, we view this comment as indirectly supporting our proposal to delay the effective date of the 2008 final rules in order to issue needed revisions.

III. Provisions of This Final Rule

This rule further delays the effective date of the 2008 final rules until July 1, 2010. The provisions of the November 25, 2008 final rule and the December 3, 2008 final rule, which were to become effective on December 31, 2009, will now become effective July 1, 2010. We note that, although we are finalizing the delay in the effective date of the 2008 final rules jointly because it is more efficient to do so, revisions to the 2008 final rules will be published as two separate revised final rules.

IV. 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.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: November 20, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: November 23, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–28569 Filed 11–27–09; 8:45 am]

BILLING CODE 2244–F4–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 190, 192, 195 and 198

[Docket No. PHMSA–2009–0265; Amdt Nos. 190–15; 192–111; 195–92, 198–5)]

RIN 2137–AE51

Pipeline Safety: Editorial Amendments to the Pipeline Safety Regulations.

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

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor changes in the regulatory text, reflects changes in governing laws, and improves the clarity of certain provisions in the pipeline safety regulations. This rule is intended to enhance the accuracy and reduce misunderstandings of the specified regulations. The amendments contained in this rule are non-substantive changes.

DATES: *Effective date:* The effective date of this final rule is January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Dana Register at (202) 366–4046.

SUPPLEMENTARY INFORMATION:

I. Background

PHMSA regularly reviews the Pipeline Safety Regulations (49 CFR Parts 186–199) to identify typographical errors, outdated contact information, or similar errors. In this final rule, we are correcting typographical errors; incorrect CFR references and citations; and clarifying certain regulatory requirements. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary.

II. Amendments Included in This Final Rule

A. In 49 CFR 190.3, which contains definitions, we are now updating the location of the Eastern Regional Office to reflect a recent location change.

1. In § 190.3, under the definition of ''Regional Director'' we are correcting the Eastern Regional Office location by replacing the location ''Washington, DC'' with ''Trenton, NJ.''

B. On October 17, 2008, PHMSA issued a final rule, under Docket No. PHMSA–2005–23447, that amended the Pipeline Safety Regulations (49 CFR Parts 186–199) to prescribe safety requirements for the operation of certain gas transmission pipelines at pressures based on higher operating stress levels. The rule allowed for an increase of maximum allowable operating pressure (MAOP) over that previously allowed in the regulations for pipelines that could meet certain criteria. On December 1, 2008, PHMSA stayed the effective date of this final rule until December 22, 2008 (73 FR 72737).

We are now correcting several editorial errors that we discovered after this final rule was published. Specifically:

2. In § 192.112, we are correcting paragraph (c)(2)(i) by replacing the phrase ''[the effective date of the final rule]'' with ''December 22, 2008.''

3. In § 192.112, we are correcting paragraph (e)(2) by replacing the phrase ''November 17, 2008'' with ''December 22, 2008.''

4. In § 192.620, we are correcting the following paragraphs:

(a) In paragraph (a)(1)(i), we are replacing the phrase ''November 17, 2008'' with ''December 22, 2008'';

(b) In footnote 1 of paragraph (a)(2)(ii), we are replacing the phrase ''November 17, 2008'' with ''December 22, 2008''

(c) In paragraph (b)(3), we are adding a reference to § 192.620(d)(3) to clarify the intent with respect to remotely operable valves;

(d) In paragraph (b)(7) we are replacing the phrase ''November 17, 2008'' with ''December 22, 2008'';

(e) In paragraph (c)(4)(ii) we are replacing the phrase ''November 17, 2008'' with ''December 22, 2008'';

(f) In paragraph (c)(6), we are clarifying that the construction requirements only apply to construction that occurred after the effective date of this rule, December 22, 2008;

(g) In paragraph (d)(3)(i), we are correcting the reference from ''(d)(1)(i)'' to ''(d)(2)(i)'';

(h) In paragraph (d)(5)(iv), we are clarifying the language to note that sampling of accumulated liquids is required whenever cleaning pigs are used and corrosion inhibitors are required if corrosive gas or liquids are present;

(i) In paragraph (d)(7)(iii), we are correcting the reference to ''paragraph (8)'' to ''(d)(9)'' and the reference from ''(6)(i)'' to ''(d)(7)(i)'';

(j) In paragraph (d)(7)(iv)(C), we are correcting the reference from ''(d)(8)'' and ''(d)(9)'' to ''(d)(9)'' and ''(d)(10)'';

(k) In paragraph (d)(8)(ii), we are clarifying that a close interval survey must be used to confirm restoration of cathodic protection unless the problem is a rectifier connection or power input remediation that can be verified by other means.

(l) In the introductory text of (d)(9)(i), we are correcting the reference from ''(d)(8)(iii)'' to ''(d)(9)(iii)'';

(m) In paragraph (d)(9)(ii), we are correcting the reference from ''(d)(8)(iii)'' to ''(d)(9)(iii)'';

(n) In paragraph (d)(10)(ii), we are correcting the reference from ''(d)(9)(i)'' to ''(d)(10)(i)'';

(o) In paragraph (d)(10)(iii), we are correcting the reference from ''(d)(8)(iii)'' to ''(d)(9)(iii)'';

(p) In paragraph (d)(11)(ii)(A), we are correcting the reference from ''(d)(8)'' to ''(d)(9)'';

(q) In the introductory text of (d)(11)(iii), we are correcting the reference from ''(d)(10)(ii)'' to ''(d)(11)(ii)''; and

(r) In paragraph (d)(11)(iv), we are correcting the reference from ''(d)(10)(ii) or (iii)'' to ''(d)(11)(ii) or (iii).''

C. On December 24, 2008, PHMSA issued a final rule under Docket No. PHMSA–2005–21305, that amended the pipeline safety regulations to allow operators to design pipelines made from new Polyamide-11 (PA–11) thermoplastic pipe using a higher design factor and to raise the design pressure limit for such pipelines. PHMSA believes that the current wording in 49 CFR 192.121 could be incorrectly interpreted to mean that the 0.40 design factor is not limited only to PA–11 pipe. Therefore, PHMSA has concluded that the formula should be clarified so that the 0.40 design factor only applies to PA–11. Therefore, we are making the following clarification:

''= 0.40 for PA–11 pipe produced after January 23, 2009 with a nominal pipe size (IPS or CTS) 4-inch or less, SDR–11 or greater (i.e. thicker pipe wall).''

D. In section 195.12, we are redesignating paragraph (d), entitled Record Retention, as paragraph (e).

E. The laws governing pipeline safety regulation provide the authority for PHMSA to issue grants to states to carry out pipeline safety programs under certification or agreement. The Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (Pub. L. 109–468) modified 49 U.S.C. 60107 to increase the maximum allowed amount

for such grants from 50 percent to 80 percent of the costs incurred by states for their safety programs. Accordingly, PHMSA is modifying 49 CFR 198.11, which implements this statutory mandate, to reflect the increase in the allowed maximum amount for grants.

III. Regulatory Analyses and Notices

A. Statutory Authority for Rulemaking

This final rule is published under the authority of 49 U.S.C. 60101 *et seq.* Specifically, 49 U.S.C. 60102(a) authorizes the Secretary of Transportation to prescribe regulations related to pipeline safety.

B. Executive Order 12866 (Amended by E.O. 13258 and E.O. 13422) and DOT Regulatory Policies and Procedures

This final rule is not a significant action under section 3(f) of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget. This final rule is also not a significant action under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

C. Executive Order 13132, Federalism (64 FR 43255, Aug. 10, 1999)

PHMSA has analyzed the rulemaking according to the principles and criteria of Executive Order 13132. The final rule makes editorial corrections and therefore will not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule does not impose substantial direct compliance costs on State or local governments and therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

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 will not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply. A tribal summary impact statement is not required.

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

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule will not impose increased compliance costs on the regulated industry. The revisions and corrections we are making to the October 17, 2008, and December 24, 2008, final rules (Docket Nos. PHMSA–2005–23447 and PHMSA–2005–21305) are clerical and do not impose an additional impact on any small business. The changes we are making to Part 198 affect grant amounts awarded to states. Thus, DOT has determined that this final rule will not have a significant impact on a substantial number of small entities. Therefore, I certify under section 605 of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to ensure that the potential impacts of rulemakings on small entities are properly considered.

F. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. Ch. 25). It does not result in costs of $132 million or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rulemaking.

G. Paperwork Reduction Act

This final rule imposes no new information collection and recordkeeping requirements and therefore the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply.

H. Executive Order 13211

This rulemaking is not a ''significant energy action'' under Executive Order 13211 since it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. 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 April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

J. 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.*

K. The National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. Ch. 55) requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. PHMSA has analyzed the effects of this final rule. Since this rule makes editorial corrections and does not impose substantive changes, PHMSA has determined that there are no environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 190

Administrative practices and procedures, Definitions, Penalties.

49 CFR Part 192

Design pressure, Incorporation by reference, Maximum allowable operating pressure, and Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 198

Grant programs, Formula, Pipeline safety.

■ In consideration of the foregoing, PHMSA amends 49 CFR parts 190, 192, 195 and 198 as follows:

PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

■ 1. The authority citation for part 190 continues to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 60101 *et seq.*; 49 CFR 1.53.

■ 2. In § 190.3, the definition of ''Regional Director'' is revised to read as follows:

§ 190.3 Definitions.

* * * * *

Regional Director means the head of any one of the Regional Offices of the Office of Pipeline Safety, or a designee appointed by the Regional Director. Regional Offices are located in Trenton, NJ (Eastern Region); Atlanta, Georgia (Southern Region); Kansas City, Missouri (Central Region); Houston, Texas (Southwest Region); and Lakewood, Colorado (Western Region).

* * * * *

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 3. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118; and 60137; and 49 CFR 1.53.

■ 4. In § 192.112, paragraphs (c)(2)(i) and (e)(2) are revised to read as follows:

§ 192.112 Additional design requirements for steel pipe using alternative maximum allowable operating pressure.

(c) * * *

(2) * * *

(i) An ultrasonic test of the ends and at least 35 percent of the surface of the plate/coil or pipe to identify imperfections that impair serviceability such as laminations, cracks, and inclusions. At least 95 percent of the lengths of pipe manufactured must be tested. For all pipelines designed after December 22, 2008, the test must be done in accordance with ASTM A578/A578M Level B, or API 5L Paragraph 7.8.10 (incorporated by reference, see § 192.7) or equivalent method, and either

* * * * *

(e) * * *

(2) Pipe in operation prior to December 22, 2008, must have been hydrostatically tested at the mill at a test pressure corresponding to a hoop stress of 90 percent SMYS for 10 seconds.

* * * * *

■ 5. Section 192.121 is revised to read as follows:

§ 192.121 Design of plastic pipe.

Subject to the limitations of § 192.123, the design pressure for plastic pipe is determined by either of the following formulas:

$$P = 2S\frac{t}{(D-t)}(DF)$$

$$P = \frac{2S}{(SDR-1)}(DF)$$

Where:

P = Design pressure, gauge, psig (kPa).

S = For thermoplastic pipe, the HDB is determined in accordance with the listed specification at a temperature equal to 73° F (23° C), 100° F (38° C), 120° F (49° C), or 140° F (60° C). In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2 of PPI TR–3/2004, *HDB/PDB/SDB/MRS Policies* (incorporated by reference, *see* § 192.7). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa). [Note: Arithmetic interpolation is not allowed for PA–11 pipe.]

t = Specified wall thickness, inches (mm).

D = Specified outside diameter, inches (mm).

SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10.

F = 0.32 or

= 0.40 for PA–11 pipe produced after January 23, 2009 with a nominal pipe size (IPS or CTS) 4-inch or less, and a SDR of 11 or greater (i.e. thicker pipe wall).

■ 6. In § 192.620, paragraphs (a)(1)(i), (a)(2)(ii), (b)(3), (b)(7), (c)(4)(ii), (c)(6), (d)(3)(i), (d)(5)(iv), (d)(7)(iii), (d)(7)(iv)(C), (d)(8)(ii), the introductory text of (d)(9)(i), (d)(9)(ii), (d)(10)(ii), (d)(10)(iii), (d)(11)(ii)(A), the introductory text of (d)(11)(iii), and (d)(11)(iv), are revised to read as follows:

§ 192.620 Alternative maximum allowable operating pressure for certain steel pipelines.

(a) * * *

(1) * * *

(i) For facilities installed prior to December 22, 2008, for which § 192.111(b), (c), or (d) applies, use the following design factors as alternatives for the factors specified in those paragraphs: § 192.111(b) – 0.67 or less; 192.111(c) and (d) – 0.56 or less.

* * * * *

(2) * * *

(ii) The pressure obtained by dividing the pressure to which the pipeline segment was tested after construction by a factor determined in the following table:

Class location	Alternative test factor
1	1.25
2	[1] 1.50
3	1.50

[1] For Class 2 alternative maximum allowable operating pressure segments installed prior to December 22, 2008 the alternative test factor is 1.25.

(b) * * *

(3) A supervisory control and data acquisition system provides remote monitoring and control of the pipeline segment. The control provided must include monitoring of pressures and flows, monitoring compressor start-ups and shut-downs, and remote closure of valves per paragraph (d)(3) of this section;

* * * * *

(7) At least 95 percent of girth welds on a segment that was constructed prior to December 22, 2008, must have been non-destructively examined in accordance with § 192.243(b) and (c).

* * * * *

(c) * * *

(4) * * *

(ii) For a pipeline segment in existence prior to December 22, 2008, certify, under paragraph (c)(2) of this section, that the strength test performed under § 192.505 was conducted at test pressure calculated under paragraph (a) of this section, or conduct a new strength test in accordance with paragraph (c)(4)(i) of this section.

* * * * *

(6) If the performance of a construction task associated with implementing alternative MAOP that occurs after December 22, 2008, can affect the integrity of the pipeline segment, treat that task as a ''covered task'', notwithstanding the definition in § 192.801(b) and implement the requirements of subpart N as appropriate.

* * * * *

(d) * * *

(3) * * *

(i) Ensure that the identification of high consequence areas reflects the larger potential impact circle recalculated under paragraph (d)(2)(i) of this section.

* * * * *

(5) * * *

* * * * *

(iv) Use cleaning pigs and sample accumulated liquids. Use inhibitors

when corrosive gas or liquids are present.

* * * * *

(7)

(iii) Within six months after completing the baseline internal inspection required under paragraph (d)(9) of this section, integrate the results of the indirect assessment required under paragraph (d)(7)(i) of this section with the results of the baseline internal inspection and take any needed remedial actions.

(iv) * * *

* * * * *

(C) Integrate the results with those of the baseline and periodic assessments for integrity done under paragraphs (d)(9) and (d)(10) of this section.

(8) * * *

* * * * *

(ii) After remedial action to address a failed reading, confirm restoration of adequate corrosion control by a close interval survey on either side of the affected test station to the next test station unless the reason for the failed reading is determined to be a rectifier connection or power input problem that can be remediated and otherwise verified.

* * * * *

(9) * * *

(i) Except as provided in paragraph (d)(9)(iii) of this section, for a new pipeline segment operating at the new alternative maximum allowable operating pressure, perform a baseline internal inspection of the entire pipeline segment as follows:

* * * * *

(ii) Except as provided in paragraph (d)(9)(iii) of this section, for an existing pipeline segment, perform a baseline internal assessment using a geometry tool and a high resolution magnetic flux tool before, but within two years prior to, raising pressure to the alternative maximum allowable operating pressure as allowed under this section.

* * * * *

(10) * * *

* * * * *

(ii) Conduct periodic internal inspections using a high resolution magnetic flux tool on the frequency determined under paragraph (d)(10)(i) of this section, or

(iii) Use direct assessment (per § 192.925, § 192.927 and/or § 192.929) or pressure testing (per subpart J of this part) for periodic assessment of a portion of a segment to the extent permitted for a baseline assessment under paragraph (d)(9)(iii) of this section.

(11) * * *

* * * * *

(ii) * * *

(A) The defect is a dent discovered during the baseline assessment for integrity under paragraph (d)(9) of this section and the defect meets the criteria for immediate repair in § 192.309(b).

* * * * *

(iii) If paragraph (d)(11)(ii) of this section does not require immediate repair, repair a defect within one year if any of the following apply:

* * * * *

(iv) Evaluate any defect not required to be repaired under paragraph (d)(11)(ii) or (iii) of this section to determine its growth rate, set the maximum interval for repair or re-inspection, and repair or re-inspect within that interval.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 7. The authority citation for part 195 is amended to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118, and 60137; and 49 CFR 1.53.

§ 195.12 [Amended]

■ 8. In section 195.12, the second paragraph designated as paragraph (d), ''Record Retention'' is redesignated as paragraph (e).

PART 198—REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS

■ 9. The authority citation for Part 198 continues to read as follows:

Authority: 49 U.S.C. 60105, 60106, 60107, 60114, and 49 CFR 1.53.

■ 10. Section 198.11 is revised to read as follows:

§ 198.11 Grant Authority.

The pipeline safety laws (49 U.S.C. 60101 *et seq.*) authorize the Administrator to pay out funds appropriated or otherwise make available up to 80 percent of the cost of the personnel, equipment, and activities reasonably required for each state agency to carry out a safety program for intrastate pipeline facilities under a certification or agreement with the Administrator or to act as an agent of the Administrator with respect to interstate pipeline facilities.

Issued in Washington, DC on November 20, 2009 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. E9–28477 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0911161406–91407–01]

RIN 0648–AY37

Groundfish Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Western Alaska Community Development Quota Program; Recordkeeping and Reporting; Correction

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

ACTION: Final rule, correction.

SUMMARY: This action corrects column headings of a regulatory table; provides replacements for outdated text; reinstates a paragraph which describes the Chiniak Gully Research Area; corrects footnotes and other errors in two tables; and corrects two maps. These errors should be corrected immediately to eliminate potential confusion by the regulated public. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

DATES: Effective November 30, 2009.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. With Federal oversight, the State of Alaska (State) manages the commercial king crab and Tanner crab fisheries under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (collectively, FMPs). The FMPs were prepared by the North Pacific Fishery Management Council and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* The FMPs are implemented by regulations at 50 CFR parts 679 and 680. General provisions governing fishing by U.S. vessels in accordance with the FMPs appear at subpart H of 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the ''Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea,'' which was signed at Ottawa, Canada, on March 2, 1953, and was amended by the ''Protocol Amending the Convention,'' signed at Washington, DC, March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). General provisions governing fishing by U.S. vessels in accordance with the FMPs appear at subpart H of 50 CFR part 600.

Need for Corrections

This action corrects regulations recently promulgated in two final rules: a rule published on May 19, 2008 (73 FR 28733) and a rule published on December 15, 2008 (73 FR 76136). The revisions are needed to correct inadvertent errors.

Table 13 to part 679 summarizes the use of forms for shipping, transporting, or transferring fish or fish product. In the final rule published in the **Federal Register** on May 19, 2008 (73 FR 28733), the outdated term ''IFQ card'' was replaced with ''IFQ hired master permit,'' because the IFQ card no longer exists. NMFS intended to change every occurrence of this phrase but missed the occurrence in Table 13 to part 679; this rule makes this correction. NMFS makes four additional revisions to Table 13. First, the cross-references to sections within the 679 regulations are moved from the column headings, indicated with a footnote number, and listed at the bottom of the table to make the table easier to read. Second, some of the cross-references are corrected as follows: the cross-reference in the Dockside Sales Receipt column heading of Table 13 is corrected to read ''§ 679.5(g)(2)(iv)'', as the paragraph cited no longer exists. The cross-reference in the Landing Receipt column heading is corrected to read ''§ 679.5(e)(8)(vii)'' because the December 15, 2008, final rule (73 FR 76136) reorganized the paragraphs describing retention of landing receipts. Third, a column is added to list the buying station report, which is a form used by a buying station or tender vessel and described at § 679.5(d). The addition of this form completes the list of the different types of product transfer forms in the part 679 regulations. Finally, Table 13 is not cross-referenced in § 679.5. Accordingly, to establish references to Table 13, this rule adds introductory paragraph (d); a sentence to the end of introductory paragraph (g)(1); introductory paragraph (k); introductory paragraph (l)(3); and introductory paragraph (l)(4). None of the revisions to Table 13 and associated regulatory text add new requirements or change existing requirements.

Section 679.5(c)(1)(vi)(B) is a regulatory table that describes the distribution of logsheets from groundfish logbooks. This rule revises column headings describing logbooks used by catcher vessels and catcher/processors that use longline or pot gear. Operators of catcher vessels and catcher/processors using longline gear use the same logbook as operators of catcher vessels and catcher/processors using pot gear. The column headings incorrectly do not include ''pot gear;'' this rule will replace ''CV lgl'' and ''CP lgl'' with ''CV lgl/pot'' and ''CP lgl/pot,'' respectively.

The December 15, 2008, final rule added a definition for ''non-individual entity'' to standardize the terms used to describe an entity other than an individual. NMFS's intention was to replace the term ''other entity'' with the new term ''other non-individual entity'' in all places in part 679 where the term ''other entity'' does not refer to an individual. Further, the intention was to add ''other non-individual entity'' in paragraphs that referred to entities of a similar nature, e.g., corporations, associations, and partnerships. Section 679.42(j)(7) is corrected by revising the one remaining reference to ''corporation or a partnership'' to read ''corporation, partnership, association, or other non-individual entity.'' This correction makes consistent use of the term ''non-individual entity'' throughout the regulatory text.

The final rule also removed and reserved § 679.22(b)(6), which describes the Chiniak Gully Research Area; an area periodically closed to fishing. NMFS believed the closure had expired and so removed the paragraph. However, NMFS overlooked that it had published a June 1, 2006 (71 FR 31105) final rule that revised the same paragraph and instituted another closure effective through 2010. This final rule re-establishes this paragraph and the effective period of the closure through December 31, 2010.

The December 15, 2008, final rule removed the term, ''weekly production report'' or ''WPR'' from 50 CFR part 679 and replaced it with the term ''production report'' in eLandings. It was NMFS's intention to replace all references to the WPR in the final rule; however, some references were missed and not replaced. This final rule corrects the omissions.

Table 10 to part 679 lists percentages used for calculating maximum retainable amounts of species closed to directed fishing relative to basis species in the Gulf of Alaska. A spelling error is corrected in footnote 4 of Table 10 by removing *S. polyspinous* and replacing it with *S. polyspinis.*

The Nearshore Bristol Bay Trawl Closure Area shown in Figure 12 to part 679 has coordinates that actually occur on land; the Legend provides the correct coordinates. The closure area is redrawn to correct the previous map which showed the closure area parallel to the coastline. The closure area is redrawn to exclude Alaska State territorial waters and waters of the protection zone around Round Island. An additional note is added to the Legend to explain these exclusions.

The map in Figure 19 to part 679 is corrected to match the base map of the Gulf of Alaska reporting areas in Figure 3, which was revised in the December 15, 2008, final rule. The map is redrawn to correct the graphic western boundary of reporting area 610 which ends at 170 degrees, not 171 degrees as shown on the illustration. Figure 19 has this same base map, but was not changed in the final rule. This final rule corrects the boundary in Figure 19.

This rule also corrects other cross-reference errors as indicated in the Locate and Remove table.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. The corrections made by this rule do not make any substantive changes in the rights or obligations of fishermen managed under the groundfish regulations implemented in the May 10, 2008, final rule and the December 15, 2008, final rule.

No aspect of this action is controversial, and no change in operating practices in the fishery is required. It was not NMFS's intent to impose incorrect regulations or to remove regulations that should have been retained. These errors should be corrected immediately to eliminate potential confusion by the regulated public. If left unrevised, these measures create ambiguous guidance, thus are likely to mislead fisheries participants and may weaken regulatory enforcement efforts.

For the same reasons, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Because prior notice and opportunity for public comment are not required for

this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply.

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

Corrections

Accordingly, the final rule published on December 15, 2008, at 73 FR 76136, and effective January 14, 2009; and the final rule published May 19, 2008, at 73 FR 28733 and effective June 18, 2008, are corrected as follows:

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 23, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 679 is corrected by making the following correcting amendments:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1540(f); 1801 *et seq.;* 1851 note; 3631 *et seq.*

■ 2. In § 679.5,

■ a. Revise the table heading in paragraph (c)(1)(vi)(B);

■ b. Add introductory paragraph (d); a sentence to the end of introductory paragraph (g)(1); introductory paragraph (k); introductory paragraph (l)(3); and introductory paragraph (l)(4). The revisions and additions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(1) * * *

(vi) * * *

(B) * * *

LOGSHEET DISTRIBUTION AND SUBMITTAL

If logsheet color is . . .	Logsheets found in these logbooks					Submit to . . .	Time limit
	CV lgl/pot	CV trw	CP lgl/pot	CP trw	MS		
*	*	*	*	*	*	*	*

* * * * *

(d) *Buying station report (BSR).* For a comparison of forms used for shipping, transporting, or transferring fish or fish product, see Table 13 to this part.

* * * * *

(g) * * *

(1) * * * For a comparison of forms used for shipping, transporting, or transferring fish or fish product, see Table 13 to this part.

* * * * *

(k) *U.S. Vessel activity report (VAR).* For a comparison of forms used for shipping, transporting, or transferring fish or fish product, *see* Table 13 to this part.

* * * * *

(l) * * *

(3) *Transshipment authorization.* For a comparison of forms used for shipping, transporting, or transferring fish or fish product, *see* Table 13 to this part.

* * * * *

(4) *IFQ Departure report.* For a comparison of forms used for shipping, transporting, or transferring fish or fish product, *see* Table 13 to this part.

* * * * *

■ 3. In § 679.22, add paragraph (b)(6) to read as follows:

§ 679.22 Closures.

* * * * *

(b) * * *

(6) *Chiniak Gully Research Area (Applicable through December 31, 2010)*—(i) *Description of Chiniak Gully Research Area.* The Chiniak Gully Research Area, as shown in Figure 22 to this part, is defined as the waters bounded by straight lines connecting the coordinates in the order listed:

57°48.60 N lat., 152°22.20 W long.;
57°48.60 N lat., 151°51.00 W long.;
57°13.20 N lat., 150°38.40 W long.;
56°58.80 N lat., 151°16.20 W long.;
57°37.20 N lat., 152°09.60 W long.;

and hence counterclockwise along the shoreline of Kodiak Island to 57°48.60 N lat., 152°22.20 W long.

(ii) *Closure.* (A) No vessel named on a Federal fisheries permit issued pursuant to§ 679.4(b) shall deploy trawl gear for purposes of either fishing, or of testing gear under § 679.24(d)(2), within the Chiniak Gully Research Area at any time from August 1 through September 20.

(B) If the Regional Administrator makes a determination that the relevant research activities have been completed for a particular year or will not be conducted that year, the Regional Administrator shall publish notification in the **Federal Register** rescinding the Chiniak Gully Research Area trawl closure, described in paragraph (b)(6)(i) of this section, for that year.

* * * * *

§§ 679.5, 679.20, 679.27, 679.30, and 679.42 [Amended]

■ 4. At each of the locations shown in the Location column, remove the phrase indicated in the ''Remove'' column and replace it with the phrase indicated in the ''Add'' column for the number of times indicated in the ''Frequency'' column.

Location	Remove	Add	Frequency
§ 679.5(h)(2)(ii)(C)	paragraph (h)(2)(i)	paragraph (h)(2)(ii)	1
§ 679.5(s)(4) heading	Weekly production report (WPR)	Production report	1
§ 679.5(s)(4)	WPR	production report	1
§ 679.5(s)(4)	paragraph (i)	paragraph (e)(10)	1
§ 679.20(g)(2)(iii)	products in the DCPL required under § 679.5(a)(7)(v)(C).	products in eLandings required under § 679.5(e)(9)(i)(D) and § 679.5(e)(10)(iii)(H) (see also Table 1c to this part).	1

Location	Remove	Add	Frequency
§ 679.27(j)(3)	weekly production report	production report	1
§ 679.27(j)(3)	§ 679.5(i)	§ 679.5(e)	1
§ 679.27(j)(5)(ii)	§ 679.5(a)(7)(iv)(C)	§ 679.5	1
§ 679.27(j)(5)(iii)	§ 679.28(d)(7)(ii)	§ 679.28(d)(7)(i)	1
§ 679.27(j)(6)	679.5(a)(7)(iv)(C) and paragraph (j)(5)	§ 679.5	1
§ 679.30(e)(1)	§ 679.5(n)(3)	§ 679.5(n)(1)	1
§ 679.42(j)(7)	corporation or a partnership	corporation, partnership, association, or other non-individual entity.	1

■ 5. Figure 12 to part 679 is revised to read as follows:

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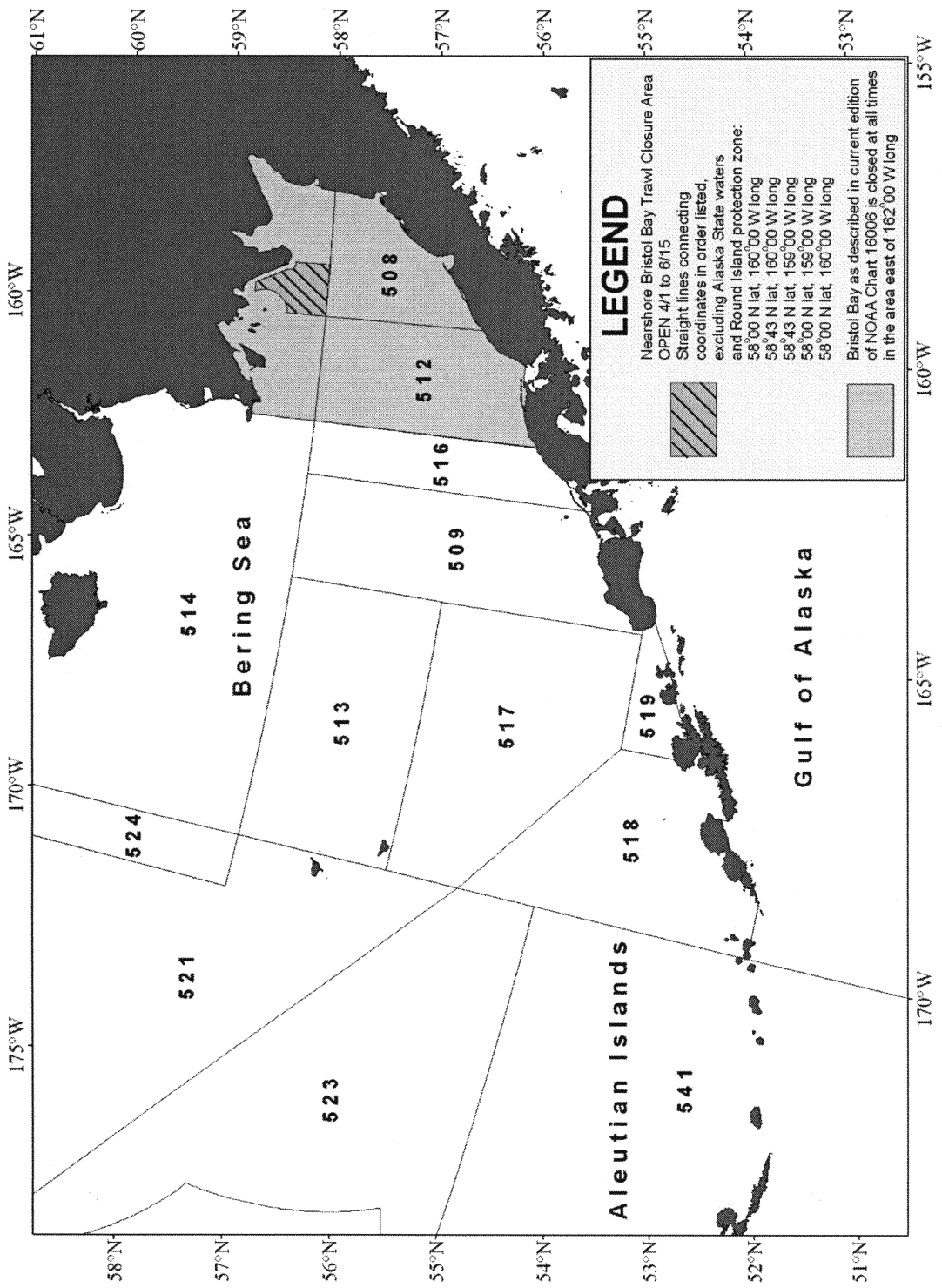

Figure 12 to Part 679 - Bristol Bay Trawl Closure Area (see 679.22(a)(9))

■ 6. Figure 19 to part 679 is revised to read as follows:

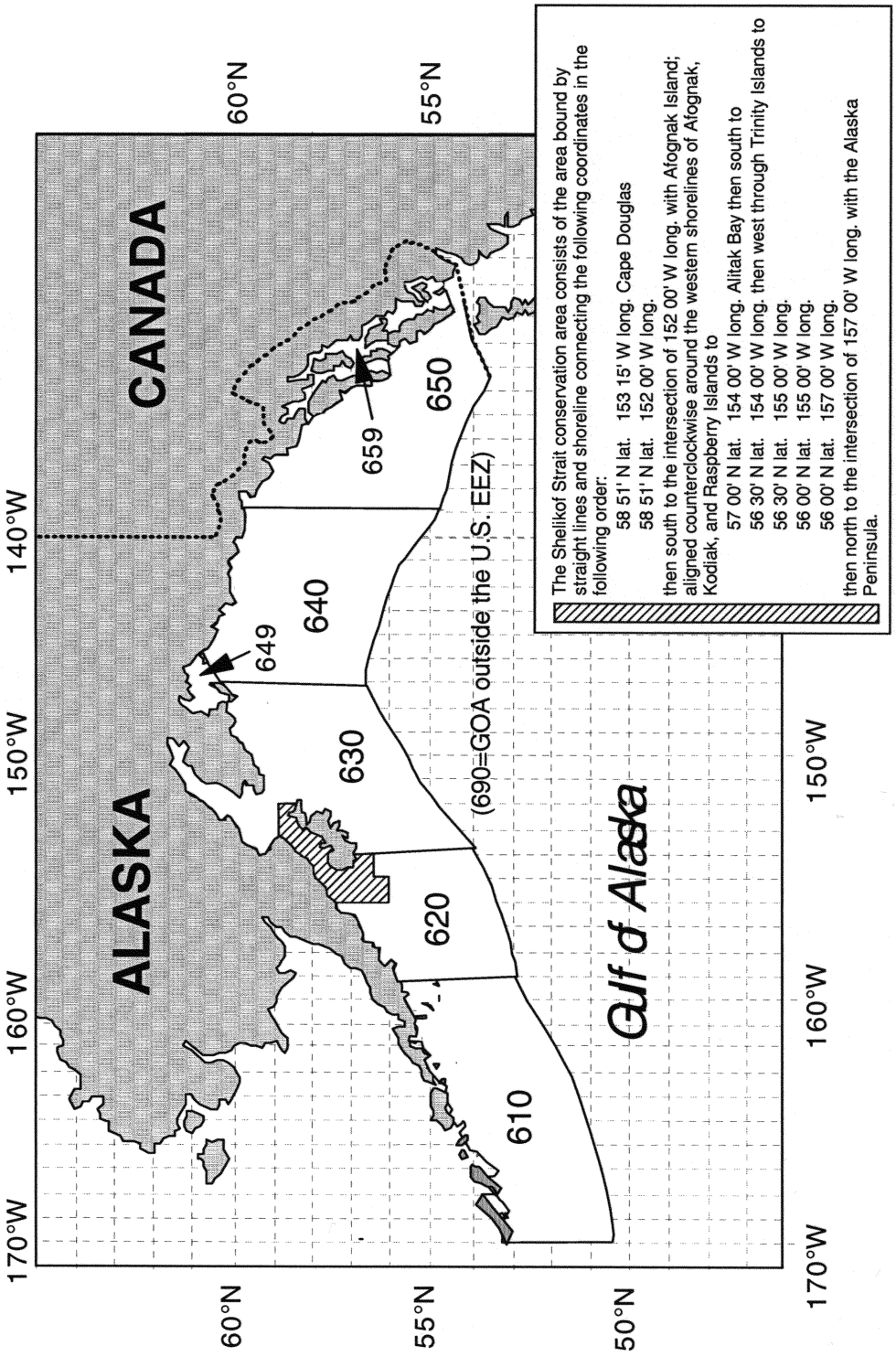

Figure 19 to Part 679. Shelikof Strait Conservation Area

■ 7. Table 10 to part 679 is revised to read as follows:

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j)[6])													
Code	Species	Pollock	Pacific cod	DW flat	Rex sole	Flathead sole	SW Flat	Arrowtooth	Sablefish	Aggregated rockfish[8]	SR/RE ERA	DSR SEO (C/Ps only)	Atka mackerel	Aggregated forage fish[10]	Skates[11]	Other species[7]
110	Pacific cod	20	na[9]	20	20	20	20	35	1	5	[1]	10	20	2	20	20
121	Arrowtooth	5	5	20	20	20	20	na	1	5	0	0	20	2	20	20
122	Flathead sole	20	20	20	20	na	20	35	7	15	7	1	20	2	20	20
125	Rex sole	20	20	20	na	20	20	35	7	15	7	1	20	2	20	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
152/ 151	Shortraker/ rougheye [1]	20	20	20	20	20	20	35	7	15	na	1	20	2	20	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	[1]	10	na	2	20	20
270	Pollock	na	20	20	20	20	20	35	1	5	[1]	10	20	2	20	20
710	Sablefish	20	20	20	20	20	20	35	na	15	7	1	20	2	20	20
Flatfish, deep-water[2]		20	20	na	20	20	20	35	7	15	7	1	20	2	20	20
Flatfish, shallow-water[3]		20	20	20	20	20	na	35	1	5	[1]	10	20	2	20	20
Rockfish, other [4]		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, pelagic [5]		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, DSR-SEO [6]		20	20	20	20	20	20	35	7	15	7	na	20	2	20	20
Skates[11]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	na	20
Other species [7]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	20	na
Aggregated amount of non-groundfish species[12]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	20	20

Notes to Table 10 to Part 679					
1	Shortraker/rougheye rockfish				
		SR/RE	Shortraker rockfish (152)		
			Rougheye rockfish (151)		
		SR/RE ERA	Shortraker/rougheye rockfish in the Eastern Regulatory Area (ERA).		
	Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish				
2	Deep-water flatfish	Dover sole, Greenland turbot, and deep-sea sole			
3	Shallow-water flatfish	Flatfish not including deep-water flatfish, flathead sole, rex sole, or arrowtooth flounder			
4	Other rockfish	Western Regulatory Area	means slope rockfish and demersal shelf rockfish		
		Central Regulatory Area			
		West Yakutat District			
		Southeast Outside District	means slope rockfish		
		Slope rockfish			
		S. aurora (aurora)	*S. variegates* (harlequin)	*S. brevispinis* (silvergrey)	
		S. melanostomus (blackgill)	*S. wilsoni* (pygmy)	*S. diploproa* (splitnose)	
		S. paucispinis (bocaccio)	*S. babcocki* (redbanded)	*S. saxicola* (stripetail)	
		S. goodei (chilipepper)	*S. proriger* (redstripe)	*S. miniatus* (vermilion)	
		S. crameri (darkblotch)	*S. zacentrus* (sharpchin)	*S. reedi* (yellowmouth)	
		S. elongatus (greenstriped)	*S. jordani* (shortbelly)		
		In the Eastern GOA only, Slope rockfish also includes *S. polyspinis*. (northern)			
5	Pelagic shelf rockfish	*S. variabilis* (dusky)	*S. entomelas* (widow)	*S. flavidus* (yellowtail)	
6	Demersal shelf rockfish (DSR)	*S. pinniger* (canary)	*S. maliger* (quillback)	*S. ruberrimus* (yelloweye)	
		S. nebulosus (china)	*S. helvomaculatus* (rosethorn)		
		S. caurinus (copper)	*S. nigrocinctus* (tiger)		
		DSR-SEO = Demersal shelf rockfish in the Southeast Outside District (SEO) The operator of a catcher vessel that is required to have a Federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO. Limits on sale and requirements for disposal of DSR are set out at § 679.20 (j).			
7	Other species	Sculpins	octopus	sharks	Squid
8	Aggregated rockfish	Means rockfish as defined at § 679.2 except in:			
		Southeast Outside District (SEO)	where DSR is a separate category for those species marked with a numerical percentage		
		Eastern Regulatory Area	where SR/RE is a separate category for those species marked with a numerical percentage		

Notes to Table 10 to Part 679			
9	N/A	not applicable	
10	Aggregated forage fish (all species of the following taxa)		
		Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
		Capelin smelt (family *Osmeridae*)	516
		Deep-sea smelts (family *Bathylagidae*)	773
		Eulachon smelt (family *Osmeridae*)	511
		Gunnels (family *Pholidae*)	207
		Krill (order *Euphausiacea*)	800
		Lanternfishes (family *Myctophidae*)	772
		Pacific herring (family *Clupeidae*)	235
		Pacific Sand fish (family *Trichodontidae*)	206
		Pacific Sand lance (family *Ammodytidae*)	774
		Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family *Stichaeidae*)	208
		Surf smelt (family *Osmeridae*)	515
11	Skates Species and Groups		
		Big Skates	702
		Longnose Skates	701
		Other Skates	700
12	Aggregated non-groundfish	All legally retained species of fish and shellfish, including IFQ halibut, that are not listed as FMP groundfish in Tables 2a and 2c to this part.	

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■ 8. Table 13 to part 679 is revised to read as follows:

TABLE 13 TO PART 67—TRANSFER FORM SUMMARY

If participant type is * * *	And has * * * Fish product onboard	And is involved in this activity	VAR [1]	PTR [2]	Trans-ship [3]	Departure report [4]	Dockside sales receipt [5]	Landing receipt [6]	BSR [7]
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Only non-IFQ groundfish.	Vessel leaving or entering Alaska.	X	.....	.....	.....	.....	.....	.....
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Only IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Vessel leaving Alaska.	.....	.....	.....	X	.....	.....	.....
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Combination of IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab and non-IFQ groundfish.	Vessel leaving Alaska.	X	.....	.....	X	.....	.....	.....
Mothership, catcher/processor, shoreside processor, or SFP.	Non-IFQ groundfish	Shipment of groundfish product.	.....	X	.....	.....	.....	.....	.....
Mothership, catcher/processor, shoreside processor, or SFP.	Donated PSC	Shipment of donated PSC.	.....	X	.....	.....	.....	.....	.....
Buying station or tender vessel.	Groundfish	Receive or deliver groundfish in association with a shoreside processor, SFP, or mothership.	.....	.....	.....	.....	.....	.....	X
Registered Buyer	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer of product ..	.....	X	.....	.....	.....	.....	.....
A person holding a valid IFQ permit, IFQ hired master permit, or Registered Buyer permit.	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer of product ..	.....	.....	.....	.....	XXX	.....	.....
Registered Buyer	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer from landing site to Registered Buyer's processing facility.	.....	.....	.....	.....	.....	XX	.....
Vessel operator	Processed IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Transshipment between vessels.	.....	.....	XXXX	.....	.....	.....	.....
Registered Crab Receiver.	CR crab	Transfer of product ..	.....	X	.....	.....	.....	.....	.....
Registered Crab Receiver.	CR crab	Transfer from landing site to RCR's processing facility.	.....	.....	.....	.....	.....	XX	.....

[1] A vessel activity report (VAR) is described at § 679.5(k).
[2] A product transfer report (PTR) is described at § 679.5(g).
[3] An IFQ transshipment authorization is described at § 679.5(l)(3).
[4] An IFQ departure report is described at § 679.5(l)(4).
[5] An IFQ dockside sales receipt is described at § 679.5(g)(2)(iv).
[6] A landing receipt is described at § 679.5(e)(8)(vii).
[7] A buying station report (BSR) is described at § 679.5(d).
X indicates under what circumstances each report is submitted.
XX indicates that the document must accompany the transfer of IFQ species from landing site to processor.
XXX indicates receipt must be issued to each receiver in a dockside sale.
XXXX indicates authorization must be obtained 24 hours in advance.

[FR Doc. E9–28545 Filed 11–27–09; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 74, No. 228
Monday, November 30, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1116; Directorate Identifier 2009–CE–061–AD]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (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: Cracks have been detected on the upper flange (cap) of several ''0'' pressure bulkheads on the production line; none of the cracks had spread across the thickness of material. Investigation revealed that all ''0'' pressure bulkheads installed on aircraft from MSN 1106 up to 1189 could have the same cracks.

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 January 14, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090.

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–2009–1116; Directorate Identifier 2009–CE–061–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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2009–0211, dated October 6, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks have been detected on the upper flange (cap) of several ''0'' pressure bulkheads on the production line; none of the cracks had spread across the thickness of material.
>
> Investigation revealed that all ''0'' pressure bulkheads installed on aircraft from MSN 1106 up to 1189 could have the same cracks.
>
> Although calculations confirm the low stress level in that area, a reinforcement of the ''0'' pressure bulkhead is suggested to avoid crack growth and the eventual failure of the bulkhead.
>
> For the reasons stated above, this new Airworthiness Directive (AD) mandates a non-destructive inspection and a reinforcement—by installation of doublers—of the ''0'' pressure bulkhead. This AD also includes a reporting requirement of the inspection results.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

PIAGGIO AERO INDUSTRIES S.p.A. has issued Service Bulletin (Mandatory) N.: SB–80–0267Rev.0, dated May 19, 2009; and Service Bulletin (Mandatory) N.: SB–80–0267Rev.1, dated June 16, 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 the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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

We estimate that this proposed AD will affect 63 products of U.S. registry. We also estimate that it would take about 120 work-hours per product to comply with the basic requirements of this proposed AD. The design approval holder is providing warranty credit for parts and up to 120 work-hours of labor.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $0.

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:

PIAGGIO AERO INDUSTRIES S.p.A.: Docket No. FAA–2009–1116; Directorate Identifier 2009–CE–061–AD.

Comments Due Date

(a) We must receive comments by January 14, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PIAGGIO P–180 airplanes, manufacturer's serial numbers 1106 through 1189, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Cracks have been detected on the upper flange (cap) of several ''0'' pressure bulkheads on the production line; none of the cracks had spread across the thickness of material.

Investigation revealed that all ''0'' pressure bulkheads installed on aircraft from MSN 1106 up to 1189 could have the same cracks.

Although calculations confirm the low stress level in that area, a reinforcement of the ''0'' pressure bulkhead is suggested to avoid crack growth and the eventual failure of the bulkhead.

For the reasons stated above, this new Airworthiness Directive (AD) mandates a non-destructive inspection and a reinforcement—by installation of doublers—of the ''0'' pressure bulkhead. This AD also includes a reporting requirement of the inspection results.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) As of the effective date of this AD, when the airplane reaches a total of 3,600 hours time-in-service or within the next 30 days after the effective date of the AD, whichever occurs later, inspect the ''0'' pressure bulkhead for cracks using a dye-penetrant inspection method. Do the inspection in accordance with Part A of the Accomplishment Instructions in PIAGGIO AERO INDUSTRIES S.p.A Service Bulletin (Mandatory) N.: SB–80–0267Rev.0, dated May 19, 2009; or PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: SB–80–0267Rev.1, dated June 16, 2009.

(2) Before further flight after the inspection required in paragraph (f)(1) of this AD (whether or not cracks were found), install doublers on the ''0'' pressure bulkhead. Do the modification in accordance with Part B and Part C of the Accomplishment Instructions in PIAGGIO AERO INDUSTRIES S.p.A Service Bulletin (Mandatory) N.: SB–80–0267Rev.0, dated May 19, 2009; or PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: SB–80–0267Rev.1, dated June 16, 2009.

(3) Within 30 days after doing the inspection required in paragraph (f)(1) of this AD, report all inspection results, negative or positive, to Piaggio Aero Industries S.p.a., Via Cibrario, 4—16154 Genoa, Italy; *fax:* +39 010 6481 881; *e-mail: airworthiness@piaggioaero.it.*

FAA AD Differences

Note: 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, Standards Office, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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 ensure 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 European Aviation Safety Agency (EASA) AD No. 2009–0211, dated October 6, 2009; PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: SB–80–0267Rev.0, dated May 19, 2009; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: SB–80–0267Rev.1, dated June 16, 2009, for related information.

Issued in Kansas City, Missouri, on November 20, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28585 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2009–0037]

RIN 0960–AG91

Revised Medical Criteria for Evaluating Skin Disorders

AGENCY: Social Security Administration.

ACTION: Advance Notice of Proposed Rulemaking; Correction.

SUMMARY: This document corrects the Docket No. to the Advance Notice of Proposed rulemaking that published in the **Federal Register** on November 10, 2009, regarding the request for comments on whether and how we should revise the criteria in our Listing of Impairments for evaluating skin disorders in adults and children. In that document, we cited the incorrect docket number for the Advance Notice of Proposed Rulemaking.

DATES: To be sure that we consider your comments, we must receive them by no later than January 11, 2010.

FOR FURTHER INFORMATION CONTACT: Jane Deweib, Social Insurance Specialist, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020.

SUPPLEMENTARY INFORMATION:

Correction

The Advance Notice of Proposed Rulemaking published on November 10, 2009 (74 FR 57972) showed a Docket No. of SSA–2009–0057. The correct Docket No. is SSA–2009–0037.

In FR Doc. E9–27033 appearing on page 57972 in the **Federal Register** of Tuesday, November 10, 2009, make the following corrections in the Headings and the Addresses sections. On page 57972, in the second column, in the Headings section change ''Docket No. SSA–2009–0057'' to ''Docket No. SSA–2009–0037.'' In the third column, the eighth line of the first paragraph under ''Addresses'' change ''Docket No. SSA–2009–0057'' to ''Docket No. SSA–2009–0037.'' In the third column, the seventh line of the third paragraph titled ''1. Internet'' change ''Docket No. SSA–2009–0057'' to ''Docket No. SSA–2009–0037.''

Dated November 20, 2009.

Dean Landis,

Associate Commissioner for Regulations, Social Security Administration.

[FR Doc. E9–28367 Filed 11–27–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 669

[FHWA Docket No. FHWA–2009–0098]

RIN 2125–AF32

Certification of Enforcement of the Heavy Vehicle Use Tax

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This notice sets forth updated FHWA procedures for enforcement of the State registration of vehicles subject to the Heavy Vehicle Use Tax (HVUT). The intent of these actions is to bring FHWA's HVUT regulations up-to-date to be consistent with many changes that have impacted the regulation over the last two decades.

DATES: Comments must be received on or before March 1, 2010.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ralph Erickson, Highway Funding and Motor Fuels Team Leader, Office of Policy, HPPI–10, (202) 366–9235, or Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal Docket Management System at: *http://www.regulations.gov*. Regulations.gov is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.gpoaccess.gov/fr/index.html* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov*.

Background

In the Surface Transportation Assistance Act of 1982, Congress established the HVUT. The purpose of the tax is to impose a road use charge that has some relation to the costs occasioned by the vehicle (heavier vehicles cause more road damage than light vehicles, and therefore should pay a higher highway funding contribution). The FHWA Cost Allocation studies [1] demonstrated that damage to the roadway resulting from a doubling of the weight of a vehicle caused an exponential increase in the amount of damage to the roadway than would have been caused by the lower weight. To compensate for this additional damage (costs occasioned), Congress established the HVUT as a way to recover from those vehicles the additional costs they impose. Very briefly, the HVUT imposes a tax on vehicles with a gross vehicle weight of 55,000 pounds and over using a sliding scale up to $550 per year payable to the Internal Revenue Service (IRS). When the HVUT has been paid the vehicle is eligible to be registered by the State. Provisions allow for

[1] Final Report on the Federal Highway Cost Allocation Study: Report of the Secretary of Transportation to the United States Congress Pursuant to Section 506 Public Law 95–599, Surface Transportation Assistance Act of 1978: U.S. Department of Transportation, May, 1982. Federal Highway Cost Allocation Study: U.S. Department of Transportation, August, 1997.

temporary and partial-year vehicle registrations.

The FHWA's responsibility in the administration of the HVUT is to ensure that the States are obtaining proof of payment of the HVUT before registering these vehicles to operate on the roadways. The agency has published regulations at 23 CFR part 669 implementing the requirements of this program as established by Federal law at 23 U.S.C. 141(c). In accordance with this Federal law, a State's annual apportionment of Interstate Maintenance funds under 23 U.S.C. 104(b)(4) may be reduced by up to 25 percent in any fiscal year during which heavy vehicles subject to HVUT may be lawfully registered in the State without having presented proof of payment of the tax. Part 669 of Title 23, Code of Federal Regulations, established a certification program to ascertain State compliance with these requirements and procedures for evaluating State compliance and for any required reduction of funds. This rulemaking proposes to modify existing FHWA procedures for enforcement of the State registration of vehicles subject to the HVUT. The regulation (originally published on July 14, 1986, at 51 FR 25364) would be updated to make it consistent with several changes in applicable law and technology, and with regulations recently promulgated by the IRS. The regulation is also being revised to address several issues that were not covered adequately in the original rulemaking. The proposed revisions are discussed in the section analysis below.

History

The HVUT tax was imposed by Congress in section 143 of the Surface Transportation Assistance Act of 1982, Public Law 97–424. This section of law was codified into the United States Code as 23 U.S.C. 141, which provides for State certification of enforcement of laws respecting maximum vehicle size and weight. The amendment added a provision to section 141 that provides that a State's annual apportionment of Interstate Maintenance funds may be reduced by up to 25 percent in any fiscal year during which heavy vehicles subject to HVUT may be lawfully registered in the State without having presented proof of payment of the tax.

On July 14, 1986, the FHWA published in the **Federal Register** (51 FR 25363) a final rule implementing the requirements of this statute in 23 CFR part 669—Enforcement of Heavy Vehicle Use Tax. The notice set forth procedures to be followed by each State for certifying that it is obtaining evidence of proof of payment of the Federal heavy vehicle use tax in accordance with 23 U.S.C. 141 for vehicles subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954, as amended, before such vehicles are lawfully registered in the State. An annual certification of compliance is required. Procedures are specified for reducing a State's apportionment of highway funds in accordance with 23 U.S.C. 141 in the event a State fails to meet the requirements of the regulation.

The FHWA is proposing revisions to its regulation to provide compatibility with the revised IRS rules. Over the decades since 1986, the IRS has updated its procedures for implementing the HVUT proof of payment. The current regulations, found in 26 CFR 41.6001–2 [2], entitled ''proof of payment for State registration purposes,'' sets forth circumstances under which a State must require proof of payment of the tax imposed by Section 4481(a), and the required manner in which such proof of payment is to be received by the State as a condition of issuing a registration for a highway motor vehicle. A State must either comply with the provisions of this section or comply with such other rules regarding the satisfaction of this proof of payment requirement as may be prescribed by the Commissioner in order to avoid a reduction of Federal-aid highway funds apportioned under 23 U.S.C. 104(b)(4).

Section-by-Section Discussion of the Proposals

The FHWA is proposing to revise the regulation at 23 CFR part 669—Certification of Enforcement of Heavy Vehicle Use Tax as follows:

The authority section and sections 669.1, 669.2, 669.9, and 669.15 would be amended to replace all references to 23 U.S.C. 141(d) with 23 U.S.C. 141(c). Public Law 104–59, title II, Sec. 205(d)(1)(A), Nov. 28, 1995, 109 Stat. 577, re-designated subsection (d) of section 141 as (c), and as a result the statutory provisions related to the HVUT program now appear at 23 U.S.C. 141(c). The FHWA proposes to revise the regulation to reflect this change in the statute.

Section 669.13 and 669.15 would be amended to revise the statutory reference to the funding sanction for non-enforcement of the HVUT requirements which currently appears as withholding State apportionments under 23 U.S.C. 104(b)(5), and which referred to the Interstate Maintenance funding category. Section 104(b)(5) was changed to section 104(b)(4) by Public Law 105–178, title I, Sec. 1103(l)(3)(C), June 9, 1998, 112 Stat. 126, and as a result we are proposing to change these sections of the regulation to reference section 104(b)(4), the correct reference to the Interstate Maintenance funding category.

The regulation at 23 CFR 669.7 requires the States to submit the annual certification by July 1 of every year. The FHWA proposes to move this deadline to January 1. A January 1 deadline date would provide FHWA with needed time to review the certifications and determine whether the State has met its responsibilities prior to the issuance of the advance notices of apportionment to the States, which normally occurs on July 1. This January 1 deadline for certification submissions would also be the same as other certifications that are submitted by the States to FHWA for review as part of other certification programs, and will simplify these submissions for the States.

Similarly, the FHWA is proposing to amend sections 669.15 and 669.17 to adopt a compliance procedure similar to that adopted in other certification programs that utilize the notices of apportionments for providing notice of non-conformity and opportunity for review. The existing procedure in the regulation is cumbersome and requires the issuance by the FHWA Administrator of a proposed written determination of non-conformity in cases of failure to certify or not adequately enforcing the HVUT requirements. The Administrator must also provide notification of the determination by certified mail. In addition, the written determination provides notice to the State of the opportunity to request within 30 days a conference on the record to show cause why it should not be found in nonconformity, or provide any information in writing. Following the conference the Administrator is to issue a final determination of compliance, which is served on the Governor. This procedure is somewhat different from other FHWA administered certification and compliance programs, in which the compliance procedure is tied to the notices of apportionments issued by the FHWA, and which indicate the amount of funds to be apportioned for each FHWA administered program and the amount of any required funding sanction. The FHWA is proposing revised procedures that would parallel

[2] 26 CFR 41 subpart A, entitled *Introduction,* subpart B entitled *Tax on Use of Certain Highway Motor Vehicles,* and Subpart C, entitled *Administrative Provisions of Special Application to Tax on use of Certain Highway Motor Vehicles,* Sections 41.0–1, 41.4481 through 41.4483–7, and 41.600101 through 41.6156–1.

other FHWA and National Highway Traffic Safety Administration funding sanction procedures [3] that are simpler to administer, are familiar to the States, and yet provide States with sufficient notification of a preliminary non-compliance determination and the right to request a review of FHWA's preliminary non-compliance determination and demonstrate State compliance. Pursuant to the proposed procedures the preliminary notice of nonconformity would be issued with the advance notice of apportionments required under 23 U.S.C. 104(e), together with notice of the funds expected to be withheld from apportionment. A State would have 30 days to submit documentation to the FHWA showing why it is in conformity. The FHWA would then issue a final determination to the State and if found in nonconformity, the State will receive notice of the funds being withheld from apportionment as part of the certification of apportionments, which normally occurs on October 1 of each year.

Section 669.21 makes reference to IRS regulations in 26 CFR 41.600–2 on what constitutes proof of payment and that States retain proof of payment (copy of the receipted 2290) for at least 1 year. The existing FHWA regulation makes no provision for proof of payment inspection or recordkeeping when a State, local jurisdiction in the State, branch offices of a State registration system, or private contractors providing these services to any of the above, are administering vehicle registrations. However, legislation in several States allows for the local registration of vehicles within the State. In a few cases, States also have private agencies licensed to provide highway vehicle registration services to either the State or to the local jurisdictions. The FHWA, therefore, proposes that all these entities be required in the regulation to provide proof of payment recordkeeping responsibilities. The FHWA regulation also provides for the storage of proof of payment records using technologies such as microfilm and microfiche, which may now be outdated. The FHWA is proposing to replace this language with revised language that would allow for use of computerized software for tracking HVUT proof of payments, yet retains the requirement that proof of payment meet IRS standards.

[3] Drug Offender Driver's License Suspension Program, 23 CFR 192.10; Minimum Drinking Age Program, 23 CFR 1208.6; Zero Tolerance Laws, 23 CFR 1210.10; 0.08 BAC Per Se Laws Program, 23 CFR 1225.12; Open Container Program, 23 CFR 1270.8; Repeat Intoxicated Driver Laws, 23 CFR 1275.8.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

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

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or would not be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The textual corrections, updates to refer to numerical section changes in law, and change in timing of the certification compliance create no changes to the economic cost due to the regulation. The record retention requirements do pose some additional burden by requiring the ability to scan all submitted IRS Form 2290s into a computerized record (according to IRS national data, approximately 2.5 million trucks fit this criteria) and keep those records for 1 year. The change in administrative procedures to remove the FHWA administrator from the fund reduction action provides governmental efficiency. Therefore, there is little economic impact and the FHWA concludes that this is not a significant regulatory action under the definitions provided.

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities.

The additional recordkeeping requirements are designed to support the verification that will help determine if any evasion is present. Smaller States may find this additional burden cumbersome. According to FHWA 2007 data, three States and the District of Columbia registered less than 3,000 trucks. These jurisdictions may find the additional recordkeeping requirements expensive given the number of trucks subject to the HVUT tax. These points do not amount to significant impacts and the FHWA therefore certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). The only change in the regulation that impacts costs is the recordkeeping provisions. Since the States and other vehicle registration entities already keep vehicle registration files, the additional burden by requiring the ability to scan all submitted IRS Form 2290s into a computerized record (as noted above, approximately 2.5 million trucks fit this criteria) and keep those records for 1 year does have a cost impact, but not enough to exceed the significance threshold.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does contain collection of information requirements for the purposes of the PRA. The FHWA believes that the information collected under this action is contained in the existing information collection under OMB Control Number 2125–0541 granted by OMB on February 1, 2008.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 669

Grants programs—transportation, Highways and roads, Taxes, Motor vehicles.

Issued on: October 28, 2009.

Victor M. Mendez,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations part 669 as follows:

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

1. The authority citation for part 669 is revised to read as follows:

Authority: 23 U.S.C. 141(c) and 315; 49 CFR 1.48(b).

2. Revise § 669.7 to read as follows:

§ 669.7 Certification requirement.

The Governor of each State, or his or her designee, shall certify to the FHWA before January 1 of each year that it is obtaining proof of payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(c). The certification shall cover the 12-month period ending September 30.

§ 669.9 [Amended]

3. Amend § 669.9 by amending paragraphs (b) and (c) by removing the words ''23 U.S.C. 141(d)'' and adding in its place the words ''23 U.S.C. 141(c)'' each place it appears.

§ 669.11 [Amended]

4. Amend § 669.11 by removing the word ''July'' and adding in its place the word ''January''.

5. Revise § 669.13 to read as follows:

§ 669.13 Effect of failure to certify or to adequately obtain proof of payment.

If a State fails to certify as required by this regulation or if the Secretary of Transportation determines that a State is not adequately obtaining proof of payment of the heavy vehicle use tax as a condition of registration notwithstanding the State's certification, Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(4) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

6. Revise § 669.15 to read as follows:

§ 669.15 Procedure for the reduction of funds.

(a) Each fiscal year, each State determined to be in nonconformity with the requirements of this part will be advised of the funds expected to be withheld from apportionment in accordance with § 669.13 and 23 U.S.C. 141(c), as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than 90 days prior to final apportionment.

(b) A State that received a notice in accordance with paragraph (a) of this section may within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in conformity with this Part. Documentation shall be submitted to the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(c) Each fiscal year, each State determined to be in nonconformity with the requirements of this part and 23 U.S.C. 141(c), based on FHWA's final determination, will receive notice of the funds being withheld from apportionment pursuant to § 669.3 and 23 U.S.C. 141(c), as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

§ 669.19 [Amended]

7. Amend § 669.19 as follows:

a. Amend paragraphs (a) and (b) by removing the words ''23 U.S.C. 104(b)(5)'' and adding in its place the words ''23 U.S.C. 104(b)(4)'' in each place it appears; and

b. Amend paragraph (c) by removing the word ''Secretary's''.

8. Revise § 669.21 to read as follows:

§ 669.21 Procedure for evaluating State compliance.

The FHWA shall periodically review the State's procedures for complying with 23 U.S.C. 141(c), including an inspection of supporting documentation and records. In those States where a branch office of the State, a local jurisdiction, or a private entity is providing services to register motor vehicles including vehicles subject to HVUT, the State shall be responsible for ensuring that these entities comply with the requirements of this part concerning the collection and retention of evidence of payment of the HVUT as a condition of registration for vehicles subject to such tax and develop adequate procedures to maintain such compliance. The State or other responsible entity shall retain a copy of the receipted IRS Schedule 1 (Form 2290), or an acceptable substitute prescribed by 26 CFR 41.6001–2 for a period of 1 year for purposes of evaluating State compliance with 23 U.S.C. 141(c) by the FHWA. The State may develop a software system to maintain copies or images of this proof of payment.

[FR Doc. E9–27939 Filed 11–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 202

[Docket No. FR 5356–P–01]

RIN 2502–AI81

Federal Housing Administration (FHA): Continuation of FHA Reform—Strengthening Risk Management Through Responsible FHA-Approved Lenders

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Through this proposed rule, HUD continues its efforts to streamline, modernize, and strengthen the mortgage insurance functions and responsibilities of FHA, as authorized by provisions contained in the National Housing Act, as amended by the FHA Modernization Act of 2008, and further supported by the Helping Families Save Their Homes Act of 2009. First, FHA proposes to no longer approve loan correspondents as approved participants in FHA programs. Mortgagees would be required to ensure that their loan correspondents meet applicable requirements. The FHA-approved mortgagee will, in turn, act as sponsor as it has in the past. However, in using a sponsor/correspondent relationship, the sponsoring mortgagee must agree to assume responsibility for any loan correspondent that works with the mortgagee in the FHA insured loan, and assume liability for the FHA-insured loan underwritten and closed in the name of the FHA-approved mortgagee. Second, this proposed rule would update the FHA regulations to incorporate criteria specified in the Helping Families Save Their Homes Act of 2009 that precludes certain lending entities from originating an FHA-insured loan, and are designed to ensure that only entities of integrity are involved in the origination of FHA-insured transactions. Third, and consistent with the objective to work with and rely upon responsible mortgagees, FHA proposes to increase the net worth requirement for FHA-approved mortgagees for the purpose of ensuring that approved mortgagees are sufficiently capitalized.

DATES: *Comment Due Date:* December 30, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (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. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–1515 (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:

I. Background

The FHA Modernization Act of 2008, Title I of Division B of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008), made or authorized HUD to make significant changes to the way in which FHA conducts several areas of its mortgage insurance operations. The FHA Modernization Act increased maximum mortgage limits, overhauled and streamlined FHA's Title I manufactured housing and condominium mortgage insurance programs, allowed a Home Equity Conversion Mortgage (HECM) to be used to purchase a home, and allowed for the insurance of cooperatives, to name a few of the significant changes made by this 2008 statute. A key theme of many of the changes made by the FHA Modernization Act centered on streamlining and modernizing existing FHA programs.

The Helping Families Save Their Homes Act (HFSH Act), Division A of Public Law 111–22, strengthened HUD's enforcement authority to ensure the integrity and safety of FHA's mortgage insurance programs. The HFSH Act contains several provisions designed to ensure that predatory lending entities and individuals are not allowed to participate in FHA-insured mortgage programs, and specifically requires FHA approval of all parties participating in the FHA single family mortgage origination process. The HFSH Act authorizes HUD to impose civil money penalties against loan originators who are not FHA-approved and yet participate in FHA loan originations. The HFSH Act strengthens HUD's enforcement authority by authorizing the imposition of civil money penalties not only for violation of statutory requirements, but for violation of any FHA implementing regulation, handbook, or mortgagee letter issued under title II of the National Housing Act. The HFSH Act directs FHA to strengthen the existing FHA lender approval process, including strengthening by ensuring that only lenders of integrity are approved by FHA as approved mortgagees.

With the authority and direction presented by these two statutes, which support and enhance the existing authority of the National Housing Act, FHA proposes to both streamline and strengthen the FHA lender approval process. Except as modified by this proposed rule, all other components of the lender approval process would remain the same, including those provisions regarding the monitoring and enforcement of FHA requirements, the imposition of sanctions (enhanced by the HFSH Act), and the opportunity to appeal adverse determinations.

II. This Proposed Rule

A. Strengthening and Streamlining Lender Approval

1. *Limiting Approval to Mortgagees.* Through this rule, FHA proposes changes to the eligibility criteria for FHA lender approval. Currently, through the FHA lender approval

process, FHA approves two types of lenders. First, FHA approves mortgagees. Mortgagees can perform any lender origination and/or service function and can own FHA-insured loans. Second, FHA approves loan correspondents, but with limited functions. Loan correspondents are allowed to perform any origination function except underwriting and cannot service or own FHA-insured loans. This rule proposes to limit the FHA lender approval process to mortgagees. This rule does not propose to alter, however, the approval process of investing mortgagees and governmental institutions as addressed in 24 CFR 202.9 and 202.10. FHA will continue to approve investing mortgagees and government institutions.

The limitation of the FHA approval process to mortgagees reflects recognition that the mortgagee, by underwriting, servicing, or owning a loan, is the most critical lending party to a mortgage transaction. Accordingly, the mortgagee should be the party that is subject to FHA's rigorous lender-approval and oversight processes, and bear the greatest degree of responsibility and liability for the loan obtained by the borrower and insured by FHA. Loan correspondents will continue to be authorized to participate in the origination of FHA loans through association with an FHA-approved mortgagee, but these entities no longer will be subject to the FHA lender-approval process.

FHA-approved mortgagees would be required to ensure that their loan correspondents meet applicable requirements. The FHA-approved mortgagee acts as sponsor as it has in the past, but in using a sponsor/correspondent relationship, the sponsoring mortgagee must agree to assume responsibility for any loan correspondent that works with the mortgagee in the FHA-insured loan for activities related to the loan origination, and assume liability for the FHA-insured loan underwritten and closed in the name of the FHA-approved mortgagee. Not only would FHA-approved mortgagees be required to ensure that sponsoring loan correspondents meet standards assuring their integrity and financial soundness, including those recently emphasized in the HFSH Act (*see* Section II.A.2 of this preamble), but to also ensure compliance by all parties to an FHA transaction with FHA's requirements regarding loan origination, processing, underwriting, and servicing and found in relevant statutes, regulations, HUD handbooks, and mortgagee letters. Although loan correspondents no longer would be subject to lender approval requirements, the FHA-approved mortgagee must ensure that any loan correspondent that the mortgagee sponsors complies with the requirements that make loans eligible for FHA insurance. Failure to comply with these requirements may result in FHA seeking sanctions against the FHA-approved mortgagee.

FHA-approved mortgagees will be authorized to underwrite for and acquire FHA mortgage applications from loan correspondents and non-FHA-approved lenders, such as mortgage brokers, provided that these parties: (1) Are in compliance with the requirements of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act (Title V of Division A of Pub. L. 110–289, approved July 30, 2008), when such requirements become applicable under the State or States in which these parties conduct business, and (2) are not suspended, debarred, or otherwise excluded from participating in the origination of an FHA loan. If the loan application is taken by an entity that is not the FHA-approved Direct Endorsement mortgagee that underwrote the loan, the entity must include the following in the FHA loan origination system for the subject loan: (1) The entity's FHA identification number (if the entity is FHA-approved) or (2) the entity's legal name and tax identification number (if the entity is not FHA-approved). The loan must be underwritten by and closed in the name of the FHA-approved mortgagee.

As contemplated by this proposed rule, upon promulgation of the final rule that will follow this proposed rule, entities that are already approved by FHA as loan correspondents would not be permitted to renew their status, or convert their approval to mortgagee, and only FHA-approved mortgagees would be allowed to request FHA case numbers.

The advantages of this limitation of FHA lender approval authority are twofold. First, this change focuses the administrative burden of the lender approval process to those entities (and HUD recognizes that a stringent approval process necessitates some administrative burden) that bear the greatest responsibility for the validity and eligibility of the loan for FHA insurance. It is the mortgagee that determines whether a borrower qualifies for the mortgage for which the borrower applied and, therefore, determines the risk of lending money to the borrower. This is the most critical determination of the mortgage process. Second, the change allows loan correspondents to continue to participate in the FHA loan origination process, but without having to undergo the lender approval process.

2. *Ineligibility To Participate in Origination of FHA–Insured Loans.* In addition to limiting the FHA lender approval process to mortgagees, this proposed rule incorporates criteria specified in section 203 of the HFSH Act that precludes any lending entity not approved by the Secretary to participate in FHA programs or not in compliance with the following eligibility requirements from originating an FHA-insured loan. Section 203(b) of the HFSH Act adds a new subsection (d) to section 202 of the National Housing Act, provides as follows:

''LIMITATIONS ON PARTICIPATION IN ORIGINATION AND MORTGAGEE APPROVAL.—

- ''REQUIREMENT.—Any person or entity that is not approved by the Secretary to serve as a mortgagee, as such term is defined in subsection (c)(7), shall not participate in the origination of an FHA-insured loan except as authorized by the Secretary.
- ''ELIGIBILITY FOR APPROVAL.—In order to be eligible for approval by the Secretary, an applicant mortgagee shall not be, and shall not have any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the applicant mortgagee who is—
  - ''currently suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under part 25 of title 24 of the Code of Federal Regulations, 2 Code of Federal Regulations, part 180 as implemented by part 2424, or any successor regulations to such parts, or under similar provisions of any other Federal agency;
  - ''under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee;
  - ''subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review;
  - ''engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;
  - ''convicted of, or who has pled guilty or nolo contendre to, a felony related to participation in the real estate or mortgage loan industry—
  - ''during the 7-year period preceding the date of the application for licensing and registration; or
  - ''at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;
  - ''in violation of provisions of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 *et seq.*) or any applicable provision of State law; or

○ ''in violation of any other requirement as established by the Secretary.''

Given the specificity of the statutory language, implementation of the criteria does not require rulemaking and the restrictions are, therefore, currently in effect. These criteria were announced by the Mortgagee Letter entitled ''Strengthening Counterparty Risk Management,'' issued September 18, 2009, and can be found as document number 09–31 at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm.* This rule proposes to update HUD's regulations to conform to the statutory requirements. Although these are statutory criteria which the Department does not have the discretion to alter, HUD nevertheless welcomes comment on these criteria and on any other comparable requirements that HUD should add to preclude participation in the origination of FHA-insured loans, and welcomes comment on any of the criteria for which an affected party seeks elaboration or guidance.

While this rule proposes to codify the new statutory ineligibility criteria, this rule does not propose to revise current procedures in place in FHA regulations and handbooks that are applicable to appeals of adverse determinations. Additionally, these new statutory criteria do not require HUD to propose enforcement mechanisms and procedures beyond those already in place for enforcement of FHA requirements. While the HFSH Act strengthens FHA's enforcement authority by expanding HUD's ability to impose civil money penalties and strengthening the authority of the Mortgagee Review Board, this increased authority does not require additional enforcement procedures. The procedures already in place by which FHA may take action against mortgagees in violation of FHA requirements continue to be sufficient.

B. Strengthening the Capacity of FHA-Approved Mortgagees

FHA proposes to increase the net worth requirement for approved mortgagees and those applicants seeking approval as mortgagees from $250,000 to $2.5 million. In addition, FHA proposes to require investing mortgagees to comply with the new net worth requirements. In order to provide mortgagees with time to adjust to the new requirements, the proposed rule would phase in the net worth increases over a 3-year period.

Within one year of the effective date of the final rule resulting from this rulemaking process, supervised and nonsupervised mortgagees and investing mortgagees would be required to have a minimum net worth of $1 million, of which at least 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary. Mortgagees would be required to comply with the minimum net worth requirement of $2.5 million within 3 years of the effective date of the final rule, with at least 20 percent of such net worth consisting of liquid assets.

The net worth requirements have not been updated since 1993. HUD's proposal to increase the net worth requirements for FHA-approved mortgagees is consistent with recent increases in net worth requirements by the government sponsored enterprises. In September 2008, both Fannie Mae and Ginnie Mae increased the net worth requirements for their business partners. Ginnie Mae now requires a net worth of $1 million and Fannie Mae requires a net worth of $1.65 million. As of December 31, 2009, Fannie Mae's net worth requirements will be increased further to $2.5 million plus a dollar amount that represents one-quarter of one percent (.25 percent) of the outstanding principal balance of the lender's total portfolio of mortgages serviced for Fannie Mae. As is evidenced by the actions of Ginnie Mae and Fannie Mae, the increases in required net worth proposed by FHA are consistent with industry norms for counterparty risk management.

The net worth increases proposed in this rule reflect not only necessary adjustments for inflation, but also the lessons learned as a result of the housing market crisis. The changes will help to ensure that FHA-approved lenders, including investing mortgagees, are sufficiently capitalized to meet the potential needs associated with the financial services they provide.

The proposed rule would also simplify the net worth requirements by establishing uniform requirements for Title I and Title II mortgagees. Under the current regulations at 24 CFR 202.5(n), Title II supervised and unsupervised mortgagees (except multifamily mortgagees) are required to maintain additional net worth in excess of the existing requirements of not less than one percent of the mortgage volume exceeding $25 million, but total net worth is not required to exceed $1 million. This proposed rule would eliminate the additional net worth requirements for title II mortgagees.

C. Use of HUD Registered Business Name and Business Changes

In addition to the two significant proposed changes presented in Sections II.A. and II.B. of this preamble, HUD proposes to codify the statutory requirement presented in section 203 of the HFSH Act, which directs FHA-approved mortgagees to use their HUD-registered business names in all advertisements and promotional materials related to FHA programs. HUD-registered business names include any alias or ''doing business as'' (DBA) on file with FHA. In addition to codifying this statutory requirement, this rule also proposes to codify the requirements specified in FHA's Strengthening Counterparty Risk Management Mortgagee Letter, issued September 18, 2009, and found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm,* which directs FHA-approved mortgagees to maintain copies of all advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used for advertisement purposes.

Through this rule, HUD also proposes to codify the requirement in section 203 of the HFSH Act that requires mortgagees to notify FHA if individual employees of the lender are subject to any sanction or other administrative action. In incorporating this requirement, HUD also is proposing to codify its existing requirements pertaining to notification to FHA of business changes, such as changes in legal structure, which are currently found in HUD Handbook 4060.1, REV–2, Chapters 2 and 6.

D. The General Approval Standards for Mortgagees (24 CFR 202.5)

Section 202.5 of HUD's FHA regulations sets forth the general approval standards for FHA-approved mortgagees. Because this section sets forth the approval standards, this is the principal regulation that is proposed to be amended by this rule. However, with the exception of adding new provisions in § 202.5(b) to address the use of business name, and non-FHA approved entities, all other changes proposed by this rule are changes to existing provisions. For example, paragraph (f) concerning business changes, and paragraph (j), which pertains to ineligibility, are expanded to include the statutory requirements of the HFSH Act. Section 202.5(g), which addresses financial statements, is proposed to be amended to include reference to the requirement to submit an audited financial statement within 90 days of the end of a mortgagee's fiscal year. The requirement to submit an audited financial statement was initiated in FHA's Strengthening Counterparty Risk Management Mortgagee Letter, issued September 18, 2009. (*See http://*

www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm.)

III. Justification for Shortened Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. As discussed in the preamble, although this rule proposes to no longer approve loan correspondents as approved participants in FHA programs, and to limit approval to mortgagees, this does not mean that loan correspondents may no longer participate in the FHA-insured loan origination process. Loan correspondents would continue to be authorized to participate in the origination of FHA loans through association with an FHA-approved mortgagee, but they would no longer be subject to the rigorous FHA lender-approval process, which is more appropriate for those entities that underwrite the loans. The FHA-approved mortgagee will, in turn, act as sponsor as it has in the past, and the sponsoring mortgagee will assume responsibility for any loan correspondent that works with the mortgagee in the FHA-insured loan, and assume liability for the FHA-insured loan underwritten and closed in the name of the FHA-approved mortgagee. Therefore, this change should not result in any loss of business by any currently FHA-approved lending entity.

Additionally, although the proposed rule would raise the net worth requirement for FHA-approved mortgagees, which have not been increased in more than 15 years, the net worth requirements proposed are at a level comparable to industry standard, as already discussed in the preamble and as further discussed in Section IV of this preamble. Additionally, to provide FHA-approved mortgagees with sufficient time to meet the new requirements, HUD would phase in the net worth increases over a 3-year period from the effective date of the final rule resulting from this rulemaking. Within one year from the effective date of the final rule, FHA-approved mortgagees would be required to have a net worth of $1 million. At present, 60 percent of approved mortgagees have a net worth of $1 million or more. Those that do not currently meet the $1 million net worth requirement may choose to increase their net worth to meet the new requirements or may participate by partnering with an approved FHA mortgagee, as is the case for loan correspondents. Within 3 years from the effective date of the final rule, mortgagees would be required to have a net worth of $2.5 million, a figure that is consistent with industry practice. It is HUD's view, therefore, that this change, given the proposed net worth requirement and the time to meet such requirement, as well as the other avenues of participation in FHA programs available to those mortgagees not able to meet the new net worth requirements, would not significantly restrict any currently FHA-approved mortgagees from the opportunity to participate in FHA programs.

The proposed rule would also update HUD's regulations to incorporate criteria specified in the HFSH Act that precludes any lending entity not approved by the Secretary to participate in FHA programs or not in compliance with applicable eligibility requirements from originating an FHA-insured loan. These are statutory restrictions, which HUD does not have the authority to modify in response to comment. The statutory provisions are currently in effect and the proposed regulatory changes merely update HUD's regulations to conform to the language of the HFSH Act.

Given that the changes proposed by this rule bring FHA up to date with current industry standards and conform to explicit statutory language, and would not result in significant changes to current FHA participation, FHA believes a 30-day public comment period presents a sufficient period for comment. Although HUD has determined that a reduced comment period is merited in this case, the Department continues to value public input in the rulemaking process. As noted, the proposed rule solicits public comment for a period of 30 days, and all comments received will be considered in the development of the final rule.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). A determination, as provided below, was made that this proposed 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 changes to the lender-approval process do not prevent participation by entities that have to date been involved in FHA programs, but rather limits the actual approval process to those entities that underwrite, service, or own FHA-insured mortgages. Therefore, loan correspondents and other non-FHA approved lenders can continue to be involved in FHA loan origination by working with FHA-approved mortgagees. Loan correspondents and other third-party originators would be exempt, however, from completing the FHA lender approval process.

The increase in net worth requirements, while seemingly a significant increase from the current net worth requirements established in 1993, is not significant when one considers the following: the net worth requirement for FHA-approved lending entities has not been increased in more than 15 years; the net worth increase would not apply to loan correspondents; and, as previously discussed in this preamble, the proposed net worth requirements are consistent with those currently required by other Federal financial institutions with which FHA-approved mortgagees conduct business and whose requirements they must meet. The following provides further analysis of the estimated impact of the increase in net requirements that supports HUD's determination that this rule is not an economically significant rule as defined by Executive Order 12866.

FHA does not presently collect audited financial statements from supervised institutions. As a result, it is not possible to determine if any of these entities that are currently FHA-approved would be unable to meet the proposed increased net worth requirements. Therefore, for the purposes of the following analysis, only data from approved non-supervised mortgagees is considered. However, based upon the fact that supervised institutions must meet much higher capital standards established by Federal banking regulators (and to comply with international Basel II standards), it is very unlikely that any supervised institutions would fail to meet the proposed net worth requirements. As a proxy, FHA analyzed Ginnie Mae net worth data for its supervised lender issuers and discovered that none of these lenders had a net worth below FHA's proposed requirement. In fact, the average net worth of this cohort was $2.4 billion.

The enactment of the proposed rule would present two options to mortgagees that currently possess a net worth below the proposed $2,500,000 requirement:

1. Increase their net worth, within the 3 years of enactment of the final rule, from the current $250,000 to $2.5

million, 20 percent of which must be held in liquid assets; or

2. Relinquish their status as an FHA-approved mortgagee and continue conducting FHA business as a loan correspondent by initiating a relationship with an approved mortgagee.

The actual economic impact of the proposed rule is the opportunity cost of option 1 and the lost revenue and additional costs associated with option 2. For mortgagees that choose option 1, it is anticipated that the increase in net worth would be met largely by changing the title of existing assets from the individual holdings of a mortgagees' owners to those of the institutions. Returns on the assets would be earned by the same individuals, whether they were held in the names of the individuals or by the mortgagees that they owned. Thus, increasing the minimum net worth requirement affects only the rate of return of the capital invested, which is the true measure of the economic impact of option 1. The impacts associated with this option are further discussed below.

For mortgagees that choose option 2, the functional impact of the option is that they no longer would be able to underwrite and process the loans they originate. The economic impact that would result from those limitations would be the loss of income from those aspects of the FHA mortgage lending process they no longer would be permitted to perform and the added costs they would be required to pay to their sponsor for processing and underwriting. An analysis of the impacts for mortgagees in choosing this option also is provided below.

If all mortgagees selected option 1 and transferred title from existing assets, the actual impact of such an action is the opportunity cost of holding those assets as net worth rather than investing them in other potentially higher-yielding investments. The true measure of economic impact is found by drilling down even farther to consider only the opportunity cost associated with those assets that must be converted to liquid form. Because assets held for net worth may still be invested elsewhere, it is only the 20 percent liquid asset portion of a mortgagee's capital that is affected by the increased net worth requirement. However, the analysis below depicts both the opportunity cost of the total capital transfer required to meet the higher net worth standard, and the opportunity cost of the liquid assets necessary to meet the requirement.

Table 1 below calculates the opportunity cost for mortgagees in meeting the proposed net worth requirements based upon total net worth needed. Table 2 calculates the opportunity cost in terms of required liquid assets. Based on data from FHA's Lender Assessment SubSystem (LASS), 24 mortgagees have a net worth equal to $250,000, 465 mortgagees have a net worth between $250,000 and $1 million, 350 mortgagees have a net worth between $1 million and $2.5 million, and 369 mortgagees have a net worth of greater than $2.5 million.

In Table 1 below, Column A lists the number of lenders in the aforementioned categories. Column B lists the average net worth of the mortgagees in each category. Column C subtracts the average net worth from the new requirement of $2.5 million per mortgagee. Column D then calculates the average opportunity cost per lender for each stratum.

The aggregate cost of this provision totals the opportunity cost of holding the amount shown in Column C in net worth rather than investing it in other potentially higher-yielding investments. The opportunity cost in Column D therefore is calculated as the difference between the average market rate of return and the risk-free interest rate. The average market rate is represented by the real annualized return of the S&P 500 between 1990 and 2008, which equals 4.5 percent. The risk-free interest is the average 10-year Treasury rate between 1990 and 2008, which equals 2.7 percent. The difference between these two rates equals 1.8 percent. Finally, the average opportunity cost of the increase in the net worth requirement per mortgagee, shown in Column D, was multiplied times Column A, the number of mortgagees in each category, to calculate the total cost of the net worth requirement imposed by this regulation, shown in Column E. As shown in Table 1, the total opportunity cost for all mortgagees of holding the additional funds in net worth totals $23.4 million.

TABLE 1—CALCULATION OF OPPORTUNITY COST TO FHA-APPROVED MORTGAGEES FOR FULL CAPITALIZATION

Net worth	(A) Number of mortgagees	(B) Average net worth	(C) Average required increase in net worth	(D) = (C)*1.8% Average opportunity cost	(E) = (A)*(D) Aggregate opportunity cost
$250K	24	$250,000	$2,250,000	$40,500	$972,000
$250K	465	539,345	1,960,655	35,292	16,410,780
$1M–$2.5M	350	1,537,509	962,491	17,325	6,063,750
>$2.5M	369	164,252,737			
Total	1,208				23,446,530

Table 2 below further extrapolates this data to assess the opportunity cost associated with only that portion of net worth held in liquid assets. The actual cost of this provision totals the opportunity cost of holding 20 percent of total net worth as liquid assets rather than investing it in other potentially higher-yielding investments. The opportunity cost therefore is calculated in essentially the same fashion as for Table 1. However, Column D of Table 2 lists the average increase in required liquid assets for lenders in each category. The opportunity cost is then calculated in the same fashion as described for Table 1, by multiplying the amount shown in Column D times 1.8 percent. This figure is shown in Column E. The total cost of the provision was then determined by multiplying the amount in Column E times the number of lenders in each stratum listed in Column A. As shown in Table 2, the opportunity cost of holding the additional required liquid assets in net worth totals $4.7 million.[1]

[1] Even if the percentage of required net worth held in liquid assets were to yield no return whatsoever, utilizing the 4.5 percent average market rate of return mentioned previously, the total opportunity cost of the uninvested liquid assets would total just $11,723,184.

TABLE 2—CALCULATION OF OPPORTUNITY COST TO FHA-APPROVED MORTGAGEES FOR LIQUID HOLDINGS

Net worth	(A)	(B)	(C)	(D) = (C)*20%	(E) = (D)*1.8%	(F) = (A)*(E)
	Number of mortgagees	Average net worth	Average required increase in net worth	Average increase in liquid assets	Aggregate opportunity cost	Aggregate opportunity cost
$250K	24	$250,000	$2,250,000	$450,000	$8,100	$194,400
$250K	465	539,345	1,960,655	392,131	7,058	3,282,137
$1M–$2.5M	350	1,537,509	962,491	192,498	3,465	1,212,738
>$2.5M	369	164,252,737				
Total	1,208					4,689,275

If all mortgagees selected option 2, the economic impact again would issue from lost revenue derived from those aspects of the FHA mortgage lending process they no longer would be permitted to perform and the added costs they would be required to pay to their sponsor for processing and underwriting. There are four primary ways in which a lender can receive income from the mortgage business: (1) Origination fees, (2) servicing release premiums, (3) servicing fees, and (4) income derived from securitization. The potential income derived from these revenue streams is as follows:

(1) FHA origination fees are capped at 1 percent of the loan amount.

(2) The industry standard for servicing release premiums is between 75 to 100 basis points of a loan's unpaid principal balance at the time of sale.

(3) The average annual servicing fee of an FHA loan is 30 basis points on the unpaid principal balance.

(4) Income derived from securitization will not be considered because a mortgagee must meet the higher net worth already required by Ginnie Mae, Fannie Mae, and Freddie Mac in order to participate in the respective securitization programs.

FHA analyzed the origination patterns of the mortgagees that would be affected over a 2-year period from August 31, 2007 to September 30, 2009. It should be noted that the vast majority of lenders reviewed do not service a mortgage portfolio but rather sell their mortgages to aggregators.

As is seen in Table 3 below, of the 489 lenders with a net worth less than the proposed $1 million, 355 have originated at least one loan in the 2-year sample period. Of the 350 lenders above the proposed $1 million net worth but below the proposed $2.5 million, 299 have originated at least one loan during the 2-year sample period. Since the affected mortgagees still would be permitted to originate FHA loans for a fee and would be entitled to income streams derived from servicing release premiums, the only economic impact would be from the costs these lenders pay to FHA-approved lenders for the processing and underwriting of the mortgages sold. Table 3 provides information regarding the economic impact if all lenders opted to relinquish their FHA approval and operate via a relationship with an FHA-approved mortgagee. Column A lists the number of lenders in each net worth category. Column B lists only the number of lenders in each category that originated at least one loan in the 2-year period from August 31, 2007, to September 30, 2009. Column C provides the average yearly originations performed by each stratum for the 2-year period. Column D calculates the average number of originations performed per lender by dividing Column C by column B. Column E calculates the average total processing and underwriting fees paid by loan correspondents for loans they originated by multiplying the amount in Column D times $200, the average fee required by a mortgagee for these services. Column F calculates the total cost of these fees for loan correspondents by multiplying Column E by Column B. As is seen from Table 3, the economic impact of this option is $45.1 million.

TABLE 3—CALCULATION OF LOST REVENUE FOR MORTGAGEES THAT RELINQUISH THEIR FHA APPROVAL

	(A)	(B)	(C)	(D) = (C)/(B)	(E) = (D)*$200	(F) = (E)*(B)
	Total number of lenders	Lenders w/originations in 2-year period	Avg. number of yearly originations	Avg. number of orig/lender	Avg. loan processing fee/lender	Aggregate loan processing fee
>$250K < $1M	489	355	87,455	246	$49,200	$17,466,000
$1M–$2.5M	350	299	138,289	463	92,600	27,687,400
Total						45,153,400

As is evidenced above, under either option a mortgagee adopts to accommodate the proposed increase in net worth requirements, the total economic impact is below $100 million. FHA believes that the method of assessment outlined here is the most true and accurate accounting of the economic impacts of this proposed rule.

As part of the public comments that HUD is soliciting on this rule, HUD also solicits public comment on its analysis and welcomes feedback on potential effects that commenters believe this rule will have on competition in financial and housing markets, with particular emphasis on the ability of mortgagees to transfer assets in order to increase their net worth.

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.

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.

Currently, there are 13,831 FHA-approved lending entities. Of these approved entities, 28 percent are approved mortgagees, 68 percent are approved correspondents, and the remaining 4 percent constitute government mortgagees or investing mortgagees. Of FHA-approved mortgagees, only 60 percent currently have a net worth of $1 million or more. An additional 20 percent of approved mortgagees have a net worth greater than $500,000. Thus, a significant portion of these mortgagees could be expected to achieve a net worth of $1 million within the one year period prior to the net worth requirement taking effect. Those that are unable to meet the new net worth requirement in that time would still be able to participate in FHA programs by partnering with an approved mortgagee.

The small entities that participate in the FHA loan origination have, to date, largely been loan correspondents. As discussed in this preamble, the proposed rule would not deny loan correspondents the ability to continue to participate in the origination of FHA-insured loans. Rather, the proposed regulatory changes would alleviate the administrative burden imposed on loan correspondents by no longer requiring them to apply separately for FHA approval. The changes proposed by this rule allow smaller entities to continue to be involved in the origination of FHA-insured loans without having to come under the FHA approval process and meet net worth requirements.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to the eligibility of those entities that may be approved as FHA-approved lenders. Accordingly, under 24 CFR 50.19(c)(1), this 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 an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would 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 proposed rule would not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number is 14.183.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 202 as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

1. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

2. In § 202.2, the definition *mortgagee or Title II mortgagee* is revised to read as follows:

§ 202.2 Definitions.

* * * * *

Mortgagee or Title II mortgagee means a mortgage lender that is approved to participate in the Title II programs as a supervised mortgagee under § 202.6, a nonsupervised mortgagee under § 202.7, an investing mortgagee under § 202.9, or a governmental or similar institution under § 202.10.

* * * * *

3. In § 202.3, revise paragraphs (a) introductory text and (a)(1) to read as follows:

§ 202.3 Approval status for lenders and mortgagees.

(a) *Initial approval.* A lender or mortgagee may be approved for participation in the Title I or Title II programs upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary.

(1) Approval is signified by:

(i) The Secretary's agreement that the lender or mortgagee is considered approved under the Title I or Title II programs, except as otherwise ordered by the Mortgagee Review Board or an officer or subdivision of the Department to which the Mortgagee Review Board has delegated its power, unless the lender or mortgagee voluntarily relinquishes its approval;

(ii) Consent by the lender or mortgagee to comply at all times with the general approval requirements of § 202.5, and with additional requirements governing the particular class of lender or mortgagee for which it was approved as described under subpart B at §§ 202.6 through 202.10; and

(iii) Under the Title I program, the issuance of a Contract of Insurance constitutes an agreement between the Secretary and the lender and which governs participation in the Title I program.

* * * * *

4. Revise § 202.5 to read as follows:

§ 202.5 General approval standards.

To be approved for participation in the Title I or Title II programs, and to maintain approval, a lender or mortgagee shall meet and continue to meet the general requirements of paragraphs (a) through (n) of this section (except as provided in § 202.10(b)) and the requirements for one of the eligible

classes of lenders or mortgagees in §§ 202.6 through 202.10.

(a) *Business form.* (1) The lender or mortgagee shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership. A partnership must meet the requirements of paragraphs (a)(1)(i) through (iv) of this section.

(i) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(ii) One general partner must be designated as the managing general partner. The managing general partner shall comply with the requirements of paragraphs (b), (c), and (f) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lenders or property improvement or manufactured home lenders, and must have exclusive authority to deal directly with the Secretary on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(iii) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All insured mortgages and Title I loans held by the partnership shall be transferred to a lender or mortgagee approved under this part prior to the termination of the partnership. The partnership shall be specifically authorized to continue its existence if a partner withdraws.

(iv) The Secretary must be notified immediately of any amendments to the partnership agreement that would affect the partnership's actions under the Title I or Title II programs.

(2) *Use of business name.* The lender or mortgagee must use its HUD-registered business name in all advertisements and promotional materials related to FHA programs. HUD-registered business names include any alias or ''doing business as'' (DBA) on file with FHA. The lender or mortgagee must keep copies of all print and electronic advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used to advertise.

(3) *Non-FHA-approved entities.* A lender or mortgagee that accepts a loan application by a non-FHA-approved entity must determine that the non-FHA-approved entity is not subject to the sanctions or administrative actions listed in paragraph (j) of this section, and that the entity's legal name and Tax ID number are included in the FHA loan origination system record for the subject loan. The loan to be insured by FHA must be underwritten by and closed in the name of the FHA-approved lender or mortgagee.

(b) *Employees.* The lender or mortgagee shall employ competent personnel trained to perform their assigned responsibilities in consumer or mortgage lending, including origination, servicing, and collection activities, and shall maintain adequate staff and facilities to originate and service mortgages or Title I loans, in accordance with applicable regulations, to the extent the mortgagee or lender engages in such activities.

(c) *Officers.* All employees who will sign applications for mortgage insurance on behalf of the mortgagee or report loans for insurance shall be corporate officers or shall otherwise be authorized to bind the lender or mortgagee in the origination transaction. The lender or mortgagee shall ensure that an authorized person reports all originations, purchases, and sales of Title I loans or Title II mortgages to the Secretary for the purpose of obtaining or transferring insurance coverage.

(d) *Escrows.* The lender or mortgagee shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under loans or insured mortgages on account of ground rents, taxes, assessments, and insurance charges or premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, except as otherwise provided in writing by the Secretary.

(e) *Servicing.* A lender shall service or arrange for servicing of the loan in accordance with the requirements of 24 CFR part 201. A mortgagee shall service or arrange for servicing of the mortgage in accordance with the servicing responsibilities contained in subpart C of 24 CFR part 203 and in 24 CFR part 207, with all other applicable regulations contained in this title, and with such additional conditions and requirements as the Secretary may impose.

(f) *Business changes.* The lender or mortgagee shall provide prompt notification to the Secretary, in such form as prescribed by the Secretary, of:

(1) All changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business; and

(2) Any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, loan originator, or employee of the lender or mortgagee, or the lender or mortgagee itself, that is subject to one or more of the sanctions in paragraph (j) of this section.

(g) *Financial statements.* The lender or mortgagee shall furnish to the Secretary a copy of its annual audited financial statement within 90 days of its fiscal year end, furnish such other information as the Secretary may request, and submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

(h) *Quality control plan.* The lender or mortgagee shall implement a written quality control plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding loan or mortgage origination and servicing.

(i) *Fees.* The lender or mortgagee, unless approved under § 202.10, shall pay an application fee and annual fees, including additional fees for each branch office authorized to originate Title I loans or submit applications for mortgage insurance, at such times and in such amounts as the Secretary may require. The Secretary may identify additional classes or groups of lenders or mortgagees that may be exempt from one or more of these fees.

(j) *Ineligibility.* For a lender or mortgagee to be eligible for FHA approval, neither the lender or mortgagee, nor any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, loan originator, or employee of the lender or mortgagee shall:

(1) Be suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424 or 24 CFR part 25, or under similar procedures of any other Federal agency;

(2) Be indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the lender or mortgagee to participate in the Title I or Title II programs;

(3) Be subject to unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent

mortgagees or that demonstrate irresponsibility;

(5) Be convicted of, or have pled guilty or nolo contendre to, a felony related to participation in the real estate or mortgage loan industry:

(i) During the 7-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(6) In violation of provisions of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 (12.U.S.C. 5101 *et seq.*) or any applicable provision of State law; or

(7) In violation of any other requirement established by the Secretary.

(k) *Branch offices.* A lender may, upon approval by the Secretary, maintain branch offices for the origination of Title I loans. A branch office of a mortgagee must be registered with the Department in order to originate mortgages or submit applications for mortgage insurance. The lender or mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

(l) *Conflict of interest and responsibility.* (1) A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration, approved by the Secretary, may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(2) *Responsibility.* FHA-approved lenders and mortgagees assume responsibility for ensuring that the lending entities with which they do business (*e.g.,* loan correspondents, mortgage brokers) are not ineligible (as provided in paragraph (j) of this section) to participate in the origination of FHA-insured loans.

(m) *Reports.* Each lender and mortgagee must submit a yearly verification report on a form prescribed by the Secretary. Upon application for approval and with each annual recertification, each lender and mortgagee must submit a certification that it has not been refused a license and has not been sanctioned by any State or States in which it will originate insured mortgages or Title I loans. In addition, each mortgagee shall file the following:

(1) An audited or unaudited financial statement, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20 percent of its net worth, and until the mortgagee demonstrates an operating profit for 2 consecutive quarters or until the next recertification, whichever is the longer period; and

(2) A statement of net worth within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership, or any transfer of control to a Federal or State supervisory agency.

(n) *Net worth.* (1) Effective on [*date 1 year after the effective date of final rule*], each supervised or nonsupervised lender or mortgagee approved under § 202.6 and § 202.7 and each investing lender and mortgagee approved under § 202.9 shall have a net worth of not less than $1,000,000, of which no less than 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(2) Effective on [*date 3 years after the effective date of final rule*], each supervised or nonsupervised lender or mortgagee approved under § 202.6 and § 202.7 and each investing lender and mortgagee approved under § 202.9 shall have a net worth of not less than $2,500,000, of which no less than 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

5. Revise § 202.6 to read as follows:

§ 202.6 Supervised lenders and mortgagees.

(a) *Definition.* A supervised lender or mortgagee is a financial institution that is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A supervised mortgagee may submit applications for mortgage insurance. A supervised lender or mortgagee may originate, purchase, hold, service or sell loans or insure mortgages, respectively.

(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, a supervised lender or mortgagee shall meet the following requirements:

(1) *Net worth.* The net worth requirements appear in § 202.5(n).

(2) *Notification.* A lender or mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

(3) *Fidelity bond.* A Title II mortgagee shall have fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or have alternative insurance coverage, approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

6. Revise § 202.8 to read as follows:

§ 202.8 Loan correspondents.

(a) *Definitions.*

Loan correspondent. A loan correspondent lender does not hold a Title I Contract of Insurance and may not purchase or hold loans but may be approved to originate Title I direct loans for sale or transfer to a sponsor or sponsors, as defined in this section, which holds a valid Title I Contract of Insurance and is not under suspension, subject to the sponsor determining that the loan correspondent has met the eligibility criteria of paragraph (b) this section.

Sponsor. (1) With respect to Title I programs, a sponsor is a lender that holds a valid Title I Contract of Insurance and meets the net worth requirement for the class of lender to which it belongs.

(2) With respect to Title II programs, a sponsor is a mortgagee that holds a valid origination approval agreement, is approved to participate in the Direct Endorsement program, and meets the net worth requirement for the class of mortgagee to which it belongs.

(b) *Eligibility to originate FHA insured loans.* A loan correspondent may originate FHA insured loans provided:

(1) The loan correspondent is working with and through an FHA-approved lender or mortgagee; and

(2) The loan correspondent or an officer, partner, director, principal, manager, supervisor, loan processor, or employee of the loan correspondent has not been subject to the sanctions or administrative actions listed in § 202.5, as determined and verified by the FHA-approved lender or mortgagee.

7. Revise § 202.11 to read as follows:

§ 202.11 Title I.

(a) *Types of administrative action.* In addition to termination of the Contract of Insurance, certain sanctions may be imposed under the Title I program. The administrative actions that may be applied are set forth in 24 CFR part 25. Civil money penalties may be imposed against Title I lenders and mortgagees pursuant to 24 CFR part 30.

(b) *Grounds for action.* Administrative actions shall be based upon both the grounds set forth in 24 CFR part 25 and as follows:

(1) Failure to properly supervise and monitor dealers under the provisions of part 201 of this title;

(2) Exhaustion of the general insurance reserve established under part 201 of this title;

(3) Maintenance of a Title I claims/loan ratio representing an unacceptable risk to the Department; or

(4) Transfer of a Title I loan to a party that does not have a valid Title I Contract of Insurance.

8. Revise § 202.12(a)(1) to read as follows:

§ 202.12 Title II.

(a) *Tiered pricing.* (1) *General requirements.* (i) *Prohibition against excess variation.* The customary lending practices of a mortgagee for its single family insured mortgages shall not provide for a variation in mortgage charge rates that exceeds two percentage points. A variation is determined as provided in paragraph (a)(6) of this section.

(ii) *Customary lending practices.* The customary lending practices of a mortgagee include all single family insured mortgages originated by the mortgagee, including those funded by the mortgagee or purchased from the originator if requirements of the mortgagee have the effect of leading to violation of this section by the originator.

(iii) *Basis for permissible variations.* Any variations in the mortgage charge rate up to two percentage points under the mortgagee's customary lending practices must be based on actual variations in fees or cost to the mortgagee to make the mortgage loan, which shall be determined after accounting for the value of servicing rights generated by making the loan and other income to the mortgagee related to the loan. Fees or costs must be fully documented for each specific loan.

* * * * *

Dated: November 12, 2009.

David H. Stevens,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. E9–28335 Filed 11–27–09; 8:45 am]

BILLING CODE 4210–67–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2004

[NARA–09–0005]

RIN 3095–AB34

National Industrial Security Program Directive No. 1

AGENCY: Information Security Oversight Office, NARA.

ACTION: Proposed rule.

SUMMARY: The Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA), is proposing to amend National Industrial Security Program Directive No. 1. This proposed amendment to Directive No. 1 provides guidance to agencies on release of certain classified information (referred to as ''proscribed information'') to contractors that are owned or under the control of a foreign interest and have had the foreign ownership or control mitigated by an arrangement known as a Special Security Agreement. Currently, there is no Federal standard across agencies on release of proscribed information to this group. The proposed amendment will provide standardization and consistency to the process across the Federal Government, and will enable greater efficiency in determining the release of the information as appropriate. This proposed amendment also moves the definitions section to the beginning of the part for easier use, and adds definitions for the terms ''Cognizant Security Office,'' ''National Interest Determination,'' and ''Proscribed Information,'' to accompany the new guidelines. Finally, this proposed amendment makes a minor typographical change to the authority citation to make it more accurate.

DATES: Submit comments on or before January 29, 2010.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include ''Attn: 3095–AB34'' and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration; Policy and Planning Office; *Attn:* Laura McCarthy, Room 4100, 8601 Adelphi Road, College Park, MD 20740.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: William J. Bosanko, Director, ISOO, at 202–357–5250.

SUPPLEMENTARY INFORMATION: As of November 17, 1995, ISOO became a part of NARA and subsequently published Part 2004, National Industrial Program Directive No. 1, pursuant to section 102(b)(1) of E.O. 12829, January 6, 1993 (58 FR 3479), as amended by E.O. 12885, December 14, 1993, (58 FR 65863). The Executive Order established a National Industrial Security Program (NISP) to safeguard Federal Government classified information released to contractors, licensees, and grantees (collectively referred to here as ''contractors'') of the United States Government. This amendment to Directive No. 1 proposes to add guidelines on release of proscribed information to this category of contractors.

ISOO maintains oversight over E.O. 12958, as amended, and policy oversight over E.O. 12829, as amended, and issuing this proposed amendment fulfills one of the ISOO Director's delegated responsibilities under these Executive Orders. Nothing in Directive No. 1 or this proposed amendment shall be construed to supersede the authority of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, *et seq.*), or the authority of the Director of National Intelligence under the National Security Act of 1947, as amended, E.O. 12333, December 8, 1981, and the Intelligence Reform and Terrorism Prevention Act of 2004.

The interpretive guidance contained in this proposed amendment will only assist agencies to implement E.O. 12829, as amended; users of Directive No. 1 shall refer concurrently to the Executive Order for guidance.

This proposed amendment is not a significant regulatory action for the purposes of E.O. 12866. The proposed amendment is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that the proposed amendment will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies.

List of Subjects in 32 CFR Part 2004

Classified information.

For the reasons stated in the preamble, NARA proposes to amend Title 32 of the Code of Federal Regulations, Part 2004, as follows:

PART 2004—NATIONAL INDUSTRIAL SECURITY PROGRAM DIRECTIVE NO. 1

1. Revise the authority citation for part 2004 to read as follows:

Authority: Executive Order 12829, January 6, 1993, 58 FR 3479, as amended by Executive Order 12885, December 14, 1993, 58 FR 65863.

2. Amend § 2004.22 by adding new paragraph (c) to read as follows:

§ 2004.22 Operational Responsibilities [202(a)]

* * * * *

(c) *National Interest Determinations (NIDs).* Executive branch departments and agencies shall make a National Interest Determination (NID) before authorizing contractors, cleared or in process for clearance under a Special Security Agreement (SSA), to have access to proscribed information. To make a NID, the agency shall assess whether release of the proscribed information is consistent with the national security interests of the United States.

(1) The requirement for a NID applies to new contracts, including pre-contract activities in which access to proscribed information is required, and to existing contracts when contractors are acquired by foreign interests and an SSA is the proposed foreign ownership, control, or influence mitigation method.

(i) If access to proscribed information is required to complete pre-contract award actions or to perform on a new contract, the Government Contracting Activity (GCA) shall determine if release of the information is consistent with national security interests.

(ii) For contractors that have existing contracts that require access to proscribed information, have been or are in the process of being acquired by foreign interests, and have proposed an SSA to mitigate foreign ownership, the Cognizant Security Office (CSO) shall notify the GCA of the need for a NID.

(iii) The GCA(s) shall determine, ordinarily within 30 days, per § 2004.22(c)(4)(i), or 60 days, per § 2004.22(c)(4)(ii), whether release of the proscribed information is consistent with national security interests.

(2) In accordance with 10 U.S.C. 2536, DoD and the Department of Energy (DOE) cannot award a contract involving access to proscribed information to a contractor effectively owned or controlled by a foreign government unless a waiver has been issued by the Secretary of Defense or Secretary of Energy.

(3) NIDs may be program-, project-, or contract-specific. For program and project NIDs, a separate NID is not required for each contract. The CSO may require the GCA to identify all contracts covered by the NID. NID decisions shall be made by officials as specified by CSA policy or as designated by the agency head.

(4) NID decisions shall ordinarily be made within 30 days.

(i) Where no interagency coordination is required because the department or agency owns or controls all of the proscribed information in question, the GCA shall provide a final documented decision to the applicable CSO, with a copy to the contractor, ordinarily within 30 days of the date of the request for the NID.

(ii) If the proscribed information is owned by, or under the control of, a department or agency other than the GCA (*e.g.,* National Security Agency (NSA) for Communications Security, the Office of the Director of National Intelligence (ODNI) for Sensitive Compartmented Information, and DOE for Restricted Data), the GCA shall provide written notice to that department or agency that its written concurrence is required. Such notice shall be provided within 30 days of being informed by the CSO of the requirement for a NID. The GCA shall ordinarily provide a final documented decision to the applicable CSO, with a copy to the contractor, within 60 days of the date of the request for the NID.

(iii) If the NID decision is not provided within 30 days, per § 2004.22(c)(4)(i), or 60 days, per § 2004.22(c)(4)(ii), the CSA shall intercede to request the GCA to provide a decision. In such instances, the CSO will provide the contractor with updates at 30-day intervals until the NID decision is made.

(5) The CSO shall not delay implementation of an SSA pending completion of a GCA's NID processing, provided there is no indication that a NID will be denied either by the GCA or the owner of the information (*i.e.,* NSA, DOE, or ODNI). However, the contractor shall not have access to additional proscribed information under a new contract until the GCA determines that the release of the information is consistent with national security interests and issues a NID.

(6) The CSO shall not upgrade an existing contractor clearance under an SSA to Top Secret unless an approved NID covering the prospective Top Secret access has been issued.

§ 2004.24 [Redesignated as § 2004.5]

3. Redesignate § 2004.24 as § 2004.5, and transfer newly designated § 2004.5 from subpart B to subpart A.

4. In newly designated § 2004.5, redesignate paragraph (b) as paragraph (c), and add new paragraphs (b), (d), and (e), to read as follows:

§ 2004.5 Definitions.

* * * * *

(b) ''Cognizant Security Office (CSO)'' means the organizational entity delegated by the Head of a CSA to administer industrial security on behalf of the CSA.

* * * * *

(d) ''National Interest Determination (NID)'' means a determination that access to proscribed information is consistent with the national security interests of the United States.

(e) ''Proscribed information'' means Top Secret; Communications Security, except classified keys used for data transfer; Restricted Data; Special Access Program; or Sensitive Compartmented Information.

Dated: November 23, 2009.

William J. Bosanko,

Director, Information Security Oversight Office.

David S. Ferriero,

Archivist of the United States.

[FR Doc. E9–28517 Filed 11–27–09; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–AL–0002; FRL–9086–3]

Approval and Promulgation of Implementation Plans: Alabama: Proposed Approval of Revisions to the Visible Emissions Rule and Alternative Proposed Disapproval of Revisions to the Visible Emissions Rule; Informational Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: The purpose of this notice is to inform the public that EPA has added a memorandum to the docket to explain the source of information for two exhibits that were provided in the original docket for the rulemaking entitled ''Proposed Approval of Revisions to the Visible Emissions Rule

and Alternative Proposed Disapproval of Revisions to the Visible Emissions Rule.'' The comment period for this proposed rulemaking was originally scheduled to close on November 16, 2009; however, EPA published a subsequent notice in the **Federal Register** extending the comment period for this proposed rulemaking to December 16, 2009 (74 FR 57978).

ADDRESSES: The hard copy docket is available at the U.S. Environmental Protection Agency, Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The electronic docket is available at *http://www.regulations.gov*. Refer to EPA docket number: ''EPA–R04–OAR–2005–AL–0002''.

FOR FURTHER INFORMATION CONTACT: Ms. Lynorae Benjamin, U.S. Environmental Protection Agency, Air, Pesticides and Toxics Management Division, Air Planning Branch; 61 Forsyth Street, SW.; Atlanta, Georgia 30303. Ms. Benjamin can be reached via e-mail at *Benjamin.lynorae@epa.gov* or phone at (404) 562–9040.

SUPPLEMENTARY INFORMATION: On October 2, 2009, EPA published the ''Proposed Approval of Revisions to the Visible Emissions Rule and Alternative Proposed Disapproval of Revisions to the Visible Emissions Rule,'' for a 45-day public comment period to November 16, 2009. During this 45-day public comment period, EPA received two requests for further information related to two exhibits provided in the docket for the proposed rulemaking. Specifically, the requesters asked for the source of data for the exhibits numbered: EPA–R04–OAR–2005–AL–0002–0045 & EPA–R04–OAR–2005–AL–0002–0047. As a result of these requests, EPA has prepared a memorandum which provides further information regarding the two aforementioned exhibits, and has placed this memorandum in the docket for this proposed rulemaking for the consideration of other reviewers.

Of further note is that EPA received 3 requests for an extension of the public comment period on the rulemaking entitled ''Proposed Approval of Revisions to the Visible Emissions Rule and Alternative Proposed Disapproval of Revisions to the Visible Emissions Rule.'' The comment period for this proposed rulemaking was originally scheduled to close on November 16, 2009; however, EPA published a subsequent notice in the **Federal Register** extending the comment period for this proposed rulemaking to December 16, 2009.

Dated: November 11, 2009.

J. Scott Gordon,

Acting Regional Administrator, Region 4.

[FR Doc. E9–28420 Filed 11–27–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–91411–01]

RIN 0648–XS43

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2010 and 2011 Harvest Specifications for Groundfish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2010 and 2011 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2010 and 2011 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received by December 30, 2009.

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–XS43, 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.

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Copies of the final 2008 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the Gulf of Alaska (GOA), dated November 2008, are available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, phone 907–271–2809, or from the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780, or Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

These proposed specifications are based in large part on the 2008 SAFE report (*see* **ADDRESSES**). In December 2009, the Council will consider the 2009 SAFE report to develop its recommendations for the final 2010 and 2011 acceptable biological catch (ABC) amounts and total allowable catch (TAC) limits. Anticipated changes in the final specifications from the proposed specifications are identified in this notice for public review.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the TACs for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs for target species and ''other species,'' halibut prohibited species catch (PSC) amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. The proposed specifications in Tables 1 through 18 of this document satisfy these requirements. For 2010 and 2011, the sum of the proposed TAC amounts is 284,688 mt. Under § 679.20(c)(3), NMFS will publish the final 2010 and 2011 specifications after (1) considering comments received within the comment period (*see* **DATES**), (2) consulting with the Council at its December 2009 meeting, and (3) considering information presented in the Final EIS (*see* **ADDRESSES**) and the final 2009 SAFE report prepared for the 2010 and 2011 groundfish fisheries.

Other Actions Potentially Affecting the 2010 and 2011 Harvest Specifications

The Council is developing an amendment to the FMP to comply with Magnuson-Stevens Act requirements associated with annual catch limits and accountability measures. That amendment may result in revisions to how total annual groundfish mortality is estimated and accounted for in the annual SAFE reports, which in turn may affect the overfishing levels (OFLs) and ABC amounts for certain groundfish species. NMFS will attempt to identify additional sources of mortality to groundfish stocks not currently reported or considered by the groundfish stock assessments in recommending OFL, ABC, and TAC for certain groundfish species. These additional sources of mortality may include recreational fishing, subsistence fishing, catch of groundfish during the NMFS trawl and hook-and-line surveys, catch taken under experimental fishing permits issued by NMFS, discarded catch of groundfish in the commercial halibut fisheries, use of groundfish as bait in the crab fisheries, or other sources of mortality not yet identified.

The Council also is considering a proposal that would allocate the Western and Central Gulf of Alaska Pacific cod TACs among the trawl, pot, hook-and-line, and jig catcher vessel and catcher processor sectors. Sector allocations may provide stability to long-term participants in the fishery by reducing competition among sectors for access to the GOA Pacific cod resource.

These changes will not be in effect until 2011 at the earliest, which could affect the 2011 OFLs, ABCs, and TACs included in this action.

Proposed ABC and TAC Specifications

In October 2009, the Council, the Scientific and Statistical Committee (SSC), and the Advisory Panel (AP), reviewed current biological and harvest information about the condition of groundfish stocks in the GOA. This information was initially compiled by the GOA Groundfish Plan Team (Plan Team) and was presented in the final 2008 SAFE report for the GOA groundfish fisheries, dated November 2008 (*see* **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The Plan Team will update the 2008 SAFE report to include new information collected during 2009. The Plan Team will provide revised stock assessments in November 2009 in the final 2009 SAFE report. The Council will review the 2009 SAFE report in December 2009. The final 2010 and 2011 harvest specifications may be adjusted from the proposed harvest specifications based on the 2009 SAFE report.

The proposed ABCs and TACs are based on the best available biological and socioeconomic data, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used to compute ABCs and OFLs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers with tier one representing the highest level of information quality available and tier six representing the lowest level of information quality available.

The SSC adopted the proposed 2010 and 2011 OFLs and ABCs recommended by the Plan Team for all groundfish species. These proposed amounts are unchanged from the final 2010 harvest specifications published in the **Federal Register** on February 17, 2009 (74 FR 7333). The AP and the Council recommendations for the proposed 2010 and 2011 OFL, ABC, and TAC amounts are also based on the final 2010 harvest specifications published in the **Federal Register** on February 17, 2009 (74 FR 7333). For 2010 and 2011, the Council recommended and NMFS proposes the OFLs and ABCs listed in Table 1. The proposed ABCs reflect harvest amounts that are less than the specified overfishing amounts. The sum of the proposed 2010 and 2011 ABCs for all assessed groundfish is 562,762 mt, which is higher than the final 2009 ABC total of 516,055 mt (74 FR 7333, February 17, 2009).

Specification and Apportionment of TAC Amounts

The Council recommended proposed TACs for 2010 and 2011 that are equal to proposed ABCs for pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and skates. The Council recommended proposed TACs for 2010 and 2011 that are less than the proposed ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, other rockfish, Atka mackerel, and the ''other species'' category.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is apportioned among Statistical Areas 610, 620, and 630, as well as equally among each of the following four seasons: the A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (50 CFR 679.23(d)(2)(i) through (iv), and 679.20(a)(5)(iv)(A), (B)).

As in 2009, the SSC and Council recommended that the method of apportioning the sablefish ABC among management areas in 2010 and 2011 include commercial fishery and survey data. NMFS stock assessment scientists believe that unbiased commercial fishery catch-per-unit-effort data are useful for stock distribution assessments. NMFS annually evaluates the use of commercial fishery data to ensure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern Regulatory Area; the SEO District, together with the

West Yakutat District (WYK), comprise the Eastern Regulatory Area. Separate sablefish TACs are specified for each district. The Council continued to recommend that five percent of the combined Eastern Regulatory Area TAC be apportioned to trawl gear for use as incidental catch in other directed groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)).

The AP, SSC, and Council recommended apportionment of the ABC for Pacific cod in the GOA among regulatory areas based on the three most recent NMFS summer trawl surveys. The proposed 2010 and 2011 Pacific cod TACs are affected by the State of Alaska's (State) fishery for Pacific cod in State waters in the Western and Central Regulatory Areas, as well as in Prince William Sound. The Plan Team, SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. Accordingly, the Council recommended reducing the proposed 2010 and 2011 Pacific cod TACs from the proposed ABCs in the Western and Central Regulatory Areas to account for State guideline harvest levels. Therefore, the proposed 2010 and 2011 Pacific cod TACs are less than the proposed ABCs by the following amounts: (1) Eastern GOA, 318 mt; (2) Central GOA, 11,329 mt; and (3) Western GOA, 7,751 mt. These amounts reflect the sum of the State's 2010 and 2011 guideline harvest levels in these areas, which are 10 percent, 25 percent, and 25 percent of the Eastern, Central, and Western GOA proposed ABCs, respectively.

NMFS also is proposing seasonal apportionments of the annual Pacific cod TACs in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot, or jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, or jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (50 CFR 679.23(d)(3) and 679.20(a)(12)).

As in 2009, NMFS proposes to establish for 2010 and 2011 an A season directed fishing allowance for the Pacific cod fisheries in the GOA based on the management area TACs minus the recent average A season incidental catch of Pacific cod in each management area before June 10 (§ 679.20(d)(1)). The directed fishing allowance and incidental catch before June 10 will be managed such that total catch in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to be taken from the B season TAC. This action meets the intent of the Steller sea lion protection measures by achieving temporal dispersion of the Pacific cod removals and reducing the likelihood of catch exceeding 60 percent of the annual TAC in the A season (January 1 through June 10) (69 FR 75865, December 20, 2004).

The sum of the proposed TACs for all GOA groundfish is 284,688 mt for 2010 and 2011, which is within the OY range specified by the FMP. The sum of the proposed 2010 TACs and the sum of the proposed 2011 TACs are each higher than the sum of the 2009 TACs of 242,727 mt, but are unchanged from the 2010 TACs currently specified for the GOA groundfish fisheries (74 FR 7333, February 17, 2009).

Table 1 lists the proposed 2010 and 2011 ABCs, TACs, and OFLs of groundfish. These amounts are consistent with the biological condition of groundfish stocks as described in the 2008 SAFE report, and adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range. These proposed amounts are subject to change pending the completion of the 2009 SAFE report and the Council's recommendations for the final 2010 and 2011 harvest specifications during its December 2009 meeting.

TABLE 1—PROPOSED 2010 AND 2011 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
Pollock [2]	Shumagin (610)	24,199	24,199	n/a
	Chirikof (620)	22,374	22,374	n/a
	Kodiak (630)	17,548	17,548	n/a
	WYK (640)	1,929	1,929	n/a
	W/C/WYK (subtotal)	66,050	66,050	90,920
	SEO (650)	8,280	8,280	11,040
	Total	74,330	74,330	101,960
Pacific cod [3]	W	31,005	23,254	n/a
	C	45,315	33,986	n/a
	E	3,180	2,862	n/a
	Total	79,500	60,102	126,000
Sablefish [4]	W	1,523	1,523	n/a
	C	4,625	4,625	n/a
	WYK	1,645	1,645	n/a
	SEO	2,544	2,544	n/a
	E (WYK and SEO) (subtotal)	4,189	4,189	n/a
	Total	10,337	10,337	12,321
Shallow-water flatfish [5]	W	26,360	4,500	n/a
	C	29,873	13,000	n/a
	WYK	3,333	3,333	n/a
	SEO	1,423	1,423	n/a
	Total	60,989	22,256	74,364
Deep-water flatfish [6]	W	747	747	n/a
	C	7,405	7,405	n/a
	WYK	1,066	1,066	n/a
	SEO	575	575	n/a
	Total	9,793	9,793	12,367

TABLE 1—PROPOSED 2010 AND 2011 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
Rex sole	W	988	988	n/a
	C	6,506	6,506	n/a
	WYK	503	503	n/a
	SEO	830	830	n/a
	Total	8,827	8,827	11,535
Arrowtooth flounder	W	29,843	8,000	n/a
	C	162,591	30,000	n/a
	WYK	14,757	2,500	n/a
	SEO	12,082	2,500	n/a
	Total	219,273	43,000	258,397
Flathead sole	W	13,342	2,000	n/a
	C	30,021	5,000	n/a
	WYK	3,622	3,622	n/a
	SEO	667	667	n/a
	Total	47,652	11,289	59,349
Pacific ocean perch [7]	W	3,710	3,710	4,405
	C	8,239	8,239	9,782
	WYK	1,107	1,107	n/a
	SEO	2,042	2,042	n/a
	E (WYK and SEO) (subtotal)	3,149	3,149	3,738
	Total	15,098	15,098	17,925
Northern rockfish [8,9]	W	1,965	1,965	n/a
	C	2,208	2,208	n/a
	E	0	0	n/a
	Total	4,173	4,173	4,979
Rougheye rockfish [10]	W	126	126	n/a
	C	842	842	n/a
	E	329	329	n/a
	Total	1,297	1,297	1,562
Shortraker rockfish [11]	W	120	120	n/a
	C	315	315	n/a
	E	463	463	n/a
	Total	898	898	1,197
Other rockfish [9,12]	W	357	357	n/a
	C	569	569	n/a
	WYK	604	604	n/a
	SEO	2,767	200	n/a
	Total	4,297	1,730	5,624
Pelagic shelf rockfish [13]	W	765	765	n/a
	C	3,179	3,179	n/a
	WYK	219	219	n/a
	SEO	302	302	n/a
	Total	4,465	4,465	5,420
Demersal shelf rockfish [14]	SEO	362	362	580
Thornyhead rockfish	W	267	267	n/a
	C	860	860	n/a
	E	783	783	n/a
	Total	1,910	1,910	2,540
Atka mackerel	GW	4,700	2,000	6,200
Big skate [15]	W	632	632	n/a
	C	2,065	2,065	n/a
	E	633	633	n/a
	Total	3,330	3,330	4,439
Longnose skate [16]	W	78	78	n/a
	C	2,041	2,041	n/a
	E	768	768	n/a
	Total	2,887	2,887	3,849
Other skates [17]	GW	2,104	2,104	2,806
Other species [18]	GW	6,540	4,500	8,720
Total		562,762	284,688	722,134

[1] Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 32%, 43%, and 25% in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 32%, 54%, and 14% in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 43%, 21%, and 35% in Statistical Areas 610, 620, and 630, respectively. Table 4 lists the proposed 2010 and 2011 pollock seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60% to the A season and 40% to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90% for processing by the inshore component and 10% for processing by the offshore component. Table 5 lists the proposed 2010 and 2011 Pacific cod seasonal apportionments.

[4] Sablefish is allocated to trawl and hook-and-line gears for 2010 and to trawl gear in 2011. Tables 2 and 3 list the proposed 2010 and 2011 sablefish TACs.

[5] ''Shallow-water flatfish'' means flatfish not including ''deep-water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[6] ''Deep-water flatfish'' means Dover sole, Greenland turbot, and deepsea sole.

[7] ''Pacific ocean perch'' means *Sebastes alutus.*

[8] ''Northern rockfish'' means *Sebastes polyspinous*.

[9] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinous.*

[10] ''Rougheye rockfish'' means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

[11] ''Shortraker rockfish'' means *Sebastes borealis.*

[12] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the SEO District means slope rockfish.

[13] ''Pelagic shelf rockfish'' means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[15] ''Big skate'' means *Raja binoculata.*

[16] ''Longnose skate'' means *Raja rhina.*

[17] ''Other skates'' means *Bathyraja spp.*

[18] ''Other species'' means sculpins, sharks, squid, and octopus.

Proposed Apportionment of Reserves

Section 679.20(b)(2) requires that 20 percent of each TAC for pollock, Pacific cod, flatfish, and the ''other species'' category be set aside in reserves for possible apportionment at a later date during the fishing year. In 2009, NMFS apportioned all the reserves in the final harvest specifications (74 FR 7340, February 17, 2009). For 2010 and 2011, NMFS proposes to reapportion all the reserves for pollock, Pacific cod, flatfish, and ''other species.'' Table 1 reflects the proposed apportionment of reserve amounts for these species and species groups.

Proposed Allocations of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Sections 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern GOA may only be used to support incidental catch of sablefish in directed fisheries for other target species (§ 679.20(a)(4)(i)). In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS proposes the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District and the allocation of the remainder of the WYK sablefish TAC be available to vessels using hook-and-line gear. As a result, NMFS proposes to allocate 100 percent of the sablefish TAC in the SEO District to vessels using hook-and-line gear. This recommendation results in a proposed 2010 allocation of 209 mt to trawl gear and 3,960 mt to hook-and-line gear. Table 2 lists the allocations of the proposed 2010 sablefish TACs to hook-and-line and trawl gear. Table 3 lists the allocations of the proposed 2011 sablefish TACs to trawl gear. The Council recommended that only a trawl sablefish TAC be established for two years so that incidental catch of sablefish by trawl gear could commence in January in the second year of the harvest specifications. However, since there is an annual assessment for sablefish and the final annual specifications are expected to be published before the Individual Fishing Quota (IFQ) season begins, typically early March, the industry and Council recommended that the sablefish TAC for the IFQ season be set on an annual basis so that the best and most recent scientific information could be considered in recommending the ABCs and TACs. Since sablefish is on bycatch status for trawl gear from January 1, it is not likely that the sablefish allocation to trawl gear would be reached prior to the effective date of the final harvest specifications.

TABLE 2—PROPOSED 2010 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO HOOK-AND-LINE AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/District	TAC	Hook-and-line allocation	Trawl allocation
Western	1,523	1,218	305
Central	4,625	3,700	925
West Yakutat [1]	1,645	1,436	209
Southeast Outside	2,544	2,544	0

TABLE 2—PROPOSED 2010 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO HOOK-AND-LINE AND TRAWL GEAR—Continued

[Values are rounded to the nearest metric ton]

Area/District	TAC	Hook-and-line allocation	Trawl allocation
Total	10,337	8,898	1,439

[1] Represents an allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District.

TABLE 3—PROPOSED 2011 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATION TO TRAWL GEAR [1]

[Values are rounded to the nearest metric ton]

Area/District	TAC	Hook-and-line allocation	Trawl allocation
Western	1,523	n/a	305
Central	4,625	n/a	925
West Yakutat [2]	1,645	n/a	209
Southeast Outside	2,544	n/a	0
Total	10,337	n/a	1,439

[1] The Council recommended that harvest specifications for the hook-and-line gear sablefish Individual Fishing Quota fisheries be limited to 1 year.

[2] Represents an allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District.

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further divided between inshore and offshore processing components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through March 10, March 10 through May 31, August 25 through October 1, and October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among statistical areas 610, 620, and 630, pursuant to § 679.20(a)(5)(iv)(A). In the A and B seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS winter surveys. In the C and D seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS summer surveys. For 2010 and 2011, the Council recommends, and NMFS proposes, averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season. The average is intended to reflect the distribution of pollock as indicated by the historic performance of the fishery during the A season. Within any fishing year, the amount by which a seasonal allowance is underharvested or overharvested may be added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B). The rollover amount is limited to 20 percent of the unharvested seasonal apportionment for the statistical area. Any unharvested pollock above the 20 percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iv)(B)). The proposed pollock TACs in the WYK of 1,929 mt and SEO District of 8,280 mt for 2010 and 2011 are not allocated by season.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all regulatory areas (and for each associated seasonal allowance) to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Pursuant to § 679.20(a)(6)(i), the amount of pollock available for vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

Table 4 lists the proposed 2010 and 2011 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown.

TABLE 4—PROPOSED 2010 AND 2011 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; 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)	5,132 (32.01%)	6,927 (43.21%)	3,972 (24.78%)	16,031 (100%)
B (Mar 10–May 31)	5,131 (32.01%)	8,591 (53.59%)	2,308 (14.40%)	16,030 (100%)
C (Aug 25–Oct 1)	6,968 (43.47%)	3,428 (21.38%)	5,634 (35.15%)	16,030 (100%)
D (Oct 1–Nov1)	6,968 (43.47%)	3,428 (21.38%)	5,634 (35.15%)	16,030 (100%)
Annual Total	24,199	22,374	17,548	64,121

[1] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot, and jig gear, the A season is January 1 through June 10, and the B season is September 1 through December 31 (§ 679.23(d)(3)(i)). For trawl gear, the A season is January 20 through June 10, and the B season is September 1 through November 1 (§ 679.23(d)(3)(ii)). After subtraction of an incidental catch allowance, 60 percent and 40 percent of the remaining annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components, as provided in § 679.20(a)(6)(ii). Between the A and the B seasons, directed fishing for Pacific cod is closed, and fishermen participating in other directed fisheries must retain Pacific cod up to the maximum retainable amounts allowed under § 679.20(e) and (f). Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod allowance from the A season may be subtracted from or added to the subsequent B season allowance by the Regional Administrator.

Section 679.20(a)(6)(ii) requires the allocation of the Pacific cod TAC apportionment in all regulatory areas between vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. Table 5 lists the proposed 2010 and 2011 seasonal apportionments and allocations of the Pacific cod TAC amounts.

TABLE 5—PROPOSED 2010 AND 2011 SEASONAL APPORTIONMENTS AND ALLOCATIONS OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA AND 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	23,254	20,929	2,325
	A season (60%)	13,952	12,557	1,395
	B season (40%)	9,302	8,371	930
Central	Annual	33,986	30,587	3,399
	A season (60%)	20,392	18,352	2,039
	B season (40%)	13,594	12,235	1,359
Eastern	Annual	2,862	2,576	286
	Total	60,102	54,092	6,010

Proposed Apportionments to the Central GOA Rockfish Program

Section 679.81(a)(1) and (2) requires the allocation of the primary rockfish species TACs in the Central Regulatory Area, after deducting incidental catch needs in other directed groundfish fisheries, to participants in the Central GOA Rockfish Program (Rockfish Program). Five percent (2.5 percent to trawl gear and 2.5 percent to fixed gear) of the remaining proposed TACs for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish in the Central Regulatory Area are allocated to the entry level rockfish fishery and 95 percent of the remaining TAC for those primary rockfish species to those vessels eligible to participate in the Rockfish Program. NMFS proposes 2010 and 2011 incidental catch amounts of 100 mt for northern rockfish, 100 mt for pelagic shelf rockfish, and 500 mt for Pacific ocean perch for other directed groundfish fisheries in the Central Regulatory Area. These proposed amounts are based on recent average incidental catch in the Central Regulatory Area by other groundfish fisheries.

Section 679.83(a)(1)(i) requires that allocations to the trawl entry level fishery must be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish must be allocated to trawl catcher vessels. Allocations of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish to longline gear vessels must be made after the allocations to trawl gear.

Table 6 lists the proposed 2010 and 2011 allocations of rockfish in the Central GOA to trawl and longline gear in the entry level rockfish fishery. Allocations of primary rockfish species TACs among participants in the Rockfish Program are not included in the proposed harvest specifications because applications for catcher/processor and catcher vessel cooperatives are due to NMFS on March 1 of each calendar year, thereby preventing NMFS from calculating proposed 2010 allocations. NMFS will post these allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm* when they become available in March 2010.

TABLE 6—PROPOSED 2010 AND 2011 ALLOCATIONS OF ROCKFISH IN THE CENTRAL GULF OF ALASKA TO TRAWL AND LONGLINE GEAR [1] IN THE ENTRY LEVEL ROCKFISH FISHERY

[Values are rounded to the nearest mt]

Species	Proposed TAC	Incidental catch allowance	TAC minus ICA	5% TAC	2.5% TAC	Entry level trawl allocation	Entry level longline allocation
Pacific ocean perch	8,239	500	7,739	387	193	323	64
Northern rockfish	2,208	100	2,108	105	53	0	105
Pelagic shelf rockfish	3,179	100	3,079	154	77	0	154
Total	13,626	700	12,926	646	323	323	323

[1] Longline gear includes jig and hook-and-line gear.

Proposed Halibut Prohibited Species Catch (PSC) Limits

Section 679.21(d) establishes annual halibut PSC limit apportionments to trawl and hook-and-line gear and permits the establishment of apportionments for pot gear. In October 2009, the Council recommended that NMFS maintain the 2009 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries for 2010 and 2011. Ten mt of the hook-and-line limit is further allocated to the demersal shelf rockfish (DSR) fishery in the SEO District. The DSR fishery is defined at § 679.21(d)(4)(iii)(A). This fishery has been apportioned 10 mt in recognition of its small scale harvests. Most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall making them exempt from observer coverage. Therefore, observer data are not available to verify actual bycatch amounts. NMFS assumes the halibut bycatch in the DSR fishery is low because of the short soak times for the gear and short duration of the fishery. Also, the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut. Finally, much of the DSR TAC is not available to the commercial DSR fishery. The Alaska Department of Fish and Game sets the quota for the commercial DSR fishery after estimates of incidental catch in all fisheries (including halibut) and anticipated recreational harvest have been deducted from the DSR TAC. Of the 362 mt TAC for DSR in 2009, 115 mt were available for the commercial fishery, of which 76 mt were harvested.

Section 679.21(d)(4) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from the non-trawl halibut PSC limit for 2010 and 2011. The Council and NMFS recommend these exemptions because (1) the pot gear fisheries have low halibut bycatch mortality averaging 19 mt annually from 2001 through 2008 (and 7 mt in 2009 through 11/7/2009); (2) the halibut and sablefish IFQ fisheries have low halibut bycatch mortality because the IFQ program requires retention of legal-sized halibut by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ; and (3) halibut mortality for the jig gear fisheries is assumed to be negligible. Halibut mortality is assumed to be negligible in the jig gear fisheries given the low amount of groundfish harvested by jig gear averaging 268 mt annually from 2001 through 2008 (and 208 mt through 10/3/2009), the selective nature of jig gear, and the likelihood of high survival rates of halibut caught and released by jig gear.

Section 679.21(d)(5) provides NMFS the authority to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final 2009 and 2010 harvest specifications (74 FR 7333, February 17, 2009) summarized the Council's and NMFS's findings with respect to each of these FMP considerations. The Council's and NMFS's findings for 2010 and 2011 are unchanged from 2009. Table 7 lists the proposed 2010 and 2011 Pacific halibut PSC limits, allowances, and apportionments. Section 679.21(d)(5)(iii) and (iv), respectively, specify that any underages or overages of a seasonal apportionment of a PSC limit will be added to or removed from the next respective seasonal apportionment within the fishing year.

TABLE 7—PROPOSED 2010 AND 2011 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear			Hook-and-line gear[1]				
			Other than DSR			DSR	
Season	Percent	Amount	Season	Percent	Amount	Season	Amount
January 20–April 1	27.5%	550	January 1–June 10	86%	250	January 1–December 31	10
April 1–July 1	20%	400	June 10–September 1	2%	5		
July 1–September 1	30%	600	September 1–December 31.	12%	35		
September 1–October 1	7.5%	150					
October 1–December 31	15%	300					
Total		2,000			290		10

[1] The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories. The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are (1) a deep-water species category, comprised of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species category, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species'' (§ 679.21(d)(3)(iii)). Table 8 lists the proposed 2010 and 2011 seasonal apportionments of Pacific halibut PSC trawl limits as apportioned between the deep-water and shallow-water species categories. Based on public comment and information contained in the final 2009 SAFE report, the Council may recommend or NMFS may make changes to the seasonal, gear-type, or fishery category apportionments of halibut PSC limits for the final 2010 and 2011 harvest specifications.

TABLE 8—PROPOSED 2010 AND 2011 SEASONAL APPORTIONMENTS OF THE PACIFIC HALIBUT PSC LIMIT APPORTIONED BETWEEN THE TRAWL GEAR SHALLOW-WATER SPECIES AND DEEP-WATER SPECIES CATEGORIES

[Values are in metric tons]

Season	Shallow-water	Deep-water[1]	Total
January 20–April 1	450	100	550
April 1–July 1	100	300	400
July 1–September 1	200	400	600
September 1–October 1	150	Any remainder	150
Subtotal January 20–October 1	900	800	1,700
October 1–December 31[2]			300
Total			2,000

[1] Vessels participating in cooperatives in the Central Gulf of Alaska Rockfish Program will receive a portion of the third season (July 1–September 1) deep-water category halibut PSC apportionment. At this time, this amount is not known but will be posted later on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when it becomes available.

[2] There is no apportionment between shallow-water and deep-water trawl fishery categories during the fifth season (October 1 through December 31).

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2009. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gears through November 7, 2009, is 1,797 mt, 266 mt, and 7 mt, respectively, for a total halibut mortality of 2,070 mt. Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2009 fishing year. Table 9 displays the closure dates for fisheries that resulted from the attainment of seasonal or annual halibut PSC limits. The amount of groundfish that trawl gear might have harvested if halibut PSC limits had not restricted some 2009 GOA groundfish fisheries is unknown.

TABLE 9—FISHERY CLOSURES DUE TO ATTAINMENT OF PACIFIC HALIBUT PSC LIMITS

Fishery category	Opening date	Closure date	**Federal Register** citation
Trawl Deep-water, season 1	January 20, 2009	March 3, 2009	74 FR 9964, March 9, 2009
Trawl Deep-water, season 2	April 1, 2009	April 23, 2009	74 FR 19459, April 29, 2009
Trawl Shallow-water, season 4	September 1, 2009	September 2, 2009	74 FR 45378, September 2, 2009

[1] With the exception of vessels participating in the Central GOA Rockfish Program.

Expected Changes in Groundfish Stocks and Catch

Proposed 2010 and 2011 ABCs for pollock, Pacific cod, deep-water flatfish, and flathead sole are higher than those established for 2009, while the proposed 2010 and 2011 ABCs for arrowtooth flounder, rex sole, sablefish, Pacific ocean perch, northern rockfish, and pelagic shelf rockfish are lower than those established for 2009. For the remaining target species, the Council recommended that ABC levels remain unchanged from 2009. More information on these changes is included in the 2008 SAFE report (*see* **ADDRESSES**) and will be updated with the 2009 SAFE report, which will be available for Council approval at its December 2009 meeting.

In the GOA, the total proposed 2010 and 2011 TAC amounts are 284,688 mt, an increase of 17 percent from the 2009 TAC total of 242,727 mt. Table 10 compares the final 2009 TACs to the proposed 2010 and 2011 TACs.

TABLE 10—COMPARISON OF FINAL 2009 AND PROPOSED 2010 AND 2011 TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GULF OF ALASKA

[Values are in metric tons]

Species	Final 2009 TACs	Proposed 2010 and 2011 TACs
Pollock	49,900	74,330
Pacific cod	41,807	60,102
Sablefish	11,160	10,337
Shallow water flatfish	22,256	22,256
Deep-water flatfish	9,168	9,793
Rex sole	8,996	8,827
Arrowtooth flounder	43,000	43,000
Flathead sole	11,181	11,289
Pacific ocean perch	15,111	15,098
Northern rockfish	4,362	4,173
Rougheye rockfish	1,284	1,297
Shortraker rockfish	898	898
Other rockfish	1,730	1,730
Pelagic shelf rockfish	4,781	4,465
Demersal shelf rockfish	362	362
Thornyhead rockfish	1,910	1,910
Atka mackerel	2,000	2,000
Big skates	3,330	3,330
Longnose skates	2,887	2,887
Other skates	2,104	2,104
Other species	4,500	4,500
Total	242,727	284,688

Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was developed by the International Pacific Halibut Commission (IPHC) staff in December 2008 for the 2009 commercial fishery; this assessment was considered by the IPHC at its annual January 2009 meeting. Information from ongoing passive integrated transponder (PIT) tag recoveries, as well as inconsistencies in the traditional closed-area stock assessments for some areas, has prompted the IPHC to reexamine the stock assessment framework and corresponding harvest policy. Historically, the IPHC assumed that once the halibut reached legal commercial size there was little movement between regulatory areas. More recently, PIT tag recoveries indicate greater movement between regulatory areas than previously believed. In response to this new information, IPHC staff developed a coast-wide assessment based on a single stock. Based on the updated assessment, the IPHC recommends a coast-wide harvest rate of 20 percent of the exploitable biomass overall, but a lower harvest rate of 15 percent for Areas 4B, 4C, 4D, and 4E. The current estimate of coast-wide (United States and Canada) exploitable biomass for 2009 is 147,419 mt, down from 163,749 mt estimated for 2008. Virtually all the decrease is due to lower survey and commercial catch rates of legal-sized halibut. Projections based on the currently estimated age compositions suggest that the exploitable and female spawning biomass will increase over the next several years as a sequence of strong year classes recruit to the legal-sized component of the population. The female spawning biomass is estimated to be 14,288 mt for 2009, an increase of 3 percent from 2008, and approximately 35 percent of the estimated unfished spawning biomass of 398,258 mt.

The halibut resource is fully utilized. Recent catches, over the last 15 years (1994 through 2008) in the commercial halibut fisheries in Alaska have averaged 33,338 mt round weight. In January 2009, the IPHC approved Alaska commercial catch limits totaling 27,518 mt round weight for 2009, a 9-percent decrease from 30,349 mt in 2008. Through November 12, 2009, commercial hook-and-line harvests of halibut off Alaska totaled 21,966 mt round weight.

Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2008 Pacific halibut stock assessment (December 2008), available on the IPHC Web site at *http://www.iphc.washington.edu.* The IPHC considered the 2008 Pacific halibut assessment for 2009 at its January 2009 annual meeting when the IPHC set the 2009 commercial halibut fishery quotas. The IPHC will consider the 2009 Pacific halibut assessment for 2010 at its January 2010 annual meeting when it sets the 2010 commercial halibut fishery quotas.

Other Factors

The IPHC will adjust the allowable commercial catch of halibut to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 2010 and 2011 groundfish

fisheries are expected to use the entire proposed annual halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by first accounting for recreational and subsistence catch, waste, and bycatch mortality, and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks. Methods available for reducing halibut bycatch include (1) publication of individual vessel bycatch rates on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* (2) modifications to gear, (3) changes in groundfish fishing seasons, (4) individual transferable quota programs, and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish forgone.

The definition of ''Authorized fishing gear'' at § 679.2 specifies requirements for biodegradable panels and tunnel openings for groundfish pots to reduce halibut bycatch. Under this definition, groundfish pots must comply with gear specification requirements (§ 679.2(15)). Compliance with these requirements reduce halibut bycatch and mortality rates in groundfish pot fisheries. As a result, pot gear exemptions from PSC limits are justified.

The definitions at § 679.2 for ''Authorized fishing gear,'' defines ''pelagic trawl gear'' in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year (§ 679.2(14)). The definition provides standards for physical conformation and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby lowering overall halibut bycatch mortality in the groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS proposes the Council's recommendation that the halibut DMRs developed and recommended by the IPHC for the 2009 GOA groundfish fisheries be used for monitoring the proposed 2010 and 2011 halibut bycatch allowances (*see* Table 11). The IPHC developed the DMRs for the 2009 GOA groundfish fisheries using the 10-year mean DMRs for those fisheries. Long-term average DMRs were not available for some fisheries, so rates from the most recent years were used. For the ''other species'' and skate fisheries, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A copy of the document justifying these DMRs is available from the Council (*see* **ADDRESSES**) and the DMRs are discussed in the Economic Status Report of the final 2008 SAFE report, dated November 2008. Table 11 lists the proposed 2010 and 2011 DMRs.

The proposed DMRs listed in Table 11 are subject to change pending the results of an updated analysis on halibut DMRs in the groundfish fisheries that IPHC staff is scheduled to present to the Council at its December 2009 meeting.

TABLE 11—PROPOSED 2010 AND 2011 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Values are oercent of halibut assumed to be dead]

Gear	Target fishery	Mortality rate (%)
Hook-and-line	Other species	14
	Skates	14
	Pacific cod	14
	Rockfish	10
Trawl	Arrowtooth flounder	69
	Atka mackerel	60
	Deep-water flatfish	53
	Flathead sole	61
	Non-pelagic pollock	59
	Other species	63
	Skates	63
	Pacific cod	63
	Pelagic pollock	76
	Rex sole	63
	Rockfish	67
	Sablefish	65
	Shallow-water flatfish	71
Pot	Other species	16
	Skates	16
	Pacific cod	16

American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel Groundfish Harvest and PSC Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limits on AFA catcher/processors and catcher vessels in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from expansion in their fisheries by those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA catcher/processors from harvesting any species of fish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA catcher/processors from processing any pollock in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA catcher vessels that are less than 125 ft (38.1 m) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands less than 5,100 mt, and have made at least 40 GOA groundfish landings from 1995 through 1997 are exempt from GOA sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA catcher vessels operating in the GOA are based on their traditional harvest levels in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iii) establishes the GOA groundfish sideboard limits based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period. Table 12 lists the proposed 2010 and 2011 groundfish sideboard limits for non-exempt AFA catcher vessels. All targeted or incidental catch of sideboard species made by non-exempt AFA catcher vessels will be deducted from the sideboard limits in Table 12.

TABLE 12—PROPOSED 2010 AND 2011 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Proposed 2010 and 2011 TACs	Proposed 2010 and 2011 non-exempt AFA CV sideboard limit
Pollock	A Season: January 20–March 10.	Shumagin (610)	0.6047	5,132	3,103
		Chirikof (620)	0.1167	6,927	808
		Kodiak (630)	0.2028	3,972	806
	B Season: March 10–May 31	Shumagin (610)	0.6047	5,131	3,103
		Chirikof (620)	0.1167	8,591	1,003
		Kodiak (630)	0.2028	2,308	468
	C Season: August 25–October 1.	Shumagin (610)	0.6047	6,968	4,214
		Chirikof (620)	0.1167	3,428	400
		Kodiak (630)	0.2028	5,634	1,143
	D Season: October 1–November 1.	Shumagin (610)	0.6047	6,968	4,214
		Chirikof (620)	0.1167	3,428	400
		Kodiak (630)	0.2028	5,634	1,143
	Annual	WYK (640)	0.3495	1,929	674
		SEO (650)	0.3495	8,280	2,894
Pacific cod	A Season [1]: January 1–June 10.	W inshore	0.1365	12,557	1,714
		W offshore	0.1026	1,395	143
		C inshore	0.0689	18,352	1,264
		C offshore	0.0721	2,039	147
	B Season [2]: September 1–December 31.	W inshore	0.1365	8,371	1,143
		W offshore	0.1026	930	95
		C inshore	0.0689	12,235	843
		C offshore	0.0721	1,359	98
	Annual	E inshore	0.0079	2,576	20
		E offshore	0.0078	286	2
Sablefish	Annual, trawl gear	W	0.0000	305	0
		C	0.0642	925	59
		E	0.0433	209	9
Flatfish, shallow-water	Annual	W	0.0156	4,500	70
		C	0.0587	13,000	763
		E	0.0126	4,756	60
Flatfish, deep-water	Annual	W	0.0000	747	0
		C	0.0647	7,405	479

TABLE 12—PROPOSED 2010 AND 2011 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Proposed 2010 and 2011 TACs	Proposed 2010 and 2011 non-exempt AFA CV sideboard limit
		E	0.0128	1,641	21
Rex sole	Annual	W	0.0007	988	1
		C	0.0384	6,506	250
		E	0.0029	1,333	4
Arrowtooth flounder	Annual	W	0.0021	8,000	17
		C	0.0280	30,000	840
		E	0.0002	5,000	1
Flathead sole	Annual	W	0.0036	2,000	7
		C	0.0213	5,000	107
		E	0.0009	4,289	4
Pacific ocean perch	Annual	W	0.0023	3,710	9
		C	0.0748	8,239	616
		E	0.0466	3,149	147
Northern rockfish	Annual	W	0.0003	1,965	1
		C	0.0277	2,208	61
Rougheye rockfish	Annual	W	0.0000	126	0
		C	0.0237	842	20
		E	0.0124	329	4
Shortraker rockfish	Annual	W	0.0000	120	0
		C	0.0218	315	7
		E	0.0110	463	5
Other rockfish	Annual	W	0.0034	357	1
		C	0.1699	569	97
Pelagic shelf rockfish	Annual	E	0.0000	804	0
		W	0.0001	765	0
		C	0.0000	3,179	0
		E	0.0067	521	3
Demersal shelf rockfish	Annual	SEO	0.0020	362	1
Thornyhead rockfish	Annual	W	0.0280	267	7
		C	0.0280	860	24
		E	0.0280	783	22
Atka mackerel	Annual	Gulfwide	0.0309	2,000	62
Big skates	Annual	W	0.0063	632	4
		C	0.0063	2,065	13
		E	0.0063	633	4
Longnose skates	Annual	W	0.0063	78	0
		C	0.0063	2,041	13
		E	0.0063	768	5
Other skates	Annual	Gulfwide	0.0063	2,104	13
Other species	Annual	Gulfwide	0.0063	4,500	28

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for non-exempt AFA catcher vessels in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). Table 13 lists the proposed 2010 and 2011 catcher vessel halibut PSC limits for non-exempt AFA vessels using trawl gear in the GOA.

TABLE 13—PROPOSED 2010 AND 2011 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are in metric tons]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	Proposed 2010 and 2011 PSC limit	Proposed 2010 and 2011 non-exempt AFA CV PSC limit
1	January 20–April 1	shallow-water	0.340	450	153
		deep-water	0.070	100	7
2	April 1–July 1	shallow-water	0.340	100	34
		deep-water	0.070	300	21
3	July 1–September 1	shallow-water	0.340	200	68
		deep-water	0.070	400	28
4	September 1–October 1	shallow-water	0.340	150	51
		deep-water	0.070	0	0
5	October 1–December 31	all targets	0.205	300	62

Non-AFA Crab Vessel Groundfish Sideboard Limits

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict these vessels' catch to their collective historical landings in all GOA groundfish fisheries (except the fixed-gear sablefish fishery). Sideboard limits also apply to landings made using a License Limitation Program (LLP) license derived from the history of a restricted vessel, even if that LLP is used on another vessel.

Sideboard limits for non-AFA crab vessels operating in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 680.22(d) and (e) base the groundfish sideboard limits in the GOA on the retained catch by non-AFA crab vessels of each sideboard species from 1996 through 2000 divided by the total retained harvest of that species over the same period. Table 14 lists these proposed 2010 and 2011 groundfish sideboard limits for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels will be deducted from the sideboard limits in Table 14.

Vessels exempt from Pacific cod sideboards are those that landed less than 45,359 kilograms of Bering Sea snow crab and more than 500 mt of groundfish (in round weight equivalents) from the GOA between January 1, 1996, and December 31, 2000, and any vessel named on an LLP that was generated in whole or in part by the fishing history of a vessel meeting the criteria in § 680.22(a)(3).

TABLE 14—PROPOSED 2010 AND 2011 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Proposed 2010 and 2011 TACs	Proposed 2010 and 2011 non-AFA crab vessel sideboard limit
Pollock	A Season: January 20–March 10.	Shumagin (610)	0.0098	5,132	50
		Chirikof (620)	0.0031	6,927	21
		Kodiak (630)	0.0002	3,972	1
	B Season: March 10–May 31	Shumagin (610)	0.0098	5,131	50
		Chirikof (620)	0.0031	8,591	27
		Kodiak (630)	0.0002	2,308	0
	C Season: August 25–October 1.	Shumagin (610)	0.0098	6,968	68
		Chirikof (620)	0.0031	3,428	11
		Kodiak (630)	0.0002	5,634	1
	D Season: October 1–November 1.	Shumagin (610)	0.0098	6,968	68
		Chirikof (620)	0.0031	3,428	11
		Kodiak (630)	0.0002	5,634	1

TABLE 14—PROPOSED 2010 AND 2011 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Proposed 2010 and 2011 TACs	Proposed 2010 and 2011 non-AFA crab vessel sideboard limit
	Annual	WYK (640)	0.0000	1,929	0
		SEO (650)	0.0000	8,280	0
Pacific cod	A Season: [1] January 1–June 10.	W inshore	0.0902	12,557	1,133
		W offshore	0.2046	1,395	285
		C inshore	0.0383	18,352	703
		C offshore	0.2074	2,039	423
	B Season: [2] September 1–December 31.	W inshore	0.0902	8,371	755
		W offshore	0.2046	930	190
		C inshore	0.0383	12,235	469
		C offshore	0.2074	1,359	282
	Annual	E inshore	0.0110	2,576	28
		E offshore	0.0000	286	0
Sablefish	Annual, trawl gear	W	0.0000	325	0
		C	0.0000	925	0
		E	0.0000	209	0
Flatfish shallow-water	Annual	W	0.0059	4,500	27
		C	0.0001	13,000	1
		E	0.0000	4,756	0
Flatfish, deep-water	Annual	W	0.0035	747	3
		C	0.0000	7,405	0
		E	0.0000	1,641	0
Rex sole	Annual	W	0.0000	988	0
		C	0.0000	6,506	0
		E	0.0000	1,333	0
Arrowtooth flounder	Annual	W	0.0004	8,000	3
		C	0.0001	30,000	3
		E	0.0000	5,000	0
Flathead sole	Annual	W	0.0002	2,000	0
		C	0.0004	5,000	2
		E	0.0000	4,289	0
Pacific ocean perch	Annual	W	0.0000	3,710	0
		C	0.0000	8,239	0
		E	0.0000	3,149	0
Northern rockfish	Annual	W	0.0005	1,965	1
		C	0.0000	2,208	0
Rougheye rockfish	Annual	W	0.0067	126	1
		C	0.0047	842	4
		E	0.0008	329	0
Shortraker rockfish	Annual	W	0.0013	120	0
		C	0.0012	315	0
		E	0.0009	463	0
Other rockfish	Annual	W	0.0035	357	1
		C	0.0033	569	2
		E	0.0000	804	0
Pelagic shelf rockfish	Annual	W	0.0017	765	1
		C	0.0000	3,179	0
		E	0.0000	521	0
Demersal shelf rockfish	Annual	SEO	0.0000	362	0

TABLE 14—PROPOSED 2010 AND 2011 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Proposed 2010 and 2011 TACs	Proposed 2010 and 2011 non-AFA crab vessel sideboard limit
Thornyhead rockfish	Annual	W	0.0047	267	1
		C	0.0066	860	6
		E	0.0045	783	4
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	632	25
		C	0.0159	2,065	33
		E	0.0000	633	0
Longnose skate	Annual	W	0.0392	78	3
		C	0.0159	2,041	32
		E	0.0000	768	0
Other skates	Annual	Gulfwide	0.0176	2,104	37
Other species	Annual	Gulfwide	0.0176	4,500	79

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Rockfish Program Groundfish Sideboard Limitations and Halibut Mortality Limitations

Section 679.82(d)(7) establishes sideboards to limit the ability of participants eligible for the Rockfish Program to harvest fish in fisheries other than the Central GOA rockfish fisheries. The Rockfish Program provides certain economic advantages to harvesters. Harvesters could use this economic advantage to increase their participation in other fisheries, thus possibly adversely affecting the participants in other fisheries. The proposed sideboards for 2010 and 2011 limit the total amount of catch that could be taken by eligible harvesters and limit the amount of halibut mortality to historic levels. The sideboard measures are in effect only during the month of July. Traditionally, the Central GOA rockfish fisheries opened in July. The sideboards are designed to restrict fishing during the historical season for the fishery, but allow eligible rockfish harvesters to participate in fisheries before or after the historical rockfish season. The sideboard provisions are discussed in detail in the proposed rule (71 FR 33040, June 7, 2006) and the final rule (71 FR 67210, November 20, 2006, and 72 FR 37678, July 11, 2007) for the Rockfish Program. Table 15 lists the proposed 2010 and 2011 Rockfish Program harvest limits in the WYK District and the Western GOA. Table 16 lists the proposed 2010 and 2011 Rockfish Program halibut mortality limits for catcher/processors and catcher vessels.

TABLE 15—PROPOSED 2010 AND 2011 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA BY THE CATCHER/PROCESSOR (CP) AND CATCHER VESSEL (CV) SECTORS

[Values are rounded to the nearest metric ton]

Area	Fishery	CP sector (% of TAC)	CV sector (% of TAC)	Proposed 2010 and 2011 TACs	Proposed 2010 and 2011 CP limit	Proposed 2010 and 2011 CV limit
West Yakutat District	Pelagic shelf rockfish	72.4	1.7	219	159	4
	Pacific ocean perch	76.0	2.9	1,107	841	32
Western GOA	Pelagic shelf rockfish	63.3	0	765	484	0
	Pacific ocean perch	61.1	0	3,710	2,267	0
	Northern rockfish	78.9	0	1,965	1,550	0

TABLE 16—PROPOSED 2010 AND 2011 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR AND CATCHER VESSEL SECTORS

[Values are rounded to the nearest metric ton]

Sector	Shallow-water complex halibut PSC sideboard ratio (percent)	Deep-water complex halibut PSC sideboard ratio (percent)	Annual halibut mortality limit (mt)	Annual shallow-water complex halibut PSC sideboard limit (mt)	Annual deep-water complex halibut PSC sideboard limit (mt)
Catcher/processor	0.54	3.99	2,000	11	80
Catcher vessel	6.32	1.08	2,000	126	22

GOA Amendment 80 Vessel Groundfish Harvest and PSC Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, hereinafter referred to as the ''Amendment 80 program,'' established a limited access privilege program for the non-AFA trawl catcher/processor sector. In order to limit the ability of participants eligible for the Amendment 80 program to expand their harvest efforts in the GOA, the Amendment 80 program established groundfish and halibut PSC limits for Amendment 80 program participants in the GOA.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the F/V GOLDEN FLEECE, to amounts no greater than the limits shown in Table 37 to part 679. Sideboard limits in the GOA are proposed for pollock in the Western and Central Regulatory Areas and in the WYK District, for Pacific cod gulfwide, for Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area and WYK District, and for northern rockfish in the Western Regulatory Area. The harvest of Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the Central Regulatory Area of the GOA is subject to regulation under the Central GOA Rockfish Program. Amendment 80 program vessels not qualified under the Rockfish Program are excluded from directed fishing for these rockfish species in the Central GOA. Pursuant to regulations, the F/V GOLDEN FLEECE is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the GOA. These sideboard limits are necessary to restrict the ability of participants eligible for the Amendment 80 program to expand their harvest efforts in the GOA.

Groundfish sideboard limits for Amendment 80 vessels operating in the GOA are based on their average aggregate harvests from 1998 to 2004. Table 17 lists the proposed 2010 and 2011 sideboard limits for Amendment 80 vessels. All targeted or incidental catch of sideboard species made by Amendment 80 vessels will be deducted from the sideboard limits in Table 17.

TABLE 17—PROPOSED 2010 AND 2011 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 VESSELS

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2010 and 2011 TAC (mt)	2010 and 2011 Amendment 80 vessel sideboards (mt)
Pollock	A Season: January 20–February 25.	Shumagin (610)	0.003	5,132	15
		Chirikof (620)	0.002	6,927	14
		Kodiak (630)	0.002	3,972	8
	B Season: March 10–May 31	Shumagin (610)	0.003	5,131	15
		Chirikof (620)	0.002	8,591	17
		Kodiak (630)	0.002	2,308	5
	C Season: August 25–September 15.	Shumagin (610)	0.003	6,968	21
		Chirikof (620)	0.002	3,428	7
		Kodiak (630)	0.002	5,634	11
	D Season: October 1–November 1.	Shumagin (610)	0.003	6,968	21
		Chirikof (620)	0.002	3,428	7
		Kodiak (630)	0.002	9,968	14
	Annual	WYK (640)	0.002	1,929	4
Pacific cod	A Season [1]: January 1–June 10.	W	0.020	13,952	279
		C	0.044	20,392	897
	B Season [2]: September 1–December 31.	W	0.020	9,302	186

TABLE 17—PROPOSED 2010 AND 2011 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 VESSELS—Continued

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2010 and 2011 TAC (mt)	2010 and 2011 Amendment 80 vessel sideboards (mt)
		C	0.044	13,594	598
	Annual	WYK	0.034	2,862	97
Pacific ocean perch	Annual	W WYK	0.994 0.961	3,710 1,107	3,688 1,064
Northern rockfish	Annual	W	1.000	1,965	1,965
Pelagic shelf rockfish	Annual	W	0.764	765	584
		WYK	0.896	219	196

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for Amendment 80 vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 vessels in each PSC target category from 1998 through 2004 (Table 38 to 50 CFR part 679). These values are slightly lower than the average historic use to accommodate two factors: Allocation of halibut PSC cooperative quota under the Central GOA Rockfish Program and the exemption of the F/V GOLDEN FLEECE from this restriction. Table 18 lists the proposed 2010 and 2011 halibut PSC limits for Amendment 80 vessels.

TABLE 18—PROPOSED 2010 AND 2011 HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR AMENDMENT 80 VESSELS IN THE GOA

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2010 and 2011 annual PSC limit (mt)	2010 and 2011 Amendment 80 vessel PSC limit (mt)
1	January 20–April 1	shallow-water deep-water	0.0048 0.0115	2,000 2,000	10 23
2	April 1–July 1	shallow-water deep-water	0.0189 0.1072	2,000 2,000	38 214
3	July 1–September 1	shallow-water deep-water	0.0146 0.0521	2,000 2,000	29 104
4	September 1–October 1	shallow-water deep-water	0.0074 0.0014	2,000 2,000	15 3
5	October 1–December 31	shallow-water deep-water	0.0227 0.0371	2,000 2,000	45 74

Classification

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared a Final EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision for the Final EIS. Copies of the Final EIS and Record of Decision for this action are available from NMFS (*see* **ADDRESSES**). The Final EIS analyzes the environmental consequences of the proposed groundfish harvest specifications and its alternatives on resources in the action area. The Final EIS found no significant environmental consequences from the proposed action or its alternatives.

NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA evaluated the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the exclusive economic zone off of Alaska. While the specification numbers may change from year to year, the harvest strategy for establishing those numbers remains the same. NMFS therefore is using the same IRFA prepared in connection with the EIS. NMFS published a notice of the availability of the IRFA and its summary in the classification section of the proposed harvest specifications for the groundfish fisheries in the GOA in the

Federal Register on December 15, 2006 (71 FR 75460). The comment period on the GOA proposed harvest specifications and IRFA ended on January 16, 2007. NMFS did not receive any comments on the IRFA or the economic impacts of the rule generally.

A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained in the preamble above. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). A summary of the IRFA follows.

The action under consideration is a harvest strategy to govern the catch of groundfish in the GOA. The preferred alternative is the status quo harvest strategy in which TACs fall within the range of ABCs recommended by the Council's harvest specification process and TACs recommended by the Council. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 747 small catcher vessels and fewer than 20 small catcher/processors. The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the GOA, and in parallel fisheries within State of Alaska waters. These include entities operating catcher vessels and catcher/processor vessels within the action area, and entities receiving direct allocations of groundfish. Catcher vessels and catcher/processors were considered to be small entities if they had annual gross receipts of $4 million per year or less from all economic activities, including the revenue of their affiliated operations. Data from 2005 were the most recent available and were used to determine the number of small entities.

Estimates of first wholesale gross revenues for the GOA were used as indices of the potential impacts of the alternative harvest strategies on small entities. An index of revenues was projected to decline under the preferred alternative due to declines in ABCs for key species in the GOA. The index of revenues declined by less than 4 percent between 2007 and 2008 and by less than one percent between 2007 and 2009.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the GOA OY, in which case harvests would be limited to the OY. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rate. Alternative 4 would have set TACs to equal the lower limit of the GOA OY range. Alternative 5 would have set TACs equal to zero. Alternative 5 is the ''no action'' alternative.

Alternatives 3, 4, and 5 were all associated with smaller levels for important fishery TACs than Alternative 2. Estimated total first wholesale gross revenues were used as an index of potential adverse impacts to small entities. As a consequence of the lower TAC levels, Alternatives 3, 4, and 5 all had smaller first wholesale revenue indices than Alternative 2. Thus, Alternatives 3, 4, and 5 had greater adverse impacts on small entities. Alternative 1 appeared to generate higher values of the gross revenue index for fishing operations in the GOA than Alternative 2. A large part of the Alternative 1 GOA revenue appeared to be due to the assumption that the full Alternative 1 TAC would be harvested. Much of the larger revenue was due to increases in flatfish TACs that were much greater for Alternative 1 than for Alternative 2. In recent years, halibut bycatch constraints in these fisheries have kept actual flatfish catches from reaching Alternative 1 levels. Therefore, a large part of the revenues presumed to be associated with Alternative 1 are unlikely to be realized. Also, Alternative 2 TACs are constrained by the ABCs that the Plan Teams and SSC are likely to recommend to the Council on the basis of a full consideration of biological issues. These ABCs are often less than the maximum permissible ABCs of Alternative 1. Therefore higher TACs under Alternative 1 may not be consistent with prudent biological management of the resource. For these reasons, Alternative 2 is the preferred alternative.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the Final EIS (*see* **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: November 23, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–28544 Filed 11–27–09; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 74, No. 228
Monday, November 30, 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

Submission for OMB Review; Comment Request

November 23, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Food Distribution Forms.

OMB Control Number: 0584–0293.

Summary of Collection: The Food Distribution Programs of the Department of Agriculture assist American farmers and needy people by purchasing commodities and delivering them to State agencies that in turn, distribute them to organizations for use in providing food assistance to those in need. The commodities help to meet the nutritional needs of: (a) Children from preschool age through high school USDA Child Nutrition Programs and in nonprofit summer camps, (b) needy person in households on Indian reservations, (c) needy household in the nuclear-affected islands, (d) needy persons served by charitable institutions, (e) pregnant and breastfeeding women, infants, and children, and elderly persons, (f) low-income, unemployed or homeless people provided foods through household distributions or meals through soup kitchens, (g) pre-school, school-age children, elderly and functionally impaired adults enrolled in child and adult day care centers, (h) victims of Presidential-declared disasters and other situations of distress. The Food and Nutrition Service (FNS) will collect information from State and local agencies using several FNS forms.

Need and Use of the Information: FNS will collect the following information from State and local agencies: (a) Number of households or meals served in the programs, (b) the kinds of commodities most acceptable to recipients, (c) the quantities of foods ordered and where the food is to be delivered, (d) verification of the receipt of a food order, and (e) the amounts of commodities in inventory.

Description of Respondents: Not-for-profit institutions; Individual or households; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 469,041.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Semi-annually; Monthly; Annually.

Total Burden Hours: 1,079,172.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–28486 Filed 11–27–09; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management; Proposed Collection; Comment Request Concerning Collection of Acquisition Information

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice and request for comments regarding a proposed extension/revision of approved information collection requirements.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Procurement and Property Management (OPPM) intends to submit to the Office of Management and Budget (OMB) a request to review and approve an extension of five currently approved information collections related to the award of, or performance under, USDA contracts. OPPM invites comment on these information collections. These information requirements are currently approved by OMB for use through February 28, 2010.

DATES: Comments on this notice must be received by January 29, 2010 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to: Donna Calacone, Procurement Analyst, Office of Procurement and Property Management, STOP 9304, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–9303. Comments may also be submitted via fax at (202) 720–8972, or through the Internet at *donna.calacone@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Calacone, Office of Procurement and Property Management, STOP 9304, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–9303, Telephone (202) 205–4036.

SUPPLEMENTARY INFORMATION: USDA is seeking OMB approval of the following information collections:

1. *Title:* Procurement: Maximum Workweek—Construction Schedule.

OMB Number: 0505–0011.

Expiration Date: 02/28/2010.

Type of request: Extension of a currently approved collection.

Proposed use of information: Information about the contractor's proposed hours of work is requested prior to the start of construction so that the agency can determine when on-site representatives are needed. A contracting office will insert this clause in a construction contract when, because of the agency's staffing or budgetary constraints, it is necessary to limit the contractor's performance to a maximum number of hours per week.

Respondents: Businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 776.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: The information collected is the hours and days of the week the contractor proposes to carry out construction, with starting and stopping times. Public reporting burden for this collection of information is estimated to average fifteen minutes per response.

Estimated Total Annual Burden on Respondents: 194 hours.

2. *Title:* Procurement: Instruction for the Preparation of Business and Technical Proposals.

OMB Number: 0505–0013.

Expiration Date: 02/28/2010.

Type of request: Extension of a currently approved collection.

Proposed use of information: Technical and business proposals received from offerors, including information about offerors' organization and financial systems, are used when conducting negotiated procurement to evaluate and determine the feasibility of the prospective contractor's technical approach, management, and cost/price to accomplish the task and/or provide the supplies or services required under a resultant contract.

Respondents: State or local governments; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 4,731.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: Public reporting burden to prepare technical and business proposals as part of a response to a solicitation is estimated to average 32 hours per response. This estimate does not include burden associated with providing information required in accordance with information collections prescribed by the Federal Acquisition Regulation. Only businesses submitting offers in response to a solicitation are affected by this collection.

Estimated Total Annual Burden on Respondents: 151,392 hours.

3. *Title:* Procurement: Brand Name or Equal Clause.

OMB Number: 0505–0014.

Expiration Date: 01/31/2010.

Type of request: Extension of a currently approved collection.

Proposed use of information: The Agriculture Acquisition Regulation permits the use of ''brand name or equal'' purchase descriptions to procure commercial products. Such descriptions require the offeror on a supply procurement to identify the ''equal'' item being offered and to indicate how that item meets salient characteristics stated in the purchase description. The contracting officer can determine from the descriptive information furnished whether the offered ''equal'' item meets the salient characteristics of the Government's requirements. The use of brand name or equal descriptions eliminates the need for bidders or offerors to read and interpret detailed specifications or purchase descriptions.

Respondents: Businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 9,300.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: This information collection is limited to solicitations for products for which other methods of product specification are impracticable. Only businesses wishing to submit bids or offers in response to a solicitation are affected. Public reporting burden for this collection of information is estimated to average one tenth of an hour per response.

Estimated Total Annual Burden on Respondents: 930 hours.

4. *Title:* Procurement: Key Personnel Clause.

OMB Number: 0505–0015.

Expiration Date: 02/28/2010.

Type of request: Extension of a currently approved collection.

Proposed use of information: The information enables the agency to determine whether the departure of a key person from the contractor's staff may have a deleterious effect upon contract performance, and to determine what accommodations or remedies may be taken. If the agency could not obtain information about departing key personnel, it could not ensure that qualified personnel continue to perform contract work.

Respondents: State or local governments; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 5,630.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: The information collection is required only when a contractor proposes to make changes to key personnel assigned to performance of a contract. Consequently, information collection is occasional. Public reporting burden for this collection of information is estimated to average one hour per respondent.

Estimated Total Annual Burden on Respondents: 5,630 hours.

5. *Title:* Procurement: Progress Reporting Clause.

OMB Number: 0505–0016.

Expiration Date: 02/28/2010.

Type of request: Extension of a currently approved collection.

Proposed use of information: The information is requested monthly or quarterly from contractors performing advisory and assistance services, or other services such as research and development (R&D), or services related to IT systems or software development. The information enables the contracting office to monitor actual progress and expenditures compared to anticipated performance and proposal representations upon which the contract award was made. The information alerts the contracting office to technical problems, to a need for additional staff resources or funding, and to the probability of timely completion within the contract cost or price. If the contracting office could not obtain a report of progress, it would have to physically monitor the contractor's operations on a day-to-day basis throughout the performance period.

Respondents: State or local government; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: The frequency of progress reports varies from monthly to quarterly depending on the complexity of the contract and the risk of successful completion. Based on monthly reporting, each respondent would submit 12 responses per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one hour per response.

Estimated Total Annual Burden on Respondents: 120,000 hours.

Comments: Comments received will be considered in order to: (a) Evaluate whether each proposed collection of information is necessary for the proper performance of the functions of USDA contracting offices, including whether the information will have a practical utility; (b) evaluate the accuracy of OPPM's estimate of the burden of each 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 five collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

Dated: November 23, 2009.

Todd Repass,

Acting Director, Office of Procurement and Property Management.

[FR Doc. E9–28494 Filed 11–27–09; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Grey Towers Visitor Comment Card

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Grey Towers Visitor Comment Card.

DATES: Comments must be received in writing on or before January 29, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Nicole Bernarsky, U.S. Forest Service, Grey Towers National Historical Site, P.O. Box 188, Milford, PA 18337.

Comments also may be submitted via facsimile to 570–296–9675 or by e-mail to *nbernarsky@fs.fed.us.*

The public may inspect comments received at Grey Towers National Historic Site during normal business hours. Visitors are encouraged to call ahead to 570–296–9630 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Nicole Bernarsky, Grey Towers National Historic Site, 570–296–9630. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Grey Towers Visitor Comment Card.

OMB Number: 0596–New.

Type of Request: New.

Abstract: The Forest Service, U.S. Department of Agriculture is proposing a new information collection for a visitor comment card to be used at Grey Towers. Located in Milford, Pennsylvania, Grey Towers was originally the summer estate of the James Pinchot family and later the primary home of Gifford Pinchot, America's first forester and founder of the USDA Forest Service. In 1963, Gifford Bryce Pinchot, son of Gifford and Cornelia, donated Grey Towers and 102 acres to the Forest Service, the Federal agency founded by his father and which now administers the site.

The Forest Service works with numerous partners to carry on the Pinchot legacy by delivering public programs, interpretive tours, and conservation education programs. Embracing a philosophy of preservation through use, Grey Towers, in partnership with the Pinchot Institute, also functions as an active conference center for conservation and natural resource issues. Today, conferences and seminars at the estate bring together a diversity of leading conservation and environmental thinkers to help guide the future of natural resource conservation.

Participant input is vital to achieving Grey Towers' goal of provide quality-based programs and events. The proposed comment card provides a venue for those participating in meetings and educational activities at Grey Towers to provide feedback. The completion and subsequent evaluation of this form ensures that Grey Towers can continue to provide excellent service to all attendees. The information collection only covers the burden associated with responses collected from the public, though Federal employees also attend events held at the facility.

The information is collected on an 8.5-inch by 11-inch form provided to program and event participants at the conclusion of the activity. Forest Service employees overseeing Grey Towers programs and administration collect the information and use it to improve and enhance the programs and events. Information collected includes attendance and feedback from program attendees.

Without this information collection, the Forest Service would not have the necessary information to enhance and improve offered programs. Programs or events could continue to have negative aspects of which the staff would be unaware, such as insufficient or unbeneficial delivery or content.

Estimate of Annual Burden: 10 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 4,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 667 hours.

Comment is invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 18, 2009.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E9–28449 Filed 11–27–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Visitor Permit and Visitor Registration Card

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no

revision of a currently approved information collection, 0596–0019. This information will help the Forest Service ensure that visitors' use of National Forest System lands is in the public interest and compatible with the mission of the Agency.

DATES: Comments must be received in writing on or before January 29, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Wilderness Program Manager, Wilderness and Wild and Scenic River Staff, Mail Stop 1125, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090.

Comments also may be submitted via facsimile to 202–205–1145 or by e-mail to: *sboutcher@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Wilderness and Wild and Scenic River Staff, 201 14th Street, SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202–205–9530 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Steven Boutcher, Wilderness and Wild and Scenic River Staff at 802–951–6771 extension number 1210 or by e-mail to *sboutcher@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Request for Comment; Visitor Permit and Visitor Registration Card.

OMB Number: 0596–0019.

Expiration Date of Approval: 03/2010.

Type of Request: Extension of a currently approved collection.

Abstract: The Organic Administration Act (16 U.S.C. 473), the Wilderness Act (16 U.S.C. 1131), and Wild and Scenic Rivers Act (16 U.S.C. 1271) require the Forest Service, U.S. Department of Agriculture to manage the forests to benefit both land and people. The information collected from the Visitor's Permit (FS–2300–30) and Visitor Registration Card (FS–2300–32) help the Forest Service ensure that visitors' use of National Forest System lands is in the public interest and is compatible with the mission of the agency. Information will be collected from National Forest System land visitors, who will be asked to describe the location of their visit and their estimated duration of use.

The Visitor's Permit, Form FS–2300–30 is required for visitors to enter many special management areas on National Forest System Lands, including Wilderness Areas, Wild and Scenic Rivers, and restricted off-road vehicle areas. The permit is only used where public use levels must be managed and monitored to prevent resource damage, to preserve the quality of the experience, or to maintain public safety. The personal contact generated by issuance of the permit results in improved visitor education and information about proper camping techniques, fire prevention, safety, and sanitation. The information collected from the Visitor's Permit may also be used to respond to indicators or standards in a Forest Plan or Wilderness Management Plan. The Visitor's Permit captures the visitor's name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, number of dogs, and number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group. The Visitor's Permit is usually issued by Forest Service employees at an office location. Visitors may obtain the permit in person or call ahead and provide the required information over the phone. The information collection does not involve the use of automated, electronic, mechanical, or other technological collection techniques.

The Visitor Registration Card, Form FS–2300–32 is a voluntary registration card, which provides Forest Service managers with an inexpensive means of gathering visitor use information required by management plans, without imposing mandatory visitor permit regulations. Moreover, the information collected can be used to respond to indicators or standards in a Forest Plan or Wilderness Management Plan without requiring a mandatory permit system to gather and record the data. Use of the Visitor Registration Card is one of the most efficient means of collecting data from visitors. It allows the Forest Service to collect data in remote locations, where it is not feasible to have permanent staffing. The Visitor Registration Card is normally made available at un-staffed entry locations such as trailheads, and is completed by the visitor without Forest Service assistance. The Visitor Registration Card provides information from wilderness and special management area visitors including name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, number of dogs, number of pack and saddle stock in the group, and number of watercraft or vehicles. The information is collected once from visitors during their visit and later gathered by Forest Service employees who then analyze the information.

The use of these two forms allows managers to identify heavily used areas, to prepare restoration, and to monitor plans that reflect where use is occurring, and in extreme cases, to develop plans to move forest users to lesser impacted areas. They also provide search and rescue personnel with information useful in locating lost forest visitors. The inability to use these forms could result in overuse and site deterioration in environmentally sensitive areas. Furthermore, without these forms, the Forest Service would be required to undertake special studies to collect use data and could be pressed to make management decisions based on insufficient or inaccurate data. The information collected will not be shared with other organizations inside or outside the government.

Estimate of Annual Burden: 3 minutes (FS–2300–30); 3 minutes (FS–2300–32).

Type of Respondents: Individuals and groups requesting use of National Forest System Wilderness and special management areas.

Estimated Annual Number of Respondents: 386,400 respondents.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 19,320 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 18, 2009.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E9–28450 Filed 11–27–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Operating Plans

AGENCY: Forest Service, USDA.

ACTION: Notice, request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, Operating Plans.

DATES: Comments must be received in writing on or before January 29, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Lathrop Smith, Forest Management, Mail Stop 1103, Forest Service, USDA, 1400 Independence Ave., SW., Washington, DC 20250–1103.

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

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

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management, 202–205–0858. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Operating Plans.

OMB Number: 0596–0086.

Expiration Date of Approval: April 30, 2010.

Type of Request: Extension of a currently approved collection.

Abstract: The National Forest Management Act, 16 U.S.C. 472a(14)(c) (Act), requires timber sale operating plans on timber sales that exceed 2 years in length. Operating plans are collected within 60 days of award of a timber sale contract and annually thereafter until contract is complete. Contracts less than 2 years in length require an annual plan. Each FS–2400–3P, FS–2400–3S, FS–2400–3T, FS–2400–6, FS–2400–6T, timber sale contract, and FS–2400–13 and FS–2400–13T Integrated Resource contract lists the information requirements for the subject contract.

The information collection under each contract varies depending on the size, scope, and length of the contract. The collection generally includes descriptions showing planned road maintenance and construction methods, timber harvesting, stewardship work (Integrated Resource Contracts only), slash disposal, and erosion control measures. Plans may also be required to address measures contractors will use to protect public safety in work areas; measures to prevent and control fires; and methods to prevent and control spills of petroleum products.

Contracting officers collect this information from contractors. Information required by a timber sale contract may be submitted in a variety of formats including forms developed by individual contractors, charts, letters, or optional Forest Service form FS–2400–67. Contractors may submit the information by electronic mail, facsimile, or via conventional mail.

The information is needed by the Agency for a variety of uses associated with the administration of Timber Sale and Integrated Resource contracts including the following: (1) Planning and scheduling contract administration workloads, (2) planning and scheduling the delivery of government furnished materials needed by contractors, (3) assuring safety of public in vicinity of contract work, (4) identifying contractor resources that may be used in emergency fire fighting situations, and (5) determining contractor eligibility for additional contract time.

Without accurate plans showing when and how a contractor intends to operate, the Forest Service would be hindered in fulfilling its contractual obligations to cooperate with and not encumber the performance of contractors. This could lead to serious problems including disputes, claims, and possible default. Without this information, the Forest Service may be unable to determine if a contractor is eligible for additional contract time to complete a project.

Estimate of Annual Burden: 1.6 hours per response.

Type of Respondents: Contractors of Timber Sale and/or Integrated Resource contracts.

Estimated Annual Number of Respondents: 2,500.

Estimated Annual Number of Responses per Respondent: 3.8.

Estimated Total Annual Burden on Respondents: 15,200 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: November 20, 2009.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E9–28451 Filed 11–27–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program: State Issuance and Participation Estimates—Form FNS–388

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision of a collection currently approved under OMB No. 0584–0081 for the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program) for the form FNS–388, State Issuance and Participation Estimates.

DATES: Comments on this notice must be received by *January 29, 2010* to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jane Duffield, Chief, State Administration Branch, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Ms. Duffield at 703–605–0795 or via e-mail to *PADMAILBOX@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 818, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jane Duffield at (703) 605–4385.

SUPPLEMENTARY INFORMATION:

Title: Form FNS–388, State Issuance and Participation Estimates.

OMB Number: 0584–0081.

Expiration Date: 4/30/2010.

Type of Request: Revision of a currently approved information collection.

Abstract: Section 18(b) of the Food and Nutrition Act of 2008, (the Act) 7 U.S.C. 2027(b), limits the value of allotments paid to SNAP households to an amount not in excess of the appropriation for the fiscal year. If allotments in any fiscal year would exceed the appropriation, the Secretary of Agriculture is required to direct State agencies to reduce the value of SNAP allotments to the extent necessary to stay within appropriated funding limits. Timely State monthly issuance estimates are necessary for FNS to ensure that it remains within the appropriation. The estimates will also have a direct effect upon the manner in which allotments would be reduced if necessary. While benefit reductions have never been ordered in the past under Section 18(b), nor are they anticipated based on current data, the Department must continue to monitor actual program costs against the appropriation.

Section 11(e)(12) of the Act, 7 U.S.C. 2020 (e)(12), requires that the State Plan of Operations provide for the submission of reports required by the Secretary of Agriculture. State agencies are required to report on a monthly basis on the FNS–388, State Issuance and Participation Estimates, estimated or actual issuance and participation data for the current month and previous month, and actual participation data for the second preceding month. The FNS–388 report provides the necessary data for an early warning system to enable the Department to monitor actual and estimated costs for all forms of issuance against the appropriation.

State agencies in general only submit one Statewide FNS–388 per month which covers benefits from their electronic benefit transfer (EBT) system. The exception is that State agencies which choose to operate an approved alternative issuance demonstration project such as a cash-out system submit a separate report for each additional type of issuance system.

In addition, State agencies are required to submit a project area breakdown on the FNS–388 of issuance and participation data twice a year. The project area breakdown attached to the FNS–388 twice a year is known as the FNS–388A. This data is useful in identifying project areas that operate fraud detection units in accordance with the Act.

FNS carefully considered the Account Management Agent (AMA) issuance data and whether it could be used for the FNS–388 system. However, AMA data does not include participation data, cash-out benefit data, or other alternative issuance data. Under current reporting, AMA would not be able to mirror our more comprehensive FNS–388 system. Moving the data would require modifications to several FNS systems that currently report, use, and analyze the FNS–388 data. After careful consideration, EBT issuance and participation estimates will continue on the FNS–388.

As of August 2009, 96 percent of the total responses submitted the FNS–388 data electronically and 4 percent submitted paper reports. As of January 2009, the last report month for which the FNS–388A was submitted, 92 percent of the total response submitted FNS–388A data electronically and 8 percent submitted paper reports.

Affected Public: State agencies that administer SNAP.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 13.81.

Estimated Total Annual Responses: 732.

Estimated Hours per Response: 7.14.

Estimated Total Annual Burden on Respondents: The annual reporting and recordkeeping burden for OMB No. 0584–0081 is estimated to be 5,226 hours. This burden is unchanged.

SNAP has 53 State agencies that administer SNAP and are respondents as mentioned above. But some State agencies administer more than one issuance system and thus respond more than once so we have 61 who respond for SNAP in total as shown below to show the total annual responses and total burden.

Affected public	Forms	Number of respondents	Frequency of response	Total annual responses	Time per response (hrs)	Annual burden hours
State Agencies	FNS–388	61	10	610	5.6	3,416.00
	FNS–388A	61	2	122	14.83	1,809.7
Total Burden Estimates		61		732		5,225.7

Dated: November 17, 2009.

Julie Paradis,

Administrator.

[FR Doc. E9–28475 Filed 11–27–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *FAX:* (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the 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. Comments may be sent to: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 5170, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Wholesale Contracts for the Purchase and Sale of Electric Power.

OMB Control Number: 0572–0089.

Type of Request: Revision of a currently approved information collection.

Abstract: Most RUS financed electric systems are cooperatives and are organized in a two-tiered structure. Retail customers are members of the distribution system that brings electricity to their homes and business. Distribution cooperatives, in turn, are members of power supply cooperatives, also known as generation and transmission cooperatives (G&T's) that generate or purchase power and transmit the power to the distribution systems.

For a distribution system a lien on the borrower's assets generally represents adequate security. However, since most G&T revenues flow from its distribution members, RUS requires, as a condition of a loan or loan guarantee to a G&T that long-term requirements wholesale power contract to purchase their power from the G&T at rates that cover all the G&T's expenses, including debt service and margins. RUS Form 444 is the standard form of the wholesale power contract. Most borrowers adapt this form to meet their specific needs. The contract is prepared and executed by the G&T and each member and by RUS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Small business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 102.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 612 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853; FAX: (202) 720–7853.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 23, 2009.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. E9–28476 Filed 11–27–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request a revision to a currently approved information collection procedure for the Trade Adjustment Assistance for Farmers program as described in 7 CFR part 1580.

DATES: Comments should be received on or before January 29, 2010 to be assured consideration.

ADDRESSES: Mail or deliver comments to the Trade Adjustment Assistance for Farmers Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1021, 1400 Independence Avenue, SW., Washington, DC 20250–1021, or telephone at (202) 720–0638.

FOR FURTHER INFORMATION CONTACT: The Trade Adjustment Assistance for Farmers Staff, at the address above, or telephone at (202) 720–0638, or e-mail at *tradeadjustment@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Trade Adjustment Assistance for Farmers.

OMB Number: 0551–0040.

Expiration Date of Approval: February 28, 2010.

Type of Request: Revision to currently approved information collection.

Abstract: The American Recovery and Reinvestment Act of 2009 reauthorizes and modifies the Trade Adjustment Assistance (TAA) for Farmers program as established by Subtitle C of Title I of the Trade Act of 2002, which amended the Trade Act of 1974. Under this program, the U.S. Department of Agriculture (USDA) provides technical assistance and cash benefits to eligible producers of raw agricultural commodities and fishermen when the Foreign Agricultural Service (FAS) Administrator determines that increased imports of raw agricultural

commodities, aquaculture products, or wild-caught aquatic species (jointly referred to as ''agricultural commodities'') have contributed importantly to a greater than 15 percent decrease in the national average price, or quantity of production, or value of production, or cash receipts for the agricultural commodity specified in the certified petition compared to the average of the three preceding marketing years. The regulation 7 CFR part 1580 established the procedure by which producers of raw agricultural commodities and fishermen can petition (form FAS–930 or a reasonable substitute) for certification of eligibility and apply for technical assistance and cash payments. To receive consideration for TAA for Farmers certification, petitioners must supply the information required by 7 CFR 1580.201. Once a petition has been certified, individuals covered by the certification must apply for TAA for Farmers benefits in accordance with 7 CFR 1580.301. The specific information required on an application (form FSA–229) must be collected from those who wish to receive program benefits. The number of respondents has doubled since the original Paperwork Reduction Act information collection procedure was filed in August 2003. The revision to this information collection is to decrease the total estimated burden hours from 14,000 to 8,750 hours based on changes to previous program eligibility requirements.

Estimated Number of Respondents: 1,250.

Estimated Number of Responses per Respondent: 1.

Estimated Burden of Hours per Response: 7 hours.

Estimated Total Annual Burden on Respondents: 8,750 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

Request for Comments

The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden, estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on the issues covered by the Paperwork Reduction Act are most useful to the Office of Management and Budget (OMB) if received within 30 days of publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured of consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

Dated: November 17, 2009.

Michael V. Michener,

Administrator, Foreign Agricultural Service.

[FR Doc. E9–28502 Filed 11–27–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary, Office of Administrative Services.

Title: DOC National Environmental Policy Act Environmental Questionnaire and Checklist.

OMB Control Number: None.

Form Number(s): CD–593.

Type of Request: Emergency submission.

Number of Respondents: 200.

Average Hours Per Response: 2.

Burden Hours: 400.

Needs and Uses: The Department of Commerce (DOC) requests an emergency review of a new information collection request for the DOC National Environmental Policy Act (NEPA) Environmental Questionnaire and Checklist (EQC). This emergency review will facilitate the execution of projects authorized under the American Recovery and Reinvestment Act of 2009 and other DOC projects. The EQC was developed to assist DOC in complying with NEPA by facilitating the collection of data concerning potential environmental impacts, streamlining the collection of that data, and maintaining consistency in quality and quantity of information received.

The EQC will allow DOC reviewers to rapidly review infrastructure projects, facilitate in evaluating the potential environmental impacts of a project, and help in determining the appropriate level of documentation (Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement) necessary to comply with NEPA.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to retain or obtain benefits.

OMB Desk Officer: Nicholas Fraser, (202) 395–5855.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by December 7, 2009 to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5806 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov*.

Dated: November 24, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–28518 Filed 11–27–09; 8:45 am]

BILLING CODE 3510–NW–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT14

Endangered Species; File No. 1556

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that Commonwealth of the Northern Mariana Islands, USA (CNMI), Division of Fish and Wildlife, [Sylvan Igisomar, responsible official] P.O. Box 10007, Saipan, Mariana Islands 96950 has been issued a modification to scientific research Permit No. 1556–01.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI

96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On September 2, 2009, notice was published in the **Federal Register** (74 FR 45421) that a modification of Permit No. 1556 had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1556–01 authorizes the permit holder to perform sea turtle surveys in the waters of the Northern Mariana Islands, USA. The project consists of shoreline/cliff line assessments, in-water tow dive assessments, and the hand capture of sea turtles. Turtles are handled, measured, photographed, carapace painted, tissue-sampled, flipper tagged, passive integrated transponder tagged, and released. A subset of the turtles are satellite tagged. The applicant captures up to 100 green and 40 hawksbill sea turtles annually. The permit is issued for five years.

The modification authorizes the permit holder to change the field season from April-October to year round and add shell etching and oral examination to their list of procedures.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 24, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–28543 Filed 11–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Corezing International; Kow Seng Lim; Zhenyong Zhou; Jie Luo; Insight Electronics Pte Ltd.; Action Global Co., Limited

In the Matter of:

Corezing International
a/k/a Corezing Technology Pte Ltd
a/k/a Corezing International Pte Ltd
a/k/a Core Zing
a/k/a CoreZing Electronics
a/k/a Corezing International Group Company
2021 Butik Batok Street 23, #02–212, Singapore 659626;
111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098;
50 East Coast Road, #2–70 Roxy Square, Singapore 428769;
Block 1057 Eunos, Avenue 3 #02–81, Singapore 409848;
G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong;
Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong;
Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong;
Flat/RM 2309, 23/F, Ho King COMM Center 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong
Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China;
Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China.

Kow Seng Lim
a/k/a Eric Lim
a/k/a James Wong
a/k/a Alvin Stanley
2021 Butik Batok Street 23, #02–212, Singapore 659626; Block 751 Woodlands Circle, #10–592, Singapore 730751.

Zhenyong Zhou
a/k/a Benny Zhou
Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road KL, Hong Kong;
Room 502, Block 3, Huzhong Emporium, Humen Town, Dongguang City Guangdong, China.

Jie Luo
a/k/a Ivy Luo
G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong;
Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong;
Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong;
Flat/RM 2309, 23/F, Ho King COMM Center 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong;
RenCai ShiChang DaSha (Building, Baoanbei Road, Luohu Qu, Shenzhen City, Guangdong, China.
Insight Electronics Pte Ltd.,
20 Ang Mo Kio Industrial Park 2A, #04–28, AMK Tech Link Singapore 555854;
54 Serangoon North Ave 4, Unit 06–31, Cyberhub North Singapore 555854.
Action Global Co., Limited
C/O Win Sino
Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay KLN, Hong Kong;
Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street Mongkok, KL, Hong Kong;
520 Sims Avenue, #02–04, Singapore 387580.

Respondents.

Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR'' or the ''Regulations''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I issue an Order temporarily denying, for a period of 180 days, the export privileges under the EAR of:

1. Corezing International, also known as (''a/k/a'') Corezing Technology Pte Ltd., a/k/a Corezing International Pte Ltd., a/k/a Core Zing, a/k/a CoreZing Electronics, and a/k/a Corezing International Group Company (collectively referred to herein as ''Corezing''): 2021 Butik Batok Street 23, #02–212, Singapore 659626; 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; Block 1057 Eunos, Avenue 3#02–81, Singapore 409848; G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong; Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong; Flat/RM 2309, 23/F, Ho King COMM Center 2–16 Fa Yuen Street, Mongkok KLN Hong Kong; Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China
2. Kow Seng Lim a/k/a Eric Lim, a/k/a James Wong and a/k/a Alvin Stanley: 2021 Butik Batok Street 23, #02–212, Singapore 659626; Block 751 Woodlands Circle, #10–592, Singapore 730751
3. Zhenyoug Zhou a/k/a Benny Zhou: Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong; Room 502, Block 3, Huzhong Emporium, Humen Town, Dongguang City, Guangdong, China
4. Jie Luo a/k/a Ivy Luo: G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong Flat/RM 2309, 23/F, Ho King COMM Center

[1] The EAR is currently codified at 15 CFR Parts 730–774 (2009). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive presidential notices, the most recent being that of August 13, 2009 (74 FR 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (''IEEPA'').

2–16 Fa Yuen Street, Mongkok KLN, Hong Kong RenCai ShiChang DaSha (Building), Baoanbei Road, Luohu Qu, Shenzhen City Guangdong, China

5. Insight Electronics Pte Ltd: 20 Ang Mo Kio Industrial Park 2A, #04–28, AMK TECH LINK, Singapore 555854 54 Serangoon North Ave 4, Unit 06–31, Cyberhub North, Singapore 555854
6. Action Global Co., Limited: C/O Win Sino. Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay KLN, Hong Kong Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street, Mongkok, KL, Hong Kong 520 Sims Avenue, #02–04, Singapore 387580

Pursuant to Section 766.24(b) of the Regulations, BIS may issue a TDO upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that ''the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

BIS has presented evidence that on multiple occasions between March 2008 and October 2009, Corezing, its directors, officers and employees, and companies that conspired with Corezing have procured and attempted to procure U.S.-origin semiconductor power amplifiers, digital signal processors, and related components for export from the United States to the People's Republic of China (''China''), via transshipment through Singapore and Hong Kong, without the licenses required under the Regulations. The power amplifiers, digital signal processors, and components are subject to the Regulations and are classified under Export Control Classification Numbers (''ECCN'') 3A001b.2.c and 3A001.b.2.d and 3A001.a.2.c. These items are controlled for National Security reasons and required a BIS license for export to China in accordance with Section 742.4 of the Regulations. No BIS licenses were obtained for any of these transactions.

OEE, through its investigation, has provided evidence that Corezing directors, officers and/or employees, including Kow Seng Lim (shareholder and a Singapore Director), Zhenyong Zhou (a Hong Kong Director) and Jie Luo (a Hong Kong Director and Manager), have been directly involved in the procurement of the items from the United States and have provided suppliers, exporters and distributors with false information regarding the ultimate destination and end-user of the items.

Evidence obtained from Corezing Directors Kow Seng Lim and Zhenyong Zhou indicates that all Triquint brand power amplifiers and components procured by Corezing were for customers in China, rather than Hong Kong or Singapore. To conceal that the country of ultimate destination for the items was China, Corezing has used various tactics or stratagems, including providing, both directly and through others, false end-user statements to U.S. exporters and suppliers. By intentionally providing such false information to U.S. exporters, Corezing caused false statements to be made on shipper's export declarations (''SED's'') filed with the U.S. Government concerning the ultimate consignee and the country of ultimate destination. These actions were deliberately taken by Corezing, acting through Kow Seng Lim, Zhenyong Zhou, and Jie Luo, in order to avoid detection by law enforcement authorities, and are evidence of the covert nature of the Respondents' conduct.

Evidence obtained by BIS also indicates that Corezing had actual knowledge that the items were subject to export controls and required a license for export to China. Corezing made statements to U.S. exporters and suppliers in connection with these transactions and attempted transactions indicating its knowledge of the Regulations and applicable licensing requirements. Corezing also had direct knowledge of the Regulations based upon a post-shipment verification visit from BIS officials in January 2007. Corezing officials, including its owner, were instructed by BIS on issues such as the transshipment of U.S. items and commodities to third countries. Moreover, Kow Seng Lim's correspondence with a U.S. supplier indicated that he would not travel to the U.S. for fear of being arrested and prosecuted for his dealings in sensitive items. Such awareness by Respondents that their actions were contrary to U.S. export control law provides additional support for the need to issue a temporary denial order.

Corezing's acquisition of U.S.-origin items include its March 28, 2008 receipt of two Triquint power amplifiers, controlled under ECCN 3A001, from the United States. The SED improperly listed Corezing as the ultimate consignee and falsely described the items as ''phosphides,'' rather than the controlled amplifiers. In December 2008, Corezing issued a purchase order with another U.S. exporter for additional Triquint amplifiers. Corezing Director Zhenyong Zhou instructed the U.S. exporter not to tell Triquint (the manufacturer) that the power amplifiers were for Corezing and to be careful in dealing with Triquint since ''they are very smart'' and will ask questions on the end-use and end-user of the items. Jie Luo, whom Zhenyong Zhou describes as his boss, was personally involved in the negotiations and was told by the U.S. exporter that the items sought by Corezing were controlled for export by the United States Government. Jie Luo also confirmed statements made by Kow Seng Lim and Zhenyong Zhou that the items were destined for China.

In the months leading up to April 2009, Corezing conspired with Insight Electronics Pte Ltd. (''Insight'') to obtain U.S.-origin digital signal processors from the United States by providing false information regarding the end-user and destination for the items. Corezing originally sought the items, which are controlled under ECCN 3A001, from the U.S. manufacturer's distributor in Singapore, stating that the items were for the ''Chinese Market.'' Shortly after an employee of the distributor in Singapore informed Corezing Director Kow Seng Lim that they would not sell the items to Corezing directly, a purchase order for the same exact items was submitted inserting Insight as the party to be billed and to receive the items in Singapore. The end-use/end-user certificate also falsely listed Insight as the ''end-customer.''

Evidence shows that on or about June 25, 2009, Zhenyong Zhou, acting on behalf of Corezing, continued to seek Triquint power amplifiers controlled under ECCN 3A001 without providing end-user statements or acquiring an export license. Correspondence with the U.S. exporter shows that Zhenyong Zhou and Kow Seng Lim made statements confirming that the destination of the amplifiers was China and confirming their knowledge that the items required an export license. This shipment was detained in late August 2009 by law enforcement. Subsequent correspondence from Corezing and its

Chinese customer to the U.S. exporter demonstrates that Corezing intended to evade the Regulations. Specifically, Corezing instructed the U.S. exporter to falsely tell U.S. authorities that the items were for an end-user in Hong Kong, a fact which further indicates Respondents' knowledge of the Regulations and willingness to evade their requirements. No export licenses were obtained for any of the transactions discussed above.

Evidence uncovered during the investigation reveals that Corezing continues to use a variety of tactics or stratagems to acquire or attempt to acquire restricted U.S.-origin items. Corezing has conspired with at least two additional companies, Insight and Action Global Co., Limited (''Action Global''), in order to circumvent U.S. export control laws and to make further efforts to avoid detection by U.S. law enforcement authorities. In addition to the transaction involving Insight described above, on at least three occasions between August 2009 and October 2009, requests for the same type and model of equipment originally sought by Corezing were shortly thereafter made in the name of Action Global and Insight, rather than in Corezing's name, after shipments destined for Corezing had been detained by U.S. law enforcement or after a U.S. exporter had stopped doing business with Corezing.

Moreover, in addition to acting in concert with Corezing as described above, Action Global also is related to Corezing. It shares a common address with Corezing in Hong Kong, and Respondent Jie Luo is listed as a Director of both Corezing and Action Global.

BIS submits, in sum, that future violations of the EAR are imminent based on the evidence of Respondents' extensive, continued and covert efforts to obtain restricted, national-security controlled items from the United States without the required BIS licenses, including by providing false information to U.S. companies in an effort to prevent U.S. law enforcement officials from discovering and ultimately stopping its conduct. I agree and find that the evidence presented by BIS demonstrates that a violation of the Regulations by Respondents is imminent in both time and degree of likelihood. The conduct in this case is deliberate, significant and likely to occur again absent the issuance of a TDO. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Accordingly, I find that a TDO naming Corezing International, Kow Seng Lim, Zhenyong Zhou, Jie Luo, Insight Electronics Pte Ltd. and Action Global Co., Limited is necessary, in the public interest, to prevent an imminent violation of the EAR.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

It is therefore ordered:

FIRST, that, Corezing International also known as (''a/k/a'') Corezing Technology Pte Ltd., a/k/a Corezing International Pte Ltd.., a/k/a Core Zing, a/k/a CoreZing Electronics, and a/k/a Corezing International Group Company, 2021 Butik Batok Street 23, #02–212, Singapore 659626, 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098, 50 East Coast Road, #2–70 Roxy Square, Singapore 428769, Block 1057 Eunos, Avenue 3#02–85, Singapore 409848, G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong, Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong, Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong, Flat/RM 2309, 23/F, Ho King COMM Center 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong, Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China, Room1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China; Kow Seng Lim a/k/a Eric Lim, a/k/a James Wong, and a/k/a Alvin Stanley, 2021 Butik Batok Street 23, #02–212, Singapore 659626, Block 751 Woodlands Circle, #10–592, Singapore 730751; Zhenyong Zhou a/k/a Benny Zhou, Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong, Room 502, Block 3, Huzhong Emporium, Humen Town, Dongguang City, Guangdong, China ; Jie Luo a/k/a Ivy Luo, G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong,, Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong, Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong, Flat/RM 2309, 23/F, Ho King COMM Center 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong, RenCai ShiChang DaSha (Building), Baoanbei Road, Luohu Qu, Shenzhen City, Guangdong, China; Insight Electronics Pte Ltd, 20 Ang Mo Kio Industrial Park 2A, #04–28, AMK TECH LINK, Singapore 555854, 54 Serangoon North Ave 4, Unit 06–31, Cyberhub North, Singapore 555854; Action Global Co., Limited, C/O Win Sino. Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay KLN, Hong Kong, Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street, Mongkok, KL, Hong Kong, 520 Sims Avenue, #02–04, Singapore 387580 (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by any Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from any Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by any Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by any Denied Person if such

service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register**.

This Order is effective upon date of publication in the **Federal Register** and shall remain in effect for 180 days.

Entered this 20th day of November 2009.

Kevin Delli-Colli,

Deputy Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E9–28605 Filed 11–27–09; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on December 17, 2009, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Report on September 2009 Wassenaar Expert Group Meeting.
4. Discussion on MPETAC proposals for 2010.
5. Report on proposed changes to the Export Administration Regulation.
6. Other Business.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than December 10, 2009.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 23, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: November 24, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–28602 Filed 11–27–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2009–OS–0110]

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 30, 2009.

Title and OMB Number: SMART Information Management System (SIMS); Application Form Number TBD; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 1,000.

Responses per Respondent: 4.

Annual Responses: 4,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 1,000 hours.

Needs and Uses: Respondents are SMART Program participants and their advisors, future employers, and mentors who provide contact, Program progress, and student status information for the purpose of monitoring student participants' progress and position in the SMART Program as part of their agreement as Program participants. All information is collected by direct entry during secure logon sessions and/or by electronic or paper forms collected by SMART Program staff performing official duties.

Affected Public: Individuals or households; not-for-profit institutions; Federal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 19, 2009.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E9–28523 Filed 11–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2009–HA–0144]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 30, 2009.

Title and OMB Number: TRICARE DoD/CHAMPUS Medical Claim Patient's Request for Medical Payment, DD Form 2642, OMB Number 0720–0006.

Type of Request: Reinstatement.

Number of Respondents: 3,000,000.

Responses per Respondent: 1.

Annual Responses: 3,000,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 750,000 hours.

Needs and Uses: This form is used solely by beneficiaries claiming reimbursement for medical expenses under the TRICARE Program. The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance eligibility, certification of the beneficiary eligibility and other health insurance liability, certification that the beneficiary received the care, and reimbursement for the medical services received.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 13, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28524 Filed 11–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–HA–0119]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 30, 2009.

Title and OMB Number: TRICARE Plus Enrollment Application, DD Form 2853, and TRICARE Plus Disenrollment Request, DD Form 2854; OMB Control Number 0720–0028.

Type of Request: Reinstatement.

Number of Respondents: 25,065.

Responses per Respondent: 1.

Annual Responses: 25,065.

Average Burden per Response: 0.117 hours.

Annual Burden Hours: 2,933 hours.

Needs and Uses: These collected instruments serve as an application for enrollment and disenrollment in the Department of Defense's TRICARE Plus Health Plan established in accordance with Title 10 U.S.C. sections 1099 (which calls for a health care enrollment system) and 1086 (which authorizes TRICARE eligibility of Medicare Eligible Persons and has resulted in the development of a new enrollment option called TRICARE Plus) and the Assistant Secretary of Defense for Health Affairs Policy Memorandum to Establish the TRICARE Plus Program, June 22, 2001. The information collected hereby provides the TRICARE contractors with necessary data to determine beneficiary eligibility and to identify the selection of a health care option.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 13, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28529 Filed 11–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2009–HA–0121]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 30, 2009.

Title and OMB Number: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Number 0720–0022.

Type of Request: Reinstatement.

Number of Respondents: 885,000.

Responses per Respondent: 1.

Annual Responses: 885,000.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 44,250 hours.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.

Affected Public: Business or other profit; Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 13, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28526 Filed 11–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–HA–0120]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 30, 2009.

Title and OMB Number: DoD Patient Safety Survey; OMB Control Number 0720–0034.

Type of Request: Reinstatement.

Number of Respondents: 14,022.

Responses per Respondent: 1.

Annual Responses: 14,022.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 2,384 hours.

Needs and Uses: In its ongoing response to legislation, DoD implemented a Web-based patient safety culture survey to a census of all staff working in Army, Navy, and Air Force Military Health System (MHS) facilities in the U.S. and internationally, including Military Treatment Facility hospitals as well as ambulatory and dental services. The survey obtains MHS staff opinions on patient safety issues such as teamwork, communications, medical error occurrence and response, error reporting, and overall perceptions of patient safety. The purpose of the survey is to assess the current status of patient safety in MHS facilities as well as to provide baseline input for assessment of patient safety improvement over time. Survey results will be prepared at the facility and Service levels and MHS overall.

Affected Public: Individuals or households; Federal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 13, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28525 Filed 11–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee Meeting; Military Leadership Diversity Commission

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting will take place:

1. *Name of Committee:* Military Leadership Diversity Commission (MLDC).

2. *Dates:* December 15 and 16, 2009.

3. *Times:* 8 a.m. to 6 p.m., December 15 and 16, 2009.

4. *Location:* Omni San Diego Hotel, 675 L Street, San Diego, California 92101.

5. *Purpose of the Meeting:* The purpose of the meeting is for the commissioners of the Military Leadership Diversity Commission to continue their efforts to address congressional concerns as outlined in the commission charter.

6. *Agenda:*

December 15, 2009

8 a.m.–11:30 a.m.

DFO opens the meeting.

Commission Chairman opening remarks.

Open discussion on definition of diversity.

Open discussion on recruiting and outreach.

Steve L. Robbins briefs the Commission on his experience in assisting private and public organizations going beyond representational diversity.

11:30 a.m.

DFO recesses the meeting.

12:30 p.m.–6 p.m.

DFO opens meeting.

Bill Leftwich briefs the Commission on his experience in implementing DoD diversity initiatives.

Pegine Echevarria briefs the Commission on her experience in assisting private and public organizations to improve their workforce diversity.

Open discussion on career development: branching and assignments.

Open discussion on career development: diversity management and training.

Time available for public comments.

6 p.m.

Commission Chairman closing remarks.

DFO adjourns the meeting.

December 16, 2009

8 a.m.–1 p.m.

DFO opens the meeting.

Commission Chairman opening remarks.

Open discussion on legal implications of diversity policy.

Military Services have the service specific organization responsible for promotions brief the commission on:

- Their promotion process.
- How they ensure that the process is fair.

11:30 a.m.

DFO recesses the meeting.

12:30 p.m.–6 p.m.

DFO opens the meeting.

Military Services have the service specific organization responsible for promotions brief the commission on:

- Their promotion process.
- How they ensure that the process is fair.

Open discussion on the way forward.

Time available for public comments.

6 p.m.

Commission Chairman closing remarks.

DFO adjourns the meeting.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meetings on December 15 and 16, 2009 will be open to the public.

Please note that the availability of seating is on a first-come basis.

8. *Committee's Designated Federal Officer or Point of Contact:* Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838 or (703) 347–5295, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail *Steven.Hady@wso.whs.mil.*

9. Supplementary information: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Military Leadership Diversity Commission about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed above under ''Committee's Designated Federal Officer or Point of Contact'' at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Military Leadership Diversity Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the Military Leadership Diversity Commission Chairperson and ensure they are provided to all members of the Military Leadership Diversity Commission before the meeting that is the subject of this notice.

10. For Further Information Contact: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail *Steven.Hady@wso.whs.mil.*

Dated: November 24, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28479 Filed 11–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for the Real Property Master Plan and Real Property Exchange at Camp Parks, Dublin, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army, with cooperation from the National Aeronautics and Space Administration (NASA), announces the availability of the ROD for the Real Property Master Plan (RPMP) and the Real Property

Exchange at Camp Parks. The ROD selects the Accelerated Modernization Alternative, under which the construction of new facilities and ranges included in the RPMP would be partially funded using the value of the land exchange (180 acres of the southern cantonment area) from Federal to private ownership. The remainder of RPMP construction at Camp Parks would be programmed as military construction projects. NASA's in-holding would be sold and proceeds of the sale would be used at its NASA–Ames Research Center, Moffett Field. This decision will speed the replacement of antiquated facilities and infrastructure on Camp Parks.

ADDRESSES: Questions regarding this action can be directed to: U.S. Army Garrison Camp Parks, Environmental Office, Building 791 5th Street, Dublin, CA 94568–5201.

FOR FURTHER INFORMATION CONTACT:

Army property: Mr. Paul Kot, (925) 875–4682, or e-mail at *Paul.Kot@usar.army.mil*.

NASA property: Dr. Ann Clarke, (650) 604–2350, or e-mail *Ann.Clarke@nasa.gov*.

SUPPLEMENTARY INFORMATION: Potential environmental and socioeconomic impacts from this decision include loss of non-native grasslands and modification of wetlands; loss of special-status species; traffic congestion at the Dublin Boulevard/Dougherty Road intersection; and air quality, socioeconomic, and visual impacts. Proposed mitigation measures would reduce the severity and extent of potential impacts.

A copy of the Final Environmental Impact Statement and ROD can be viewed at *http://www.licicett.army.mil*.

Dated: November 18, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. E9–28371 Filed 11–27–09; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On November 20, 2009, the Department of Education published a comment period notice in the **Federal Register** (Page 60247, Column 3) seeking public comment for an information collection entitled, ''Guidance on Title I, Part A''. The notice is hereby corrected, stating that requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and clicking on link number 4171. The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: November 24, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E9–28533 Filed 11–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On November 20, 2009, the Department of Education published a comment period notice in the **Federal Register** (Page 60246, Column 3) seeking public comment for an information collection entitled, ''Annual Performance Report for the State Grant for Assistive Technology Program''. The number of responses are corrected to 190,456 and the burden hours are corrected to 26,796. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: November 24, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

[FR Doc. E9–28574 Filed 11–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed three–year extension of Form FE–746R, ''Natural Gas Import and Export Monthly Report.''

DATES: Comments must be filed by January 29, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Yvonne Caudillo. To ensure receipt of the comments by the due date, submission by FAX (202–586–6050) or e-mail (*yvonne.caudillo@hq.doe.gov*) is recommended. The mailing address is The Office of Fossil Energy, Natural Gas Regulatory Activities, FE–34, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Ms. Caudillo may be contacted by telephone at 202–586–4587.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Caudillo at the address listed above. Also, please visit our Web site at *http://fossil.energy.gov/programs/gasregulation/Guidelines_for_Quarterly_Reports.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This 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.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

DOE's Office of Fossil Energy (FE) is delegated the authority to regulate natural gas imports and exports under

section 3 of the Natural Gas Act of 1938, 15 U.S.C. 717b. In order to carry out its delegated responsibility, FE requires those persons seeking to import or export natural gas to file an application containing the basic information about the scope and nature of the proposed import/export activity. DOE collects critical natural gas information (*i.e.,* country of origin/destination, international point of entry/exit; name of supplier; volume; price; transporter; geographic market served; and duration of supply contract) on a monthly basis. This information, which is published in FE's Natural Gas Import and Export Quarterly Report, is used to ensure compliance with the terms and conditions of the authorizations. In addition, the data are used to monitor North American gas trade, which, in turn, enables the Federal government to perform market and regulatory analyses; improve the capability of industry and the government to respond to any future energy-related supply problems; and keep the general public informed of international natural gas trade.

Please refer the to the natural gas import and export report 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, disclosure information, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

DOE will be requesting a three-year extension of approval to its natural gas import and export activity data collection with no changes to the previously approved collection. DOE will treat the monthly information as public information, which conforms to the historical treatment of all natural gas import and export information filed pursuant to the terms of all natural gas import/export authorizations.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

As a Potential Respondent to the Request for Information

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the due date?

E. Public reporting burden for the proposed monthly reporting of natural gas imports and exports is estimated to average three hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

F. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

H. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

C. Is the information useful at the levels of detail to be collected?

D. For what purpose(s) would the information be used? Be specific.

E. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

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) and Section 3 of the Natural Gas Act of 1938, codified at 15 U.S.C. 717b.

Issued in Washington, DC, November 19, 2009.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9–28622 Filed 11–27–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9086–9]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; Request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Comite Civico Del Valle, Inc. in the United States District Court for the Northern District of California: *Comite Civico Del Valle, Inc.* v. *Jackson*, No. C09–04095 PJH (N.D. Cal.). Plaintiff filed a deadline suit to compel the Administrator to take final action under section 110(k) of the Act on Imperial County Air Pollution Control District (ICAPCD) Rules 800 through 806 submitted to the Environmental Protection Agency (EPA) by the California Air Resources Board as revisions to the state implementation plan. The proposed consent decree establishes a deadline for EPA action on ICAPCD Rules 800 through 806.

DATES: Written comments on the proposed consent decree must be received by *December 30, 2009*.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0864, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–5601; *fax number* (202) 564–5603; *e-mail address: wilcox.geoffrey@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree requires EPA to sign for publication in the **Federal Register** no later than June 15, 2010 a notice of the Agency's final action on ICAPCD Rules 800 through 806 pursuant to section 110(k) of the CAA. Rules 800 through 806 are a series of control measures intended to reduce particulate matter (PM–10) from a variety of sources of fugitive dust including construction activities, open areas, paved and unpaved roads and agricultural operations.

This proposed consent decree would resolve a lawsuit seeking to compel action by the Administrator to take final action under section 110(k) of the Act on ICAPCD Rules 800 through 806 submitted to the Environmental Protection Agency (EPA) by the California Air Resources Board as revisions to the state implementation plan. The proposed consent decree provides that EPA will sign for publication in the **Federal Register** notice of the Agency's final action pursuant to CAA section 110(k) on Rules 800 through 806 by June 15, 2010. If EPA fulfills its obligations, Plaintiff has agreed to dismiss this suit with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0864) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., 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 Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov*. You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 20, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–28537 Filed 11–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9086–8]

Postponement of NACEPT Subcommittee on Promoting Environmental Stewardship

AGENCY: Environmental Protection Agency (EPA).

ACTION: Postponement of meeting.

SUMMARY: On November 13, 2009, EPA provided notice (74 FR 58626) of a meeting of the NACEPT Subcommittee on Promoting Environmental

Stewardship on December 1 and 2, 2009. The purpose of this notice is to announce a postponement of the December 1 and 2 meeting.

The purpose of the Subcommittee on Promoting Environmental Stewardship (SPES) of the National Advisory Council for Environmental Policy and Technology (NACEPT) is to advise the U.S. Environmental Protection Agency on how to promote environmental stewardship practices that encompass all environmental aspects of an organization in the regulated community and other sectors, as appropriate, in order to enhance human health and environmental protection.

The meeting scheduled for December 1 and 2 was intended to focus on the Subcommittee's potential stewardship-related recommendations for the Agency. The meeting is being postponed to allow additional time for Subcommittee members to more fully prepare and process potential next steps.

FOR FURTHER INFORMATION CONTACT: Regina Langton, Designated Federal Officer, *langton.regina@epa.gov,* 202–566–2178, U.S. EPA Office of Policy, Economics, and Innovation (MC1807T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Dated: November 23, 2009.

Andrew Teplitzky,

Acting Director, Performance Track Division.

[FR Doc. E9–28534 Filed 11–27–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

November 20, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on January 29, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to *PRA@fcc.gov* or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0816.

Title: Local Telephone Competition and Broadband Reporting, Report and Order, WC Docket No. 07–38, FCC 08–89; Order on Reconsideration, WC Docket No. 07–38, FCC 08–148.

Form No.: FCC Form 477.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 1,790 respondents; 3,580 responses.

Estimated Time Per Response: 289 hours (average).

Frequency of Response: Semi–annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 201, 218–220, 251–252, 271, 303(r), 332 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. Section 1302; as well as 47 U.S.C. section 706 of the Telecommunications Act of 1996.

Total Annual Burden: 1,034,620 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission will continue to allow respondents to certify, on the first page of each submission, that some data contained in that submission are privileged or confidential, commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity making the submission. If the Commission receives a request for, or proposes to disclose the information, the respondent would be required to make a full showing pursuant to the Commission's rules for withholding from public inspection information submitted to the Commission. The Commission will retain its current policies and procedures regarding the confidential treatment of submitted FCC Form 477 data, including the use of aggregated, non–company specific data in its published reports.

Need and Uses: This information collection is being submitted to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance. The Commission is reporting a decrease of 50,520 hours to the total annual burden. This adjustment decrease is due to respondents' increased familiarity with the new, on–line filing procedures and with the changes to their own systems that were necessary to comply with this information collection. During the first two filing windows during OMB's one year conditional approval of the data collection on a pilot basis, the Commission has been flexible with and assisted respondents who had difficulty in submitting information in the new format.

This collection improves the Commission's understanding of the extent of broadband deployment, facilitating the development of appropriate broadband policies and the Commission's ability to carry out its obligation under section 706 of the Telecommunications Act of 1996 to ''determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.'' In addition, the Telecommunications Act of 1996 directs the Commission to take actions to open all participants, including new entrants. A central task in creating this framework is the opening of previously monopolized local telecommunications markets. By collecting timely and reliable information about the pace and extent of competition for local telephony service in different geographic areas, including

rural areas, the Commission significantly improves the ability to evaluate the effectiveness of actions the Commission and the states are taking to facilitate economic competition in those areas.

The information is used by Commission staff to prepare reports that help inform consumers and policy makers at the federal and state level of the development of competition in the local telephone service market and the deployment of broadband services. The Commission will continue to use the information to better inform its understanding of broadband deployment in conjunction with its congressionally mandated section 706 reports. The Commission also uses the data to support its analyses in a variety of rulemaking proceedings under the Communications Act of 1934, as amended. Absent this information collection, the Commission would lack essential data for assisting it in determining the effectiveness of its policies and fulfilling its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Deputy Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–28460 Filed 11–27–09; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the scheduling of an Oral Argument in Daniel Chapter One, *et al.,* Docket No. 9329.

DATES: Thursday, December 3, 2009, 1 p.m.

FOR FURTHER INFORMATION CONTACT: Mitch Katz, Senior Public Affairs Specialist, Office of Public Affairs, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2180, (202) 326–2711 (recorded message).

SUPPLEMENTARY INFORMATION: An Oral Argument will be held in the Matter of Daniel Chapter One, *et al.,* Docket 9329 at the Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580 at 1 p.m. Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

Matters To Be Considered

PORTION OPEN TO THE PUBLIC

(1) Oral Argument in Daniel Chapter One, *et al.,* Docket 9329.

PORTION CLOSED TO THE PUBLIC

(2) Executive Session to follow Oral Argument in Daniel Chapter One., *et al.,* Docket 9329.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–28372 Filed 11–27–09; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on December 18, 2009, via telephone conference call, from 9 a.m. to 2 p.m./Eastern Time. Members of the public should call 1–877–705–6006; confirmation code ''HIT Standards Committee meeting.'' To listen via computer, no sooner than 10 minutes prior to the meeting, please go to: *http://altarum.na3.acrobat.com/HITstandards*.

Location: The meeting is dial-in only.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, *Fax:* 202–690–6079, *e-mail: judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The Committee will discuss updates from its workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 10, 2009. Oral comments from the pubic will be scheduled between approximately 1:30 and 2 p.m. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: November 23, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–28583 Filed 11–27–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee's NHIN Workgroup Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS

ACTION: Notice of meeting.

This notice announces a forthcoming subcommittee meeting of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee's Nationwide Health Information Network (NHIN) Workgroup.

General Function of the Committee: to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed. The NHIN Workgroup is charged with creating a policy and technical framework that allows the internet to be used for the secure and standards-based exchange of health information, in a way that is open to all and fosters innovation.

Date and Time: The meeting will be held on December 16, 2009, from 10 a.m. to 5 p.m./Eastern Time.

Location: The OMNI Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. The hotel telephone number is 202–234–0700. The meeting will be available via Webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, *Fax:* 202–690–6079, *e-mail: judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will be discussing the nationwide health information network (NHIN), and will be hearing testimony from stakeholder groups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov*. The meeting will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 9, 2009. Oral comments from the pubic will be scheduled between approximately 3 p.m. to 4 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business on that day.

Persons attending Committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: November 24, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–28584 Filed 11–30–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on December 15, 2009, from 9 a.m. to 5 p.m./Eastern Time.

Location: The Washington Marriott Hotel, 22nd and M Streets, NW., Washington, DC. The hotel telephone number is 202–872–1500.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, *Fax:* 202–690–6079, *e-mail: judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup and the NHIN Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views,

orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 8, 2009. Oral comments from the pubic will be scheduled between approximately 4 p.m. to 4:30 p.m. Time allotted for each presentation is limited to two minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: November 23, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–28621 Filed 11–27–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Annual Financial Report (ACF–696T) for Tribes.

OMB No.: 0970–0195.

Description: Tribes use the Financial Report Form ACF–696T to report Child Care and Development Fund (CCDF) expenditures. Authority to collect and report this information is found in Section 658G of the Child Care and Development Block Grant Act of 1990, as revised. In addition to the Program Reporting Requirements set forth in 45 CFR Part 98, Subpart H, the regulations at 45 CFR 98.65(g) and 98.67(c)(1) authorize the Secretary to require financial reports as necessary.

Tribal grantees submit the ACF–696T report on an annual basis on behalf of the Tribal Lead Agency administering the Child Care and Development Fund (CCDF).

The American Recovery and Reinvestment Act (ARRA) of 2009, (Pub. L. 111–5) provides an additional $2 billion for the Child Care and Development Fund to help States, Territories, and Tribes provide child care assistance to low income working families. CCDF Program Instruction (CCDF–ACF–PI–2009–03) provided guidance on ARRA spending requirements.

Section 1512 of the ARRA legislation requires recipients to report quarterly spending and performance data on the public Web site, ''Recovery.gov''. Federal agencies are required to collect ARRA expenditure data and performance data and these data must be clearly distinguishable from the regular CCDF (non-ARRA) funds. To ensure transparency and accountability, the ARRA requires Federal agencies and grantees to track and report separately on expenditures from funds made available by the stimulus bill. Office of Management and Budget (OMB) guidance implementing the ARRA legislation indicates that agencies requiring additional information for oversight should rely on existing authorities and reflect these requirements in their award terms and conditions as necessary, following existing procedures. Therefore, to capture ARRA expenditures, the ACF–696T has been modified (by the addition of two columns) for reporting ARRA data. In addition, a new data element will ask Tribes to estimate the number of child service months funded with ARRA dollars. The collection will not duplicate other information.

Respondents: Tribes and Tribal Organizations that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T CCDF Financial Reporting Form for Tribes	232	1	8	1,856
Estimated Total Annual Burden Hours:				1,856

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7245, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: November 24, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–28474 Filed 11–27–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–10–0488]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov*.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Restriction on Travel of Persons (OMB Control No. 0920–0488 Exp.1/31/2010)—Extension—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention is requesting OMB approval to extend the information collection request, ''Restriction on Travel of Persons'' (OMB Control No. 0920–0488). This information collection request is scheduled to expire on January 31, 2010.

CDC is authorized to collect this information under 42 CFR 70.5 (Certain communicable diseases; special requirements). This regulation requires that any person who is in the communicable period for cholera, plague, smallpox, typhus, or yellow fever or having been exposed to any such disease is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

Control of disease transmission within the States is considered to be the province of state and local health authorities, with Federal assistance being sought by those authorities on a cooperative basis without application of Federal regulations. The regulations in 42 Part 70 were developed to facilitate Federal action in the event of large outbreaks requiring a coordinated effort involving several states, or in the event of inadequate local control. While it is not known whether, or to what extent situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is now commonplace. Should these situations arise, CDC will use the reporting and recordkeeping requirements contained in the regulations to carry out quarantine responsibilities as required by law.

There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Regulation	Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
42 CFR 70.3 Application to the State of Destination for a permit.	Traveler	2,000	1	15/60	500
	Attending physician	2,000	1	15/60	500
42 CFR 70.3 Copy of material submitted by applicant and permit issued by State health authority.	State health authority	8	250	6/60	200
42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel.	Master of a vessel or person in charge of conveyance.	1,500	1	15/60	375
42 CFR 70.4 Copy of material submitted or state or local health authority under this provision.	State health authority	20	75	6/60	150
42 CFR 70.5 Application for a permit to move from State to State while in the communicable period.	Traveler	3,750			938
	Attending physician				
Total					3,601

Dated: November 20, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–28489 Filed 11–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–10–0573]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Adult and Pediatric HIV/AIDS Confidential Case Reports for National HIV/AIDS Surveillance (OMB No. 0920–0573 Exp. 2/28/2010)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of HIV/AIDS surveillance data collection is to monitor trends in HIV disease and describe the characteristics of infected persons (*e.g.,* demographics, modes of exposure to HIV, clinical and laboratory markers of HIV disease, manifestations of severe HIV disease, and deaths among persons with HIV/AIDS). HIV/AIDS surveillance data are widely used by scientists, researchers, and public health authorities at all levels to assess the impact of HIV infection on morbidity and mortality, to allocate medical care resources and services and to guide prevention and disease control activities.

CDC in collaboration with health departments in the 50 states, the District of Columbia, and U.S. dependent areas, conducts national surveillance for cases of HIV infection that includes critical data across the spectrum of HIV disease from HIV diagnosis to AIDS, the end-stage disease caused by infection with HIV, and death. In addition, this system provides the essential data to estimate HIV incidence and monitor patterns in variant, atypical, and resistant strains of HIV among infected persons in the United States. Case report data are either abstracted from medical records by health departments or reported from laboratories, physicians, and other care providers to health departments who compile the information and report data to CDC for inclusion in the national database. Since 1993, these data have been maintained and reported through the HIV/AIDS reporting system (HARS) software. In 2010, the new enhanced electronic HIV/AIDS reporting system (eHARS) will be fully deployed. The revisions requested include additional data elements for eHARS that will allow better tracking of documents and flow of previously approved currently collected surveillance data. In addition, we are requesting approval of a revised data collection form for enhanced perinatal surveillance (EPS) including non-substantial changes aimed at improving the format and usability of the EPS form.

The data CDC collects through the national HIV surveillance system provide the sole source of comprehensive, complete national HIV statistics collected in a timely and standardized manner. Continued data collection will benefit the public by providing accurate and reliable information on the extent and distribution of the HIV epidemic in the United States to be used to guide local and national HIV prevention and control efforts and guide distribution of resources for HIV treatment and care. The total estimated annual burden hours are 51,311.

Estimated Annualized Burden Hours

EXHIBIT 12.A—ESTIMATES OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)
Health Departments	Adult HIV/AIDS Case Report	59	1,839	20/60
Health Departments	Pediatric HIV/AIDS Case Report	59	8	20/60
Health Departments	Case Report Updates	59	97	5/60
Health Departments	Incidence	25	2,437	10/60
Health Departments	VARHS	11	2,019	5/60
Health Departments	EPS	15	167	1

Dated: November 20, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–28487 Filed 11–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–304/304a, CMS–1515/1572, CMS–10291, CMS–10292, CMS–588 and CMS–R–232]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper

performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Reconciliation of State Invoice and Prior Quarter Adjustment Statement; *Use:* Section 1927 of the Social Security Act requires drug manufacturers to enter into and have in effect a rebate agreement with CMS in order for States to receive funding for drugs dispensed to Medicaid recipients. Drug manufacturers must complete and submit to States the 304 form (the Reconciliation of State Invoice Form) to explain any rebate payment adjustments for the current quarter, and complete and submit the 304A form (the Prior Quarter Adjustment Statement Form) to States to explain rebate payment adjustments to any prior quarters. Both forms are used to reconcile drug rebate payments made by manufacturers with the State invoices of rebates due. *Form Number:* CMS–304/304a (OMB#: 0938–0676); *Frequency:* Reporting—Quarterly; *Affected Public:* Private Sector: Business or other for profits; *Number of Respondents:* 570; *Total Annual Responses:* 3820; *Total Annual Hours:* 141,080. (For policy questions regarding this collection contact Cindy Bergin at 410–786–1176. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument and Supporting Regulations in 42 CFR 488.26 and 442.30. *Use:* In order to participate in the Medicare Program as a Home Health Agency (HHA) provider, the HHA must meet Federal Standards. These forms are used to record information and patients' health and provider compliance with requirements and to report the information to the Federal Government; *Form Number:* CMS–1515/1572 (OMB#: 0938–0355); *Frequency:* Reporting—Yearly; *Affected Public:* Health Care Services; *Number of Respondents:* 10,078; *Total Annual Responses:* 5,614; *Total Annual Hours:* 9,821. (For policy questions regarding this collection contact Patricia Sevast at 410–786–8135. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Dental Provider and Benefit Information Posted on Insure Kids Now! Website; *Form Number:* CMS–10291 (OMB#: 0938–1065); *Use:* Section 501 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) requires the Secretary to work with States, pediatric dentists, and other dental providers to include on the Insure Kids Now (IKN) website, a ''current and accurate list of all dentists and providers within each State that provide dental services to children enrolled in the State plan (or waiver) under Medicaid or the State child health plan (or waiver) under CHIP. Section 501 of CHIPRA also requires the Secretary to ensure the list is updated at least quarterly and includes the description of the dental services provided under Medicaid or CHIP and whether the services are provided through a State plan or waiver. The Secretary shall also post on the IKN website State specific information on available dental benefits. This information collection requirement will allow States to collect the information on the dental providers and dental benefits in accordance with CHIPRA. *Frequency:* Yearly and Quarterly; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 51; *Total Annual Responses:* 255; *Total Annual Hours:* 9,180. (For policy questions regarding this collection contact Nancy Goetschius at 410–786–0707. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Medicaid HIT Plan and Templates for Implementation of Section 4201 of ARRA; *Form Number:* CMS–10292 (OMB#: 0938–NEW); *Use:* This information is being requested in order that States can submit documentation to CMS for review and approval in order that States can implement the Medicaid program and draw down Federal financial participation. The American Reinvestment and Recovery Act of 2009 (ARRA) provides States with the flexibility to request funds to develop a health information technology vision and road to get to the ultimate goal of meaningful use of certified electronic health records technology. We will be sending State Medicaid Directors letters and templates for the State Medicaid Hit Plan (SMHP), the Planning Advance Planning Document (PAPD) and the Implementation Advance Planning Document (IAPD) to States in an effort to request these changes if they so choose to make the process as simple as possible. *Frequency:* Yearly, once and/or occasionally; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 280. (For policy questions regarding this collection contact Donna Schmidt at 410–786–5532. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Electronic Funds Transfer Authorization Agreement; *Use:* Section 1815(a) of the Social Security Act provides the authority for the Secretary of Health and Human Services to pay providers/suppliers of Medicare services at such time or times as the Secretary determines appropriate (but no less frequently than monthly). Under Medicare, CMS, acting for the Secretary, contracts with Fiscal Intermediaries and Carriers to pay claims submitted by providers/suppliers who furnish services to Medicare beneficiaries. Under CMS' payment policy, Medicare providers/suppliers have the option of receiving payments electronically. Form number CMS–588 authorizes the use of electronic fund transfers (EFTs). *Form Number:* CMS–588 (OMB#: 0938–0626); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 100,000; *Total Annual Responses:* 100,000; *Total Annual Hours:* 100,000. (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Reinstatement without change of a currently approved collection; *Title of Information Collection:* Medicare Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations at 42 CFR 421.300–421.316; *Use:* Section 1893(d)(1) of the Social Security Act requires CMS to establish a process for identifying, evaluating, and resolving conflicts of interest. CMS proposed a process in Section 421.310 to mandate submission of pertinent information regarding conflicts of interest. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract. CMS needs this information to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have

organizational conflicts of interest and whether any conflicts have been resolved. *Form Number:* CMS–R–232 (OMB#: 0938–0723); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 11; *Total Annual Responses:* 44; Total Annual Hours: 2,200. (For policy questions regarding this collection contact Joe Strazzire at 410–786–2775. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *December 30, 2009.*

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: November 20, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–28458 Filed 11–27–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Financial Report (ACF 696) for States and Territories.

OMB No.: 0970–0163.

Description: States and Territories use the Financial Report Form ACF–696 to report Child Care and Development Fund (CCDF) expenditures. Authority to collect and report this information is found in section 658G of the Child Care and Development Block Grant Act of 1990, as revised. In addition to the Program Reporting Requirements set forth in 45 CFR Part 98, Subpart H, the regulations at 45 CFR 98.65(g) and 98.67(c)(1) authorize the Secretary to require financial reports as necessary.

The form provides specific data regarding claims and provides a mechanism for States to request Child Care grant awards and to certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor Child Care and Development Fund expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

The American Recovery and Reinvestment Act (ARRA) of 2009, (Pub. L. 111–5) provides an additional $2 billion for the Child Care and Development Fund to help States, Territories, and Tribes provide child care assistance to low income working families. CCDF Program Instruction (CCDF–ACF–PI–2009–03) provided guidance on ARRA spending requirements.

Section 1512 of the ARRA legislation requires recipients to report quarterly spending and performance data on the public website, ''Recovery.gov''. Federal agencies are required to collect ARRA expenditure data and performance data and these data must be clearly distinguishable from the regular CCDF (non-ARRA) funds. To ensure transparency and accountability, the ARRA authorizes Federal agencies and grantees to track and report separately on expenditures from funds made available by the stimulus bill. Office of Management and Budget (OMB) guidance implementing the ARRA legislation indicates that agencies requiring additional information for oversight should rely on existing authorities and reflect these requirements in their award terms and conditions as necessary, following existing procedures. Therefore, to capture ARRA expenditures, the ACF–696 has been modified (by the addition of a column) for reporting ARRA expenditure data. In addition, a new data element will ask States and Territories to estimate the number of child service months funded with ARRA dollars. The collection will not duplicate other information.

Respondents: States and Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696	56	4	5	1,120

Estimated Total Annual Burden Hours: 1,120

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project,

Fax: 202–395–7245,

Attn: Desk Officer for the Administration for Children and Families.

Dated: November 24, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–28503 Filed 11–27–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Conditional Knockout of Smad1 in Mice

Description of Technology: NIH inventors have generated a conditional knockout of Smad1, a protein involved in the TGF-beta family signaling pathways. LoxP elements were made to flank exon 2 of Smad1 in one set of mice. These mice can be crossed with mice expressing the CRE element in a tissue-specific or inducible manner. These mice can be used to study the role of Smad1 under a variety of conditions in a variety of different paradigms.

Applications:

• Tool for studying role of Smad1 in development in general or in a specific tissue.

• Tool for studying the role of Smad1 in a tissue-specific and/or an inducible way.

Inventor: Dr. Shixia Huang (NCI).

Related Publication: S Huang, B Tang, D Usoskin, RJ Lechleider, SP Jamin, C Li, MA Anzano, T Ebendal, C Deng, AB Roberts. Conditional knockout of the Smad1 gene. Genesis 2002 Feb;32(2):76–79.

Patent Status: HHS Reference No. E–307–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Steve Standley, PhD; 301–435–4074; *sstand@od.nih.gov.*

Clk and Dyrk1A Inhibitors as General Splicing Modulators and for the Potential Treatment of Down's Syndrome and Alzheimer's Disease

Description of Technology: NIH investigators have discovered a series of potent, selective small molecule inhibitors of cdc2-like kinases (Clk) and dual-specificity tyrosine-regulated kinase 1A (Dyrk1A) with potential as modulators of gene splicing and within the treatment of Down's syndrome and Alzheimer's disease. Clk kinases are known to phosphorylate the prominent family of serine- and arginine-rich (SR) splicing proteins. Members of the Clk family have been implicated in the regulation of alternative splicing of PKCβII, TF, Tau and β-globin pre-mRNA. Dyrk1A is a kinase that has been implicated in numerous aspects of neurological development and maintenance. The gene that encodes Dyrk1A is found on the Down's Syndrome-critical region on chromosome 21 and the over-expression of Dyrk1A is considered to be a primary contributor to the Down's syndrome phenotype. For instance, transgenic mice overexpressing Dyrk1A exhibit cognitive deficits, and blocking Dyrk1A in these transgenic animals has been shown to mitigate Down's-related deficits. Hyper-phosphorylation of Tau by Dyrk1A has also been directly implicated in the pathology and progression of Down's syndrome-associated Alzheimer's disease. Alzheimer's disease in general is also associated with pathological deposition of hyper-phosphorylated Tau. Thus, these molecules have the potential to treat both Down's syndrome and Alzheimer's disease.

Applications:

• Tools for the study of alternate gene splicing.

• Potential therapeutic for Down's syndrome.

• Potential therapeutic for Alzheimer's disease.

Development Status: Early stage.

Market: In the United States approximately 1 in 800 births is associated with Down's syndrome with approximately 340,000 affected nationwide. Alzheimer's disease affects 1 in 68 people with approximately 4,000,000 affected nationwide.

Inventors: Craig J. Thomas *et al.* (NHGRI).

Publication: BT Mott *et al.* Evaluation of substituted 6-arylquinazolin-4-amines as potent and selective inhibitors of cdc2-like kinases (Clk). Bioorg Med Chem Lett. 2009 Dec 1;19(23):6700–6705. Epub ahead of print, 2009 Oct 3, doi:10.1016/j.bmcl.2009.09.121.

Patent Status: U.S. Provisional Application No. 61/247,632 filed 01 Oct 2009 (HHS Reference No. E–230–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Steve Standley, PhD; 301–435–4074; *sstand@od.nih.gov.*

Collaborative Research Opportunity: The NIH Chemical Genomics Center is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize appropriate lead compounds described in U.S. Provisional Application No. 61/247,632. Please contact Dr. Craig J. Thomas via e-mail (*craigt@nhgri.nih.gov*) for more information.

RORgamma (RORC) Deficient Mice Which Are Useful for the Study of Lymph Node Organogenesis and Immune Responses

Description of Technology: The retinoid-related orphan receptor gamma (RORγ) is a member of the nuclear receptor superfamily. NIH investigators used homologous recombination in embryonic stem cells to generate mice in which the RORγ gene was disrupted. RORγ deficient mice lack peripheral and mesenteric lymph nodes and Peyer's patches indicating that ROR expression is indispensable for lymph node organogenesis. In addition, RORγ is required for the generation of Th17 cells which play a critical role in autoimmune disease.

The RORγ deficient mice are useful to identify the physiological functions of the RORγ. RORγ deficient mice also provide an excellent tool to study the role of RORγ in immune responses and autoimmune disease, the study of the role of Th17 and interleukin 17 in these processes, and the analysis.

Inventor: Anton M. Jetten (NIEHS).

Publication: S Kurebayashi, E Ueda, M Sakaue, DD Patel, A Medvedev, F Zhang, AM Jetten. Retinoid-related orphan receptor γ (RORγ) is essential for lymphoid organogenesis and controls apoptosis during thymopoiesis. Proc Natl Acad Sci USA. 2000 Aug 29;97(18):10132–10137.

Patent Status: HHS Reference No. E–222–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Suryanarayana (Sury) Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the ROR gamma mice or related laboratory research interests. Please contact Dr. Elizabeth Denholm at *denholme@niehs.nih.gov* or 919–541–0981 for more information.

Antibody Composition and Methods for the Prevention and Treatment of Lupus Nephritis

Description of Technology: This technology identifies an antibody that induces a protective effect in vivo in a mouse model of lupus nephritis. Lupus is a chronic autoimmune disease that can damage various parts of the body, especially the kidneys. The lupus nephritis-model mice that were treated with this antibody experienced a dramatic increase in survival, demonstrated a reduced immune complex formation deposition in the kidneys, and displayed low levels of proteinuria as compared with untreated mice. The antibody is an autospecific anti-dsDNA IgM.

In addition, this invention may be used as a component of a predictive diagnostic kit. As lupus-related kidney disease may be asymptomatic, significant kidney damage may occur before lupus is diagnosed (lupus.org). The inventors are currently investigating whether the ratio of protective antibodies to nonprotective or pathogenic antibodies in lupus nephritis models is predictive of disease. Currently available diagnostic methods (proteinuria, creatine clearance, or kidney biopsy) are not predictive and test only for existing kidney impairment or damage.

Applications:

- A preventative and therapeutic for lupus nephritis.
- A component of a predictive diagnostic kit for lupus nephritis.
- A research tool for investigation of lupus nephritis in a mouse model.

Advantages:

- Therapeutic antibodies are unlikely to elicit side effects in patient populations, unlike many existing therapies.
- The diagnostic would be predictive, unlike existing diagnostics.

Development Status: Early stage, *in vivo* (mouse).

Market:

- At least 1.5 million Americans have lupus (lupus.org).
- Up to 67% of children with lupus, and approximately 40% of all individuals with lupus, develop lupus-related kidney complications (lupus.org).

Inventors: Marilyn Diaz, Chuancang Jiang, Ming-Lang Zhao (NIEHS).

Publication: In preparation.

Patent Status: U.S. Provisional Application No. 61/176,615 filed 08 May 2009 (HHS Reference No. E–156–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Norbert Pontzer, J.D., PhD; 301–435–5502; *pontzern@mail.nih.gov.*

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology or related laboratory research interests. Please contact Dr. Elizabeth Denholm at *denholme@niehs.nih.gov* or 919–541–0981 for more information.

$P2Y_1$ Receptor Antagonists Useful for the Study of Platelet Aggregation and Clotting Conditions

Description of Technology: NIH inventors have developed $P2Y_1$ receptor antagonists ((N)-Methanocarba 2′-Deoxyadenosine 3′, 5′-Bisphosphate Analogues) for inhibition of platelet aggregation and treatment of clotting conditions. On the platelet surface, simultaneous activation of the $P2Y_1$ and $P2Y_{12}$ receptors by ADP induces aggregation. The $P2Y_1$-mediated response is associated with the initial shape change and rapid aggregation, and the $P2Y_{12}$ receptor is associated with amplification of the aggregation. $P2Y_{12}$ receptor antagonists are both in clinical use and under development as antithrombotic agents. Potent and selective $P2Y_1$ receptor antagonists, such as the conformationally locked methanocarba nucleotide MRS2500 1 (K_i 0.79 nM), have been designed and shown to have promise in preclinical studies as antithrombotic agents. This novel drug concept is also supported by studies of mice in which the $P2Y_1$ receptor has been genetically deleted, wherein the initiation of clotting events is markedly impaired.

Applications: Potential new target for treating intravascular clotting.

Development Status: Early-stage of development.

Market: There is a very large potential market for $P2Y_1$ receptor antagonists. For instance, $P2Y_1$ receptor antagonists may treat deep vein thrombosis, which occurs in 80 of 100,000 individuals in the U.S. annually.

Inventors: Kenneth A. Jacobson and Sonia De Castro (NIDDK)

Patent Status:

- U.S. Provisional Application No. 61/061,309 filed 13 Jun 2008 (HHS Reference No. E–235–2008/0–US–01).
- Patent Cooperation Treaty Application PCT/US2009/47204 filed 12 Jun 2009 (HHS Reference No. E–235–2008/0–PCT–03)

Licensing Status: Available for licensing.

Licensing Contact: Steve Standley, PhD; 301–435–4074; *sstand@od.nih.gov.*

Dated: November 23, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–28538 Filed 11–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6023–CN]

Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Advanced Diagnostic Imaging Supplier Accreditation Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects a technical error in the notice entitled ''Medicare Program; Solicitation of Independent Accrediting Organizations to Participate in the Advanced Diagnostic Imaging Supplier Accreditation Program'' which was posted for public inspection by the Office of the Federal Register on October 30, 2009, and published in the **Federal Register** on November 25, 2009.

FOR FURTHER INFORMATION CONTACT: Sandra Bastinelli, (410) 786–3630.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E9–26209, which was posted for public inspection by the Office of the Federal Register (OFR) on October 30, 2009, and published in the **Federal Register** on November 25, 2009, we made a technical error that is corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the November 25, 2009 notice.

II. Summary of Errors

In section II.B. of the November 25, 2009 notice, we list the criteria that an accreditation organization must furnish to CMS to be considered for approval as a designated accreditation organization for Medicare under 42 CFR 414.68 (as issued in the ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010'' final rule with comment period, FR Doc. E9–26502, posted for public inspection by OFR on October 30, 2009). Due to a technical error, the list of criteria does not accurately reflect the requirements set out at new § 414.68.

III. Correction of Errors

In FR Doc. E9–26502 published on November 25, 2009 (74 FR 62189), correct section II.B. to read as follows:

''*B. Application Requirements*

To be considered for approval as a designated accreditation organization for Medicare requirements, an accreditation organization must furnish CMS the information and meet the criteria set out at 42 CFR 414.68, as issued in the ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010'' final rule with comment period, FR Doc. E9–26502, posted for public inspection by OFR on October 30, 2009.''

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We note that section 1834(e) of the Act requires us to designate organizations to accredit suppliers furnishing the technical component (TC) of advanced diagnostic imaging services by January 1, 2010. Given the statutory deadline to designate organizations and the timing of the publication of this final rule with comment period, we believe it is impracticable to provide a notice and comment period or to delay the effective date of these criteria for designating organizations to accredit suppliers furnishing the TC of advanced diagnostic imaging services. In addition, it is unnecessary to provide a period for notice and comment or delay the effective date of this correction, because this correction notice does not change our policies regarding the application process, but merely clarifies that the application process is subject to a regulation that has already been the subject of notice and comment rulemaking. Therefore, we believe that we have good cause for waiving a notice and comment period, and making the imaging accreditation application process correction effective upon publication.

Authority: Section 1834(e) of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: November 23, 2009.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. E9–28541 Filed 11–25–09; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3218–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee

January 27, 2010.

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (''Committee'') will be held on Wednesday, January 27, 2010. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will focus on the sufficiency of currently available evidence to determine whether the results of pharmacogenomic testing affect health outcomes of patients with cancer when used as a guide for certain drug treatments. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting date:* The public meeting will be held on Wednesday, January 27, 2010 from 7:30 a.m. until 4:30 p.m., Eastern Standard Time (E.S.T.).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m., E.S.T. on December 28, 2009. Once submitted all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit powerpoint presentation materials and writings that will be used in support of an oral presentation, is 5 p.m., E.S.T. on Monday, December 28, 2009. Speakers may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register via e-mail at *MEDCAC_Registration@cms.hhs.gov* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m., E.S.T. on Wednesday, January 20, 2010.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5 p.m., E.S.T, Friday, January 8, 2010.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via e-mail to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for

MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780)). This notice announces the January 27, 2010, public meeting of the Committee. During this meeting, the Committee will discuss the sufficiency of currently available evidence to determine whether the results of pharmacogenomic testing affect health outcomes of patients with cancer when used as a guide for certain drug treatments. Background information about this topic, including panel materials, is available at *http://www.cms.hhs.gov/coverage.* We encourage the participation of appropriate organizations with expertise in pharmacogenomics and oncology.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcac.* We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your State-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 19, 2009.

Barry M. Straube,

Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. E9–28457 Filed 11–27–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Pediatric Advisory Committee; Amendment of Notice; Correction

AGENCY: Food and Drug Administration, HHS

ACTION: Notice; correction.

The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 2, 2009 (74 FR 56652). The document announced an amendment to the notice of meeting of the Pediatric Advisory Committee. This meeting was announced in the **Federal Register** of October 6, 2009 (74 FR 51289). The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20957, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–26262, appearing on page 56652, in the **Federal Register** of Monday, November 2, 2009, the following correction is made:

1. On page 56652, in the first column, the heading ''[Docket No. 2009–N–0664]'' is corrected to read ''[Docket No. FDA–2009–N–0664]''.

Dated: November 20, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28448 Filed 11–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Autism Review.

Date: December 17, 2009.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Epilepsy Clinical Trials.

Date: December 18, 2009.

Time: 2 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892, (301) 496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28405 Filed 11–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L13300000 PO0000; OMB Control Number 1004–0121]

Information Collection; Leasing of Solid Mineral Other Than Coal and Oil Shale

AGENCY: Bureau of Land Management.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0121 under the Paperwork Reduction Act. This control number covers paperwork requirements in 43 CFR parts 3500 through 3590, which pertain to leasing of solid minerals other than coal and oil shale.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before December 30, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0121), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Vincent Vogt, Solid Minerals Group, at 202–785–6570 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Vogt.

SUPPLEMENTARY INFORMATION:

Title: Leasing of Solid Minerals Other Than Coal and Oil Shale (43 CFR 3500—3590).

OMB Number: 1004–0121.

Abstract: This notice pertains to information collections that are necessary for the management of leases and prospecting permits for solid minerals other than coal and oil shale. The BLM manages such leases and permits under the Mineral Leasing Act of 1920, the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), and other statutes that authorize the Secretary of the Interior to regulate the development of mineral deposits on Federal lands. The information collections covered by this notice are found at 43 CFR parts 3500 through 3590, and in the following forms:

- Form 3504–1, Personal Bond and Power of Attorney;
- Form 3504–3, Bond Under Lease;
- Form 3504–4, Statewide or Nationwide Personal Mineral Bond for Prospecting Permits and Leases;
- Form 3510–1, Prospecting Application and Permit;
- Form 3510–2, Phosphate or Sodium Use Permit; and
- Form 3520–7, Lease.

60–Day Notice: As required in 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on June 17, 2009 (74 FR 28718), soliciting comments from the public and other interested parties. The comment period closed on August 17, 2009. The BLM did not receive any comments from the public in response to this notice or unsolicited comments from respondents covered under these regulations.

Current Action: This proposal is being submitted to extend the expiration date of November 30, 2009.

Type of Review: 3-year extension.

Affected Public: Individuals, associations, and corporations seeking authorizations pertaining to solid minerals other than coal and oil shale.

Obligation to Respond: Required to obtain or retain benefits.

Annual Responses: 473.

Annual Burden Hours: 16,346.

Document processing fees are associated with some of these information collections, and publication costs are associated with one of these information collections.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0121 in your correspondence. 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.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. E9–28436 Filed 11–27–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N256; 41910–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Permit(s); Road Realignment and Construction of Associated Storm Water Retention Ponds in Lake County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for an incidental take permit (ITP); availability of proposed low-effect habitat conservation plans (HCP); request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and habitat conservation plan (HCP). Lake County Public Works (applicant) requests a 5-year ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 0.10 acres (ac) of sand skink (*Neoseps reynoldsi*)—occupied habitat incidental to realignment of Hancock road and construction of three storm water retention ponds in Lake County, Florida (project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the sand skink.

DATES: We must receive any written comments on the ITP application and HCP on or before December 30, 2009.

ADDRESSES: If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to *paula_sisson@fws.gov.* For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (*see* **ADDRESSES**); telephone: 904/731–3134.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please reference permit number TE231577–0 for Lake County Public Works in all requests or comments. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Due to the reduction in quality and acreage of xeric (bare, scrub-like areas with sandy soils, open canopies) upland communities, and the rapid development occurring in these areas, the sand skink is reportedly declining throughout most of its range. By some estimates, as much as 90 percent of the scrub ecosystem has already been lost to residential development and conversion to agriculture, including citrus groves.

Applicant's Proposal

The applicant is requesting take of approximately 0.10 ac of occupied sand skink habitat incidental to the project. The 21.83-ac project is located east of US Highway 27, west of Ronald Reagan Turnpike and north of Old Highway 50, Section 8, 9, 16, 17, Township 22 South, Range 26 East, Lake County, Florida. The proposed project currently includes realignment of a portion of Turkey Farms Road and the intersection of Old Highway 50 and with the North Hancock Road Extension for safety purposes. The project also includes three storm water retention ponds to address runoff associated with the realigned roadway. The applicant proposes to mitigate for the take of the sand skink at a ratio of 2:1 based on Service Mitigation Guidelines. The applicant proposes to mitigate for 0.10 ac of impacts by purchasing 0.20 ac of occupied sand skink habitat in Polk County, Florida, within the boundaries of the Lake Wales Ridge.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we are making a preliminary determination that the ITP is a ''low-effect'' project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). We may revise this preliminary determination based on our review of public comments we receive in response to this notice. A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the sand skink. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: November 20, 2009.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E9–28508 Filed 11–27–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2009–N0070; 80230–1265–0000–S3]

Butte Sink, Willow Creek-Lurline, and North Central Valley Wildlife Management Areas; Tehama, Butte, Glenn, Colusa, Yuba, Sutter, Placer, Yolo, Solano, Contra Costa, and San Joaquin Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Butte Sink, Willow Creek-Lurline, and North Central Valley Wildlife Management Areas (WMAs). The WMAs are part of the Sacramento National Wildlife Refuge Complex. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by January 15, 2010. We will announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: Jackie_Ferrier@fws.gov. Include ''CCP'' in the subject line of the message.

Fax: Attn: Jackie Ferrier, (530) 934–7814.

U.S. Mail: Sacramento National Wildlife Refuge, 752 County Road 99W, Willows, California, 95988.

In-Person Drop-off: You may drop off comments during regular business hours at the above address.

Additional information about the CCP planning process is available on the Internet at *http://sacramentovalleyrefuges.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Mensik, Acting Project Leader, at (530) 934–2801 or Jackie Ferrier, Planning Team Leader, at (530) 934–2801.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Butte Sink, Willow Creek-Lurline, and North Central Valley WMAs, in Tehama, Butte, Glenn, Colusa, Yuba, Sutter, Placer, Yolo, Solano, Contra Costa, and San Joaquin counties, CA. This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of [the] North Central Valley, Willow Creek-Lurline, and Butte Sink WMAs.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Butte Sink, Willow Creek-Lurline, and North Central Valley Wildlife Management Areas

Sacramento NWRC consists of five NWRs and three wildlife management areas. This CCP will include Butte Sink, Willow Creek-Lurline, and North Central Valley WMAs. The Butte Sink WMA was established in 1979 and currently consists of 733 acres of fee title lands and 35 conservation easements on approximately 10,260 acres. The acquisition objective for the Butte Sink WMA has been met. The Willow Creek-Lurline WMA was established in 1985 and currently consists of 84 conservation easements on approximately 5,795 acres; with an approved acquisition objective of 8,000 acres within Glenn and Colusa counties. The North Central Valley WMA was established in 1991 and currently consists of approximately 1,732 acres of fee title lands and 28 conservation easements on approximately 14,740 acres; with an approved acquisition objective of 55,000 acres within eleven counties.

The vast majority of wetlands in the Central Valley have been converted to agricultural, industrial, and urban development. The WMAs consist of intensively managed wetlands, associated uplands and riparian habitats that support large concentrations of migratory birds and many other wetland-dependent species. Collectively, these lands play a significant role in supporting approximately forty percent of Pacific Flyway wintering waterfowl populations.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that could be addressed in the CCP. These issues are briefly summarized below. During public scoping additional issues may be identified.

During the CCP planning process, the Service will evaluate: Methods for enhancing the wildlife and habitat resources, water supply and quality, mosquito control/public health, long-term easement compliance monitoring, and future acquisitions. Visitor service opportunities on fee title lands will also be evaluated.

Public Meetings

We will give the public an opportunity to provide input at public meetings. You can obtain the schedule from the planning team leader or project leader (*see* **ADDRESSES**). You may also submit comments anytime during the planning process by mail, e-mail, or fax (*see* **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 20, 2009.

Ren Lohoefener,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. E9–28567 Filed 11–27–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORWO957000–L62510000–PM000: HAG10–0033]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian,

Oregon

T. 19 S., R. 6 W., accepted October 2, 2009.
T. 30 S., R. 2 W., accepted October 15, 2009.
T. 22 S., R. 8 W., accepted October 16, 2009.
T. 23 S., R. 3 W., accepted October 16, 2009.
T. 19 S., R. 5 W., accepted October 23, 2009.
T. 29 S., R. 9 W., accepted October 23, 2009.
T. 31 S., R. 4 W., accepted October 29, 2009.

Washington

T. 23 N., R. 10 W., accepted October 23, 2009.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204.

Dated: November 13, 2009.

Fred O'Ferrall,

Branch of Lands and Minerals Resources.

[FR Doc. E9–28495 Filed 11–27–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LL ID03000–L14300000–FR0000, DSG–09–0001; IDI–14152–02]

Notice of Realty Action: Recreation and Public Purposes Act Sale Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has determined that certain public lands in Custer County, Idaho are suitable for classification for conveyance to the Custer County Commission, under authority of the Recreation and Public Purposes (R&PP) Act, June 14, 1926, (43 U.S.C. 869 *et seq.*) as amended.

DATES: Comments regarding the proposed classification for conveyance must be received by January 14, 2010.

ADDRESSES: Detailed information concerning this action, including but not limited to documentation related to compliance with applicable environmental and cultural resource laws, is available for review at the BLM Challis Field Office. Address all written comments concerning this Notice to David Rosenkrance, BLM Challis Field Office Manager, 1151 Blue Mountain Road, Challis, Idaho 83226–9304.

FOR FURTHER INFORMATION CONTACT: Tim Vanek, Realty Specialist, BLM Challis Field Office, (208) 879–6218, or by e-mail at: *timothy_vanek@blm.gov.*

SUPPLEMENTARY INFORMATION: The Challis Shooting Range is approximately 2½ miles north of Challis, Idaho and approximately 0.8 mile west of Challis Creek Road. The public land portion of the Challis Shooting Range has been examined and found suitable for conveyance to the Custer County Commission under the provisions of the R&PP Act, as amended. The subject parcel is at the following legal land description:

Boise Meridian

T. 14 N., R. 19. E.,
Sec. 17, N½SW¼.

The area described contains approximately 80 acres in Custer County.

The 80 acres is currently authorized under an R&PP lease, identified with BLM serial number IDI–14152–01, to the Custer County Commission, and operated and managed by the Central Idaho Rod & Gun Club (CIRGC), which is a non-profit organization. The current lease was originally granted in July 1981 and renewed in November 2006. To comply with the R&PP Act, as amended and current BLM policy found in Instruction Memorandum 2008–074 (Change 1) dated December 2, 2008, the renewal decision included a bar on further renewals. The lease will expire in November 2011.

CIRGC developed the subject parcel with a rifle range, rifle shooting stations/benches with overhead cover, target backstops at 100-yard intervals out to 600-yards, and a two-track road extending the length of the range. Also, as a part of the rifle range, CIRGC uses a 1000-yard backstop which is an earthen berm. However, it is not part of the 80-acres currently authorized by the R&PP lease, nor is it listed for disposal in the BLM Challis Resource Management Plan. Hence, it is not part of this sale classification. The subject parcel is adjacent to private property owned by the CIRGC which developed the site with a clubhouse, access road and parking area, shotgun trap shooting stations, pistol range, and a public restroom.

The Custer County Commission proposes to use the land to continue operation of the Challis Shooting Range. Custer County holding R&PP title to the subject parcel would also provide the CIRGC freedom to make future improvements to the facility. There are no other use authorizations on the subject parcel. Conveyance of the subject parcel is consistent with the

BLM Challis Resource Management Plan.

The patent, if issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act, as amended and all applicable regulation of the Secretary of the Interior will apply. In particular, statutory provisions governing the disposal of existing leased disposal sites are to be found at 43 U.S.C. 869–2(b), regulatory provisions can be found at 43 CFR 2743.3 and 2743.3–1.

2. The United States will reserve the right to construct ditches and canals, authorized by the Act of August 30, 1890, 43 U.S.C. 945.

3. The United States will reserve all minerals together with the right to prospect for, mine, and remove the minerals.

4. All valid and existing rights.

5. These parcels are subject to the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation and Liabilities Act, 42 U.S.C. 9620(h), as amended by the Superfund Amendments and Reauthorization Act of 1986, Title III, Section 305(a).

6. The patentee, its successors or assigns, by accepting a patent, agrees to indemnify, defend, and hold harmless the United States, its officers, agents, representatives and employees (hereinafter ''United States'') from any costs, damages, claims, causes of action in connection with the patentee's use, occupancy, or operations on the patented real property. This agreement includes, but is not limited to, acts or omissions of the patentee and its employees, agents, contractors, lessees, or any third party arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property which cause or give rise to, in whole or in part: (1) Violations of Federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property and/or applicable to the use, occupancy, and/or operations thereon; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; and (4) Releases or threatened releases of solid, or hazardous waste(s), and/or hazardous substance(s), pollutant(s), contaminant(s), and/or petroleum product(s), or derivative(s) of a petroleum product as defined by Federal or State environmental laws, age generated, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to the said solid or hazardous substance(s), waste(s), contaminant(s), petroleum product(s), or derivative(s) of petroleum product as defined by Federal or state laws. Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State, and local environmental laws and regulatory provisions, throughout the life of the facility, including any closure and/or post-closure requirements that may be imposed with respect to any physical plant and/or facility upon the real property under any Federal, State, or local environmental laws or regulatory provisions. In the case of a patent being issued, this covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Additional detailed information concerning this Notice of Realty Action including records related to the subject parcel is available for review at the BLM Challis Field Office, 1151 Blue Mountain Road, Challis, Idaho 83226. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday except holidays.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except for conveyance under the R&PP Act, as amended.

You may submit written comments regarding the proposed classification for conveyance of the land to the BLM Field Office Manager at the address stated above. With respect to the proposed classification, the BLM Challis Field Office will only accept written comments concerning the following four subjects:

1. Whether the land is physically suited for the proposal;

2. Whether the use will maximize the future use or uses of the land;

3. Whether the use is consistent with local planning and zoning; and

4. If the use is consistent with State and Federal programs.

You may also submit written comments regarding BLM's adherence to proper administrative procedures in reaching the decision. Comments received during this process, including respondent's name, address, and other contact information will be available for public review. 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.

The BLM State Director will review any adverse comments and may sustain, vacate, or modify this decision. In the event the public does not submit adverse comments, the classification will become effective no sooner than January 29, 2010. The land will not be offered for conveyance until after the classification becomes effective.

Authority: 43 CFR Subpart 2741.

David Rosenkrance,

Challis Field Manager.

[FR Doc. E9–28454 Filed 11–27–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2009–N259; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for permits to conduct certain activities with endangered species and/or marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act require that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by December 30, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703–358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Submit your written data, comments, or requests for copies of the complete applications to the address shown in **ADDRESSES**.

Applicant: Lemur Conservation Foundation, Myakka City, FL, PRT–231674

The applicant requests a permit to import 6 captive-bred red collared lemurs (*Eulemur collaris*) from the Hamerton Zoo Park, England, for the purpose of enhancement of the survival of the species.

Applicant: University of New Mexico, Museum of Southwestern Biology, Albuquerque, NM, PRT–084874

The applicant requests the renewal of their permit for the export/re-export and re-import of non-living museum specimens and non-living herbarium specimens of endangered and threatened animals and plants species that were previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: University of California, Los Angeles/Center for Tropical Research, Los Angeles, CA, PRT–215520

The applicant requests a permit to import biological samples from Baird's tapir (*Tapirus bairdii*) from Centro de Investigacions en Ecosistemas de la Universidad Nacional Autonoma de Mexico, for the purpose of enhancement of the species through scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: National Zoological Park, Smithsonian Institution, Washington, D.C., PRT–231151

The applicant requests a permit to import one male and one female captive-born clouded leopards (*Neofelis nebulosa*) from Howletts Wild Animal Park, United Kingdom, for the purpose of enhancement of the survival of the species.

Applicant: William J. Butler, Juntura, OR, PRT–232558

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Submit your written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications to the address shown in **ADDRESSES**. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Dr. Beth Shapiro, Pennsylvania State University, University Park, PA, PRT–220509

The applicant requests a permit to import blood and tissue samples from polar bear (*Ursus maritimus*) each of the 19 subpopulations for scientific research purposes. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: John Downer Productions LTD, Bristol, United Kingdom, PRT–229154

The applicant requests a permit to photograph northern sea otters (*Enhydra lutris kenyoni*) in Alaska, from boats and using aerial devices, for commercial and educational purposes. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Pontecorvo Productions LLC, Seattle, WA, PRT–230255

The applicant requests a permit to photograph polar bear (*Ursus maritimus*) dens in Alaska for commercial and educational purposes. This notification covers activities to be conducted by the applicant over a 1-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review

Dated: November 20, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E9–28624 Filed 11–27–09; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Third Review)]

Barium Chloride From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on barium chloride from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 16, 2009.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 5, 2009, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (74 FR 54069, October 21, 2009). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on March 26, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on April 15, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 9, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 14, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 6, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 26, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before April 26, 2010. On May 19, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 21, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 23, 2009.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28443 Filed 11–27–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–770–773 and 775 (Second Review)]

Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 16, 2009.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 5, 2009, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (74 FR 54068, October 21, 2009). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on March 22, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 8, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 2, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 6, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera no later than 7 business days prior to the date of the hearing.*

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 31, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 19, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before April 19, 2010. On May 7, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 11, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 23, 2009.

By order of the Commission.

William R. Bishop,

Secretary to the Commission.

[FR Doc. E9–28444 Filed 11–27–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–657]

Certain Automotive Multimedia Display and Navigation Systems, Components Thereof, and Products Containing Same; Notice of Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on

September 22, 2009, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337–TA–657 on September 22, 2008, based on a complaint filed by Honeywell International Inc. of Morristown, New Jersey (''Honeywell''). 73 FR 54617 (Sept. 22, 2008). The complainant named the following respondents: Alpine Electronics, Inc. of Japan, and Alpine Electronics of America, Inc. of Torrance, California (collectively ''Alpine''); Denso Corporation of Japan, and Denso International America, Inc. of Southfield, Michigan (collectively ''Denso''); Pioneer Corporation of Japan and Pioneer Electronics (USA) Inc. of Long Beach, California (collectively ''Pioneer''); and Kenwood Corporation of Japan and Kenwood USA Corporation of Long Beach, California (collectively ''Kenwood''). The complaint alleged violations of Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation, sale for importation, and sale within the United States after importation of certain automotive multimedia display and navigation systems, components thereof, and products containing the same that infringe certain claims of U.S. Patent Nos. 5,923,286 (''the '286 patent''); 6,289,277 (''the '277 patent''); 6,308,132 (''the '132 patent''); 6,664,945 (''the '945 patent''); 6,691,030 (''the '030 patent''); and 6,700,482.

On March 31, 2009, the ALJ granted Honeywell's and Kenwood's joint motion to terminate the investigation as to Kenwood, based on a settlement agreement between those parties and pursuant to Commission rule 210.21(b), 19 CFR 210.21(b). On April 15, 2009, the ALJ granted Honeywell's motion to terminate the investigation as to the '030 patent pursuant to Commission rule 210.21(a)(1), 19 CFR 210.21(a)(1). On April 19, 2009, the ALJ granted Honeywell's motion to terminate the investigation as to claims 2–7 of the '945 patent. On April 23, 2009, the ALJ granted Honeywell's and Denso's joint motion to terminate the investigation as to Denso, based on a settlement agreement between those parties. On June 23, 2009, the ALJ granted Honeywell's and Alpine's joint motion to terminate the investigation as to Alpine, based on a settlement agreement between them. The Commission determined not to review any of these initial determinations.

As against Pioneer, the sole remaining respondent, the following asserted patents and claims remained: '132 patent (claims 1–7, 17); '286 patent (claim 5); '945 patent (claim 1); '277 patent (claims 1, 4, 5, 9, 11, 13, 20). Pioneer's accused products include factory-installed GPS units in certain automobiles and certain after-market ''head-unit'' GPS devices that are mounted in automobile dashboards.

On September 22, 2009, the ALJ issued his final ID, finding no violation of section 337 by Pioneer. The ALJ found that a domestic industry in the United States exists with respect to Honeywell's licensing program, which has a nexus to the asserted patents as required by 19 U.S.C. 1337(a)(2) and (a)(3). The ALJ construed more than twenty contested claim terms. The ALJ found that the accused products do not literally infringe, directly or indirectly, any asserted claims of any of the asserted patents. (Honeywell did not argue infringement under the doctrine of equivalents.)

The final ID also found invalid the asserted claims of three of the four asserted patents. The ALJ determined that the asserted claims of the '132 patent are invalid for four independent reasons. First, the term ''software means'' in asserted independent claims 1 and 17 is indefinite under 35 U.S.C. 112 ¶ 2. Second, Honeywell's demonstration of the alleged invention at a trade show more than a year before the application for that patent was filed, constituted a public-use bar under 35 U.S.C. 102(b). Third, Honeywell's supposed offer to sell the invention to one of its customers constituted an on-sale bar under 35 U.S.C. 102(b). Fourth, and finally, the ALJ found that the asserted claims of the '132 patent are anticipated by U.S. Patent No. 6,092,076 to McDonough.

The ALJ ruled that claim 5 of the '286 patent is invalid for failure of the inventor to disclose to the Patent and Trademark Office (USPTO) the best mode of practicing the patented invention, in violation of 35 U.S.C. 112 ¶ 1. The ALJ ruled that the asserted claims of the '277 patent are anticipated, under 35 U.S.C. 102(b), by the factory-installed navigation system in the 1998 Lexus GS 400 automobile, and its accompanying manuals. The ALJ found claim 1 of the '945 patent not invalid.

On October 5, 2009, Honeywell filed its petition, and Pioneer its contingent petition, for review of the initial determination. Together, the parties petitioned for review of the majority of the ALJ's claim constructions. Honeywell has also petitioned for review of the ALJ's findings of noninfringement of the asserted claims of the four patents, as well as of the ALJ's determinations that the asserted claims of the '132, '286 and '277 patents are invalid. Pioneer has petitioned for review of the ALJ's determination that the asserted claims of the '132 patent are not invalid for failure of the inventors to disclose to the USPTO the best mode of practicing the patented invention, in violation of 35 U.S.C. 112 ¶ 1. Pioneer also petitions for review of the ALJ's determination that the asserted claims of the '945 patent are not invalid under 35 U.S.C. 102 as anticipated by one of several pieces of prior art. On October 13, 2009, Honeywell and Pioneer filed responses to each other's petition, and the Commission investigative attorney filed a response to Honeywell's petition.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review:

i. The construction of the '286 patent's claim terms ''inertial reference system,'' and ''based upon the IRS position signal, the velocity of the vehicle and the acceleration of the vehicle.''

ii. The construction of the '945 patent's claim terms ''radio select means,'' ''selectable alphanumeric text portion,'' ''selectable frequency tuning portion,'' and ''storage select means.''

iii. The finding that the asserted claims of the '132 patent are anticipated under 35 U.S.C. 102(b) by U.S. Patent No. 6,092,076 to McDonough.

iv. The finding that claim 5 of the '286 patent is invalid under 35 U.S.C. 112 ¶ 1, for failure to disclose the best mode.

v. The finding that claim 5 of the '286 patent is not infringed by the accused products.

vi. The finding that claim 1 of the '945 patent is not anticipated under 35 U.S.C. 102 by the Alpine CVA–1000 system, U.S. Patent No. 6,725,231 to Obradovich, or U.S. Patent No. 7,398,051 to Bates.

vii. The finding that the accused products do not infringe claim 1 of the '945 patent.

viii. The finding that the accused products do not infringe the asserted claims of the '277 patent.

ix. The finding that claim 9 of the '277 patent is anticipated under 35 U.S.C. 102(b) by the 1998 Lexus GS 400.

x. The finding that claim 9 of the '277 patent is not invalid under 35 U.S.C. 103(a) over the 1998 Lexus GS 400, in view of U.S. Patent No. 6,725,231 to Obradovich, the 1997 VICS instruction manual, or the Xanavi manual.

The Commission has determined to review and to take no position on whether the asserted claims of the '132 patent are invalid because of an on-sale bar under 35 U.S.C. 102(b). *See Beloit Corp.* v. *Valmet Oy,* 742 F.2d 1421, 1422–23 (Fed. Cir. 1984).

The Commission has determined not to review the remainder of the ID. The parties are requested to brief their positions on the following five questions (and only on the following five questions) concerning the issues under review with reference to the applicable law and the evidentiary record.

For the questions regarding the '286 patent, assume the ALJ's claim constructions except as follows: ''inertial reference system'' means ''a device that employs a plurality of inertial sensors for determining the position of the vehicle,'' and such position can be real or relative; ''based upon the IRS position signal, the velocity of the vehicle and the acceleration of the vehicle'' is afforded its plain meaning and is not limited to usage of error values.

For the questions regarding the '945 patent, assume the ALJ's claim constructions except as follows: ''radio select means'' is written in means-plus-function format with a recited function of ''selecting a radio'' and a corresponding structure of ''a plurality of buttons''; ''selectable alphanumeric text portion'' means a ''portion selectable by the user that contains alphanumeric text''; ''selectable frequency tuning portion'' means a ''portion selectable by the user that contains frequency tuning information''; ''storage select means'' is written in means-plus-function format with a recited function of ''selecting storage'' and a corresponding structure of ''a button.''

1. As so construed, are the specific limits and frequency values withheld by the inventor part of the invention of claim 5 of the '286 patent for purposes of finding a violation of best mode under 35 U.S.C. 112 ¶ 1?

2. As so construed, do the accused products infringe claim 5 of the '286 patent?

3. As so construed, is claim 1 of the '945 patent anticipated under 35 U.S.C. 102 by the Alpine CVA–1000 system, U.S. Patent No. 6,725,231 to Obradovich, or U.S. Patent No. 7,398,051 to Bates?

4. As so construed, do the accused products infringe claim 1 of the '945 patent?

5. If the Commission finds that claim 1, but not claim 9, of the '277 patent is anticipated under 35 U.S.C. 102 by the 1998 Lexus GS 400, is claim 9 invalid under 35 U.S.C. 103(a) over the 1998 Lexus GS 400, in view of any one of the three following references: U.S. Patent No. 6,725,231 to Obradovich, the 1997 VICS instruction manual, or the Xanavi manual?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Monday, December 7, 2009. Reply submissions must be filed no later than the close of business on Monday, December 14, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written

submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: November 23, 2009.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28464 Filed 11–27–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–623]

In the Matter of Certain R–134a Coolant (Otherwise Known as 1,1,1,2-Tetrafluoroethane) Enforcement Proceeding; Notice of Commission Determination Not To Review An Enforcement Initial Determination Finding No Violation of a Consent Order; Termination of the Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the enforcement initial determination (''EID'') issued by the presiding administrative law judge (''ALJ'') on September 21, 2009 in the above-captioned investigation, finding no violation of a September 11, 2008 consent order.

FOR FURTHER INFORMATION CONTACT: Michelle Walters Klancnik, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this enforcement proceeding, based on a complaint filed by INEOS Fluor Holdings Ltd., INEOS Fluor Ltd., and INEOS Fluor Americas LLC (''INEOS''). The complaint alleged that respondent Sinochem Environmental Protection Chemicals (Taicang) Co. Ltd. (''Sinochem (Taicang)'') violated the Commission's September 11, 2008 Consent Order. The Commission referred the proceeding to the Chief ALJ, who held a prehearing conference and evidentiary hearing on June 22, 2009 with all parties participating.

On September 21, 2009, the ALJ issued the subject EID, finding that respondent Sinochem (Taicang) did not violate the Consent Order. On October 6, 2009, INEOS filed a petition for review challenging the ALJ's conclusion. On October 13, 2009, respondent Sinochem (Taicang) and the Commission investigative attorney each filed oppositions to INEOS's petition.

The Commission has determined not to review the EID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 & 210.75).

By order of the Commission.

Issued November 23, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28466 Filed 11–27–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–648]

In the Matter of Certain Semiconductor Integration Circuits Using Tungsten Metallization and Products Containing Same; Notice of Commission Determination To Review-In-Part A Final Initial Determination Finding No Violation of Section 337 and To Remand A Portion of the Investigation; Schedule for Written Submissions Relating To Remand, and To Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation, and has determined to remand a portion of the investigation to the ALJ.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 21, 2008 based on a complaint filed on April 18, 2008, by LSI Corporation of Milpitas, California and Agere Systems Inc. of Allentown, Pennsylvania (collectively ''complainants''). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor integrated circuits using tungsten metallization and products containing same by reason of infringement of one or more of claims 1, 3, and 4 of U.S. Patent No. 5,227,335. The amended complaint named numerous respondents. Several respondents have been terminated from the investigation due to settlement. The following seven respondents remain in the investigation: Tower Semiconductor, Ltd. (''Tower'') of Israel; Jazz Semiconductor (''Jazz'') of Newport Beach, California; Powerchip Semiconductor Corporation (''Powerchip'') of Taiwan; Grace Semiconductor Manufacturing Corporation (''Grace'') of China; Integrated Device Technology, Inc. (''IDT'') of San Jose, California;

Spansion, Inc. (''Spansion'') of Sunnyvale, California; and Nanya Technology Corporation (''Nanya'') of Taiwan. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On September 21, 2009, the ALJ issued his final ID finding no violation of section 337 by the remaining respondents. He concluded that each accused process was covered by one or more of asserted claims 1, 3, and 4 of the '335 patent, but also that all asserted claims were anticipated under 35 U.S.C. 102(g) in view of the IBM Process A prior art. On October 5, 2009, complainants, respondents, and the Commission investigative attorney (''IA'') filed petitions for review of the final ID. Also, four separate petitions for review were filed on the same date by respondents Grace, IDT, Tower/Jazz, and Nanya/Powerchip/Spansion. The IA, complainants, and respondents filed responses to the other parties' petitions on October 13, 2009.

Upon considering the parties' filings, the Commission has determined to review-in-part the ID. Specifically, the Commission has determined to review: (1) Invalidity of claims 1, 3, and 4 of the '335 patent under 35 U.S.C. 102(g) & 103 with respect to the IBM Process A, IBM Process B, and AMD prior art; and (2) Jazz's stipulation regarding whether its process meets the complete, third recited step of claim 1, *i.e.,* ''depositing a tungsten layer by chemical vapor deposition, said tungsten layer covering said glue layer on said dielectric and said exposed material.'' The Commission has determined not to review the remainder of the ID.

In addition, the Commission has determined to issue an order remanding the investigation to the ALJ for further proceedings relating to whether claim 4 is rendered obvious by IBM Process A in light of the other prior art asserted by respondents.

The Commission has instructed the ALJ to make his determination on remand at the earliest practicable time, and to extend the target date of the above-captioned investigation as he deems necessary to accommodate the remand proceedings. The parties are invited to file written submissions on the ALJ's remand determination within fourteen days after service of the ALJ's determination and to file responses to the written submissions within seven days after service of the written submissions. The Commission also requests briefing on remedy, the public interest, and bonding from the parties, consistent with these submission dates, as described in detail below.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, and such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patent at issue expires and the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders, and any reply submissions, must be filed consistent with the dates stated above relating to the remand ID. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42–46 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–46.

By order of the Commission.

Issued November 23, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28465 Filed 11–27–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Review)]

Ironing Tables From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on ironing tables from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on ironing tables from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For

further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 16, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On October 5, 2009, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (74 FR 54066, October 21, 2009). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on March 24, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on April 13, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 8, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 12, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 2, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 22, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before April 22, 2010. On May 13, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 17, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 24, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28547 Filed 11–27–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1174–1175 (Preliminary)]

Seamless Refined Copper Pipe and Tube From China and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured [2] or threatened with material injury,[3] by reason of imports from China and Mexico of seamless refined copper pipe and tube, provided for in subheadings 7411.10.10, and 8415.90.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 30, 2009, a petition was filed with the Commission and Commerce by Cerro Flow Products, Inc., St. Louis, MO; Kobe Wieland Copper Products, LLC, Pine Hall, NC; Mueller Copper Tube Products, Inc. and Mueller Copper Tube Company, Inc., Memphis, TN, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of seamless refined copper pipe and tube from China and Mexico. Accordingly, effective September 30, 2009, the Commission instituted antidumping duty investigation Nos. 731–TA–1174–1175 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 6, 2009 (74 FR 51318). The conference was held in Washington, DC, on October 21, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 16, 2009. The views of the Commission are contained in USITC Publication 4116 (November 2009), entitled *Seamless Refined Copper Pipe and Tube from China and Mexico: Investigation Nos. 731–TA–1174–1175 (Preliminary).*

By order of the Commission.

Issued: November 24, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28546 Filed 11–27–09; 8:45 am]

BILLING CODE P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Charlotte R. Lane, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of seamless refined copper pipe and tube from China and Mexico.

[3] Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of seamless refined copper pipe and tube from China and Mexico.

DEPARTMENT OF JUSTICE

[OMB Number 1122–0020]

Office on Violence Against Women; Agency Information Collection Activities: Proposed Collection

ACTION: 60-Day Notice of Information Collection Under Review: Proposed Collection. Office on Violence Against Women Solicitation Template.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until January 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection.

(2) *Title of the Form/Collection:* OVW Solicitation Template.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–XXXX. U.S. Department of Justice, OVW.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: The affected public includes applicants to OVW grant programs authorized under the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000 and the Violence Against Women Act of 2005. These include States, territory, Tribe or unit of local government; State, territorial, tribal or unit of local governmental entity; institutions of higher education including colleges and universities; tribal organizations; Federal, State, tribal, territorial or local courts or court-based programs; State sexual assault coalition, State domestic violence coalition; territorial domestic violence or sexual assault coalition; tribal coalition; tribal organization; community-based organizations and non-profit, nongovernmental organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes the requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.* project activities and timeline, proposed budget): and provides registration dates, due dates, and instructions on how to apply within the designated application system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collect annually from the approximately 1800 respondents (applicants to the OVW grant programs). The public reporting burden for this collection of information is estimated at up to 30 hours per application. The 30-hour estimate is based on the amount of time to prepare a narrative, budget and other materials for the application as well to coordinate with and develop a memorandum of understanding with requisite project partners.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 54,000 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 23, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–28612 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on November 23, 2009 a Consent Decree in *United States of America and Allegheny County Health Department* v. *Allegheny Ludlum Corporation and Harsco Corporation,* Civil Action No. 09–1546 was lodged with the United States District Court for the Western District of Pennsylvania.

In a complaint that was filed simultaneously with the Consent Decree, the United States and the Allegheny County Health Department (''ACHD'') sought injunctive relief and penalties against Allegheny Ludlum Corporation (''ALC'') and Harsco Corporation (''Harsco'') pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged Clean Air Act violations and violations of the Pennsylvania State Implementation Plan at a slag handling operation in Natrona, Pennsylvania owned by ALC and operated by Harsco.

Under the terms of the settlement, the settling defendants will: (1) Control fugitive emissions at the slag handling operations; (2) perform a supplemental environmental project to control fugitive dust in the vicinity of the slag handling operations; and (3) pay a $184,900 civil penalty for settlement of the claims in the complaint.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or submitted via e-mail to *pubcomment-ees.enrd@usdoj.gov,* and should refer to *United States and the Allegheny County Health Department* v. *Allegheny Ludlum Corporation and Harsco Corporation,* D.J. Ref. No. 90–5–2–1–09378.

The Consent Decree may be examined at the Offices of the U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. 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 number (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 $10.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–28459 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0042]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Debra Satkowiak, Chief, Explosives Industry Programs Branch, Room 6E405, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your

comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

(2) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. The information contained in the statement of process is required to ensure compliance with the provisions of Public Law 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 8 respondents will complete the required information in 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 16 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 24, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–28555 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0087]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: eForm 6 Access Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Boydston, Chief, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification of Explosive Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form* Number: ATF F 5013.3 Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. Respondents must complete the eForm 6 Access Request form in order to receive a user ID and password to obtain access to ATF's eForm 6 System. The information is used by the Government to verify the identity of the end users prior to issuing passwords.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 500 respondents will complete a 18 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 150 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 24, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–28557 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0007]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Release and

Receipt of Imported Firearms, Ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Boydston, Chief, Firearms and Explosives Import Branch, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Release and Receipt of Imported Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6A (5330.3C). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, Not-for-profit institutions. The data provided by this information collection request is used by ATF to determine if articles imported meet the statutory and regulatory criteria for importation and if the articles shown on the permit application have been actually imported.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 20,000 respondents will complete a 24 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8,000 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 24, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–28553 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on September 30, 2009, Aptuit, 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application to the Drug Enforcement Administration (DEA) for registration as an importer of Poppy Straw Concentrate (9670), a basic class of controlled substance listed in schedule II.

The company plans to import an ointment for the treatment of wounds which contain trace amounts of the controlled substance normally found in poppy straw concentrate for packaging and labeling for clinical trials.

As explained in the Correction of Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28540 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 28, 2009, and published in the **Federal Register** on September 8, 2009 (74 FR 46228), Clinical Supplies Management Inc., 342 42nd Street, South Fargo, North Dakota 58103, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Sufentanil (9740), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance with the sole purpose of packaging, labeling, and distributing to customers which are qualified clinical sites conducting clinical trials under the auspices of an FDA-approved clinical study.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Clinical Supplies Management, Inc., to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Clinical Supplies Management, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and

local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: November 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28539 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Robotics Technology Consortium, Inc.

Notice is hereby given that, on October 15, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Robotics Technology Consortium, Inc. (''RTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: 5D Robotics, Inc., Boise, ID; Adaptive Materials, Inc., Ann Arbor, MI; Advanced Scientific Concepts Inc., Santa Barbara, CA; Advanced Technology Institute (ATI), Charleston, SC; Aerius Photonics, LLC, Ventura, CA; Alion Science and Technology Corporation, Westminster, MD; Alliance Spacesystems, LLC, Pasadena, CA; American Reliance, Inc. (ANREL), El Monte, CA; AnthroTronix, Inc., Silver Spring, MD; Applied Research Associates, Inc., Albuquerque, NM; Applied Systems Intelligence, Inc., Alpharetta, GA; Artisan Robotics, Tucson, AZ; Atair Aerospace, Inc., Brooklyn, NY; ATI Industrial Automation, Apex, NC; Autonomous Exploration, Inc., Andover, MA; Autonomous of Justice Vision Solutions Inc., Petersboro, UT; BAE Systems Land & Armaments, Santa Clara, CA; Barrett Technology, Inc., Cambridge, MA; Battelle Energy Alliance LLC, Idaho Falls, ID; Battelle Memorial Institute, Columbus, OH; BFA Systems, Inc., Huntsville, AL; BioMimetic Systems, Cambridge, MA; BioRobots, LLC, Cleveland, OH; Black-I Robotics, Inc., Tyngesbero, MA; Black & Rossi, LLC, The Woodlands, TX; Boston Dynamics Inc., Waltham, MA; Boston Engineering Corporation, Waltham, MA; Braintech, Inc., Washington, DC; Broadcast Microwave Services, Inc., Poway, CA; Burnham Consulting Inc., Chesterfield, MO; Butterfly Haptics, LLC, Pittsburgh, PA; C–21, Inc., Stow, MA; Carnegie Mellon University, Pittsburgh, PA; Chatten Associates, Inc., West Conshohocken, PA; Concurrent EDA LLC, Pittsburgh, PA; Concurrent Technologies, Inc., Pittsburgh, PA; Cybernet Systems Corporation, Ann Arbor, MI; Defense Research Associates Inc., Beavercreek, OH; Defined Business Solutions (Formerly Defined Business Strategies), Washington, DC; DEL Services, LLC, Eldersburg, MD; Delta Information Systems, Inc., Horsham, PA; DeVivo AST, Inc., Huntsville, AL; DRS Sensors & Targeting Systems, Inc., Cypress, CA; DTC Communications, Inc., Washington, DC; EDAG Inc., Auburn Hills, MI; Elbit Systems of America, LLC, Fort Worth, TX; EmergentViews, Inc., San Francisco, CA; Energid Technologies Corporation, Cambridge, MA; Esys Integration Corporation, Auburn Hills, MI; First Response Robotics, LLC, Amelia, OH; Foster-Miller, Inc., Waltham, MA; General Dynamics Robotic Systems, Westminster, MD; Georgia Tech Applied Research Corporation, Smyrna, GA; Great Lakes Sound & Vibration, Inc. (GLSV), Houghton, MI; Harris Corporation, GCSD, Melbourne, FL; HDT Engineering Services, Inc. (formerly New World Associates, Inc.), Fredericksburg, VA; Honeybee Robotics, New York, NY; Honeywell International, Phoenix, AZ; Ibis-Tek, Butler, PA; Innovative Technical Solutions, Inc. (NovaSol), Honolulu, HI; Institute for Disabilities Research (IDRT), Wheaton, MD; Integrated Solutions for Systems Inc. (IS4S), Huntsville, AL; International Computer Science Institute, Berkeley, CA; Inuktun USA, LLC, Robert, LA; iRobot Corp., Bedford, MA; i Track Inc., Oxford, MI; ITT Corporation, Albuquerque, NM; JADI, Inc., Troy, MI; Jet Propulsion Laboratory (JPL), Pasadena, CA; John H. Northrop & Associates, Inc., Burke, VA; Kairos Autonomi, Sandy, UT; KJVision LLC, Philadelphia, PA; Klett Consulting Group, Inc., Virginia Beach, VA; Kuchera Defense Systems, Windber, PA; Lithos Robotics Corporation, Amherst, NY; Lockheed Martin, Bethesda, MD; Macro USA, Roseville, CA; Mel Siegel, Consultant in Science & Technology, Pittsburgh, PA; Mercedes-Benz Research & Development, Palo Alto, CA; Mesa Robotics, Inc., Madison, AL; Mobile Intelligence Corporation, Livonia, MI; Mobile Robots Inc., Amherst, NH; National Robotics Training Center (NRTC) Florence Darlington Technical College, Florence, SC; Navtech GPS, Springfield, VA; Neptec USA Inc., Houston,TX; Next Wave Systems, LLC, Pekin, IN; Nomadio, Inc., Philadelphia, PA; Northrop Grumman Remotec, Clinton, TN; Northwest UAV Propulsion Systems (NWUAV), McMinnville, OR; Novint Technologies, Inc., Albuquerque, NM; NuVision Engineering, Inc., Pittsburgh, PA; Oceana Sensor Technologies, Inc., Virginia Beach, VA; Old Dominion University, Norfolk, VA; Onvio, LLC, Salem, NH; Oshkosh Corporation, Oshkosh, WI; Pandora Data Systems, Inc., Santa Cruz, CA; PERL Research LLC, Huntsville, AL; Photon-X, Inc., Huntsville, AL; Photon-X, LLC, Huntsville, AL; PNI Sensor Corporation, Santa Rosa, CA; Polaris Sensor Technologies, Inc., Huntsville, AL; Prioria Robotics, Inc., Gainesville, FL; Quantum 3D, Inc., San Jose, CA; Quantum Signal, LLC, Ann Arbor, MI; Rababy & Associates, LLC, Spotsylvania, VA; Raytheon Co., Waltham, MA; RE2, Inc., Pittsburgh, PA; Readylabs, Inc., Pleasanton, CA; ReconRobotics, Inc., Edina, MN; Rep Invariant Systems, Inc., Cambridge, MA; RF Extreme, Hackettstown, NJ; Robotex Incorporated, Palo Alto, CA; Robotic Research, LLC, Gaithersburg, MD; Robotics Research Corporation, Cincinnati, OH; Robotic Technology, Inc., Potomac, MD; Robot Worx, Marion, OH; RPU Technology, Inc., Needham, MA; Sarnoff Corporation, Princeton, NJ; SAVIT Corporation, Parsippany, NJ; Science Applications International Corporation (SAIC), San Diego, CA; Scientific Applications & Research Assoc., Inc. (SARA), Cypress, CA; Scientific Systems Company, Inc., Woburn, MA; Secure Axxess Solutions, LLC, Nashua, NH; Seegrid Corporation, Pittsburgh, PA; Sense Technologies, LLC, Boerne, TX; SET Corporation, Arlington, VA; Shee Atika Technologies, LLC, Kirkland, WA; Silvus Technologies, Inc., Los Angeles, CA; SJ Automation LLC, Monterey, CA; SkEyes Unlimited Corp., Washington, PA; Smart Information Flow Technologies, LLC (SIFT), Minneapolis, MN; Soar Technology, Inc., Ann Arbor, MI; Southwest Research Institute, San Antonio, TX; SRI International, Menlo Park, CA; Stealth Robotics, LLC, Longmont, CO; StratBot, Villanova, PA; STRATOM, Inc., Boulder, CO; Sullivan

Advanced Technology, San Diego, CA; TBI, LLC, Washington, DC; Technical Products Inc., Ayer, MA; Tech Team Government Solutions, Ann Arbor, MI; Texas A&M University, College Station, TX; Textron Systems Corp., Wilmington, MA; The Boeing Company, Chicago, IL; The Charles Stark Draper Laboratory, Cambridge, MA; The Droid Works, Inc., Wayland, MA; The Pennsylvania State University, Freeport, PA; The Regents of the University of Michigan, Ann Arbor, MI; The Technology Collaborative (NCDR), Pittsburgh, PA; The University of North Carolina at Chapel Hill, Chapel Hill, NC; The University of Texas at Austin, Austin, TX; Think–A–Move, Ltd, Beachwood, OH; Three Rivers 3D, Inc., Gibsonia, PA; TORC Technologies, Blacksburg, VA; Torrey Pines Logic, Inc., San Diego, CA; Toycen Corporation, Ogdenburg, NY; TRACLabs Inc., Houston, TX; TYZX, Inc., Menlo Park, CA; Ultra Electronics Measurement Systems Inc., Wallingford, CT; University of Florida, Gainesville, FL; University of Louisiana at Lafayette, Lafayette, LA; University of Pennsylvania, Philadelphia, PA; University of Washington, Seattle, WA; University of Wyoming, Laramie, WY; Valde Systems, Inc., Brookline, NH; Vecna Technologies, Inc., College Park, MD; Velodyne Lidar, Inc., Morgan Hill, CA; Virginia Tech, Blacksburg, VA; Vision Robotics Federal Systems, LLC, San Diego, CA; West Virginia High Technology Consortium Foundation (WVHTCF), Fairmont, WV; WINTEC, Incorporated, Walton Beach, FL; and Worcester Polytechnic Institute, Worcester, MA.

The general areas of RTC's planned activities are: (a) To enter in to an agreement with the U.S. Government to provide the U.S. Government advice in developing and executing ground robotics endeavors by performing certain research and development (including prototype projects) in the area of robotics, to be conducted in collaboration with the U.S. Government and Members, as selected, funded and technically supervised by the U.S. Government; (b) to collaboratively and collectively provide the U.S. government with input and advice on non-proprietary, nonconfidential technical concepts and issues; (c) to inform members of Congress and their staff and other branches of the U.S. Government about robotics technology research; and, (d) to engage in any other lawful activities that will further the purposes of RTC.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–28364 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on October 26, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GBL Systems, Camarillo, CA has been added as a party to this venture. Also, IONA Technologies, Waltham, MA; EMC Corporation, Hopkinton, MA; Factiva, New York, NY; and BearingPoint, Inc., McLean, VA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on August 3, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 17, 2009 (74 FR 47825).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–28363 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on September 24, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aging Aircraft Consulting, LLC, Warner Robins, GA; Aerowing, Inc., Las Vegas, NV; Altair Engineering, Inc., Troy, MI; Dassault Systemes Simulia Corp., Northville, MI; Decision Incite Inc., Great Falls, VA; DIT–MCO International Inc., Kansas City, MO; Delta Consultants, Novi, MI; Engineered Performance Materials Company, LLC, Saline, MI; IBC Materials & Technologies, Inc., Lebanon, IN; L&L Products, Inc., Romeo, MI; MAHLE Industries, Inc., Farmington Hills, MI; Morris Technologies, Inc., Cincinnati, OH; Nimbis Services, Inc., McLean, VA; Ontonix LLC, Novi, MI; R Systems NA, Inc., Champaign, IL; Spectro Incorporated, Littleton, MA; Superior Controls, Inc., Plymouth, MI; and Wayne State University, Detroit, MI have been added as parties to this venture.

Also, Cabot Corporation, Albuquerque, NM; Camber Corporation, Huntsville, AL; Control Technology Inc., Knoxville, TN; Dow Chemical Company, Midland, MI; Eastman Kodak Company, Rochester, NY; Edison Welding Institute, Columbus, OH; Henkel Electronic, Conductive Die Attach Division, City of Industry, CA; IMES, Inc., Norwood, MA; Net-Inspect LLC, Bellevue, WA; Optomec Design Company, Albuquerque, NM; Parker Emerging, New Britain, CT; PPG Industries, Troy, MI; Savant Technology Group, Inc., Ann Arbor, MI; Star Cutter Company, Farmington, MI; and Teradyne, Inc. and Assembly Test Division, Boston, MA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on February 4, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 26, 2009 (74 FR 13227).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–28362 Filed 11–27–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 19, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/*Fax:* 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension with change of a currently approved collection.

Title of Collection: Overpayment Detection and Recovery Activities.

OMB Control Number: 1205–0173.

Agency Form Number: ETA–227.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 2,968.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The Secretary interprets applicable sections of Federal law to require States to address the prevention, detection, and recovery of benefit overpayments caused by willful misrepresentation of errors by claimants or others. The report provides an accounting of the types and amounts of such overpayments and serves as a useful management tool for monitoring overall integrity in the Unemployment Insurance system. For additional information, see related notice published at 74 FR 44385 on August 28, 2009.

Agency: Employment and Training Administration.

Type of Review: Extension with change of a currently approved collection.

Title of Collection: Investigative Data Collection Requirements for the Trade Act of 1974 as amended by the Trade and Globalization Adjustment Assistance Act of 2009.

OMB Control Number: 1205–0342.

Agency Form Numbers: ETA–9042; ETA–9042a; ETA–8562a1; ETA–8562A; ETA–8562B; ETA–9118; ETA–9043A; and ETA–9043B.

Affected Public: Individuals or Households; Businesses or other for-profits; and State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 6,916.

Total Estimated Annual Burden Hours: 17,883.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: Section 221(a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade and Globalization Adjustment Assistance Act of 2009, authorizes the Secretary of Labor and the Governor of each State to accept petitions for certification of eligibility to apply for adjustment assistance. The Forms ETA 9042A, Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, and its Spanish translation, Form 9042a–1, Solicitud De Asistencia Para Ajuste, establish a format that may be used for filing such petitions. The Department's regulations regarding petitions for worker adjustment assistance may be found at 29 CFR 90. The Forms ETA 9043a, Business Confidential Data Request, ETA 8562a, Business Confidential Customer Survey and ETA 9118, Business Confidential Non-Production Questionnaire are undertaken in accordance with Sections 222, 223 and 249 of the Trade Act of 1974, as amended by the Trade and Globalization Adjustment Assistance Act of 2009, are used by the Secretary of Labor to certify groups of workers as eligible to apply for worker trade adjustment assistance. For additional information, see related notice published at 74 FR 28955 on June 18, 2009.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Reporting and Performance Standards System for Migrant and Seasonal Farmworker Programs Under Title I, Section 167 of the Workforce Investment Act (WIA).

OMB Control Number: 1205–0425.

Agency Form Numbers: ETA–9093; ETA–9094; and ETA–9095.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 70,562.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: This collection of information relates to the operation of employment and training programs for Migrant and Seasonal Farmworkers under title I, section 167 of the Workforce Investment Act (WIA). It also

contains the basis of the performance standards system for WIA section 167 grantees, which is used for program oversight, evaluation and performance assessment. For additional information, see related notice published at 74 FR 43159 on August 26, 2009.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Pell Grants and the Payment of Unemployment Benefits to Individuals in Approved Training.

OMB Control Number: 1205–0473.

Agency Form Number: N/A.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 265.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The Administration seeks to enable more individuals to obtain job training while receiving unemployment benefits, so they can develop their skills while the economy recovers. Therefore states, as third party disseminators, are strongly encouraged to notify unemployed individuals of their potential eligibility for Pell Grants. For additional information, see related notice published at 74 FR 49401 on September 27, 2009.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Collecting Aggregate Participant Counts for Workforce Investment Act (WIA) Title 1B, Wagner-Peyser Act, National Emergency Grants, and Reemployment Services Grants.

OMB Control Number: 1205–0474.

Agency Form Number: ETA–9147; ETA–9148; and ETA–9149.

Affected Public: State Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Annual Burden Hours: 614,632.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: This request is to extend OMB approval for a collection previously approved on an emergency basis which both modified the frequency of reporting and requests the collection of an additional data element contained in the following two performance-related data instruments: (1) OMB Control Number 1205–0420—Workforce Investment Act (WIA), Title I Adult, Dislocated Worker and Youth Activities Programs. This control number includes the following ETA forms: (A) Workforce Investment Act Annual Report—ETA form 9091, (B) Workforce Investment Act Quarterly Report—ETA Form 9090, and (C) Workforce Investment Act Standardized Record Data—WIASRD. and (2) from OMB control number 1205–0240, ETA 9002 A–E and VETS 200 A–C. For additional information, see related notice published at 74 FR 28553 on June 16, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–28499 Filed 11–27–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Comment Request for Proposed Information Collection for Occupational Code Assignment; Extension Without Revisions

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the Occupational Code Assignment Form (ETA 741), which expires on January 31, 2010. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before January 29, 2010.

ADDRESSES: Submit written comments to Lauren Fairley-Wright, Office of Workforce Investment, Employment and Training Administration, Mail Stop S–4231, 200 Constitution Avenue, NW., Washington, DC 20210, *Phone:* (202) 693–3731 (This is not a toll-free number), *Fax:* (202) 693–3015, or *e-mail: wright.lauren@dol.gov.*

SUPPLEMENTARY INFORMATION: *I. Background:* The Occupational Code Assignment form (ETA 741) was developed as a public service to the users of the Occupational Information Network (O*NET), in an effort to help them in obtaining occupational codes and titles for jobs that they were unable to locate in O*NET.

The O*NET system classifies nearly all jobs in the United States economy. However, new specialties are constantly evolving and emerging. The use of the OCA is voluntary and is provided (1) As a uniform format to the public and private sector to submit information in order to receive assistance in identifying an occupational code, (2) to provide input to a database of alternative (lay) titles to facilitate searches for occupational information in the O*NET OnLine (*http://online.onetcenter.org*), O*NET Code Connector (*http://www.onetcodeconnector.org*), as well as America's Career InfoNet (*http://www.acinet.org*), and (3) to assist the O*NET system in identifying potential occupations that may need to be included in future O*NET data collection efforts. The OCA process is designed to help the occupational information user relate an occupational specialty or a job title to an occupational code and title within the framework of the Standard Occupational Classification (SOC) based O*NET system. The O*NET–SOC system consists of a database that organizes the work done by individuals into approximately 1,000 occupational categories. In addition, O*NET occupations have associated data on the importance and level of a range of occupational characteristics and requirements, including Knowledge, Skills, Abilities, Tasks, and Work Activities. Since the O*NET–SOC system is based on the 2000 SOC system, identifying an O*NET–SOC code and title also facilitates linkage to National, State, and local occupational employment and wage estimates.

II. Review Focus:

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions:

Type of Review: extension without changes.

Title: Occupational Code Assignment.

OMB Number: 1205–0137.

Affected Public: Federal government, state and local government, business or other for-profit/non-profit institutions, and individuals.

Form: ETA–741.

Total Respondents: 30.

Frequency: On occasion.

SUMMARY OF ANNUAL BURDEN FOR THE OCCUPATIONAL CODE ASSIGNMENT

Form	Requests per year [1]	Hours/ request [2]	Hours burden used	Salary expenditure used [3] (hours x hourly income)
OCA—Part A	30	.58	15.51	$653.75

[1] Estimate based on average for January 2007 through September 2009.
[2] Estimates on OCA form—Part A = 30 minutes.
[3] Salary based on America's Career InfoNet data for Human Resource Manager, median income = $42.15/hour.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Average Time per Response: 30 minutes for the OCA Part A; 40 minutes for the OCA Part A and OCA Request for Additional Information combined.

Estimated Total Burden Hours: 15.51.

Comments submitted in response to this notice request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 10th day of November 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–28501 Filed 11–27–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the National Agricultural Workers Survey, OMB Control No. 1205–0453; Extension With Revisions

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the continued collection of data about hired farm workers via the National Agricultural Workers Survey. Office of Management and Budget authorization for the current questionnaire will expire on March 31, 2010.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before January 29, 2010.

ADDRESSEE: Submit written comments to Mr. Daniel Carroll, Room N–5641, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. *Telephone number:* 202–693–2795 (this is not a toll-free number). *Fax:* 202–693–2766. *E-mail: carroll.daniel.j@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor has been continually surveying hired farm workers since 1988 via the National Agricultural Workers Survey (NAWS). The survey's primary focus is to describe the employment, demographic, and health characteristics of hired crop farm workers. It is the only national-level data source for this information.

The NAWS provides an understanding of the manpower resources available to U.S. agriculture, and both public and private service programs use the data for planning, implementing, and evaluating farm worker programs.

The NAWS samples hired crop farm workers in three cycles each year to capture the seasonality of agricultural employment. Workers are randomly sampled at their work sites. Depending on the information needs and resources of the various Federal agencies that use NAWS data, between 1,500 and 4,000 workers are interviewed each year.

The primary NAWS questionnaire routinely provides a standard set of information on the employment, demographic, and health characteristics of hired crop workers. When new information is required, Federal agencies add supplemental collection instruments to the NAWS.

Changes to the Primary Questionnaire

In fiscal years 2005 through 2009, the Environmental Protection Agency (EPA) added four questions to the primary instrument that were administered to all respondents who reported having mixed, loaded, or applied pesticides in the previous twelve months. The questions solicited: (1) The type of material(s) the respondent handled, (2) the last time each material was handled, (3) the crop the respondent was working on when last handling each material, and (4) the number of days the material was handled. These four questions have been removed from the questionnaire. The EPA will analyze the data and determine if the questions need to be revised and reinserted in the future.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with Changes.

Title: National Agricultural Workers Survey.

OMB Number: 1205–0453.

Affected Public: Individuals, Farms.

Form(s): Primary Questionnaire; Injury Supplement.

Total Respondents: 2,003.

Frequency: Annual.

Total Responses: 2,003.

Average Time per Response: 48.7 minutes.

Estimated Total Burden Hours: 1,625.

Total Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 17, 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–28447 Filed 11–27–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

Agency Holding Meeting: National Science Board.

Date and Time: Wednesday, December 9, 2009, at 8 a.m.; and Thursday, December 10, 2009 at 8 a.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 1235 and 1295, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. *Public visitors must arrange for a visitor's badge in advance. Call 703–292–7000 to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.*

Status: Some portions open, some portions closed.

Open Sessions:

December 9, 2009

8 a.m.–8:05 a.m.
8:05 a.m.–10:30 a.m.
8:05 a.m.–10:15 a.m.
10:30 a.m.–12 p.m.
11:30 a.m.–12 p.m.
1 p.m.–2 p.m.
2 p.m.–3:30 p.m.

December 10, 2009

8 a.m.–10:10 a.m.
1 p.m.–2:45 p.m.

Closed Sessions:

December 9, 2009

10:15 a.m.–10:30 a.m.
10:30 a.m.–11:30 a.m.

December 10, 2009

10:10 a.m.–10:30 a.m.
10:40 a.m.–11:10 a.m.
11:15 a.m.–11:30 a.m.
11:30 a.m.–12:00 p.m.

Agency Contact: Kim Silverman, *ksilverm@nsf.gov,* (703) 292–7000, *http://www.nsf.gov/nsb/.*

Matters to be Discussed:

Wednesday, December 9, 2009

Open Session: 8 a.m.–8:05 a.m., Room 1235.

- Chairman's Remarks.

Committee on Programs and Plans (CPP)

Open Session: 8:05 a.m.–10:30 a.m., Room 1235.

- Approval of August 2009 and September 2009 CPP Minutes.
- Committee Chairman's Remarks.
  - *Proposed Revision—Transmitting DRB Packages to NSB.*
- *Discussion Items:* Proposed Revisions to ''Annual Timeline for Integration of Board MREFC Process with NSF Budget Process'' (September 2006) and Proposed Modification to ''Setting Priorities for Large Research Facility Projects supported by the NSF'' (September 2005).
- *NSB Information Item:* National Ecological Observatory Network.
- *NSB Information Item:* Plans for Integration and Recompetition of the EAR Solid Earth Deformation Facilities.
- *CPP Subcommittee on Polar Issues (SOPI):*
  - SOPI Chairman's Remarks.
  - Director's Report—Office of Polar Programs (OPP).
  - Arctic Sea Ice update.
  - NSF at the United Nations Framework Convention on Climate Change (UNFCCC): Conference of the Parties (COP15) in Copenhagen, Denmark, December 2009.
  - Report from Board Members on Travel to the Antarctic.
  - *NSB Information Item:* IceCube O&M Renewal.

Committee on Programs and Plans (CPP)

Closed Session: 10:30 a.m.–11:30 a.m., Room 1235.

- Committee Chairman's Remarks.
- *Subcommittee on Polar Issues (SOPI):*
  - *NSB Information Item:* Arctic Logistics in Support of Research Contract.
- *NSB Action Item:* Award for the Operations of the Cornell High Energy Synchrotron Source (CHESS) and the Cornell Electron Storage Ring (CESR).

Committee on Audit and Oversight (A&O)

Open Session: 8:05 a.m.–10:15 a.m., Room 1295.

- Approval of Minutes:
  - August 6, 2009 Meeting.
  - November 6, 2009 Closed Teleconference.
- Committee Chairman's Opening Remarks.
- Report of the Advisory Committee on GPRA Performance Assessment (*http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf09068*).
- FY2009 NSF Financial Audit Report (*http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf10001*).
- Chief Financial Officer's Update including ARRA Status Update.
- Inspector General's ARRA Update.
- OIG Audit Plan for 2010.

- Other NSF Management Updates.
  - Human Resource Management at the National Science Foundation.
  - Report to the Board on ''NSF 2013''.
- Committee Chairman's Closing Remarks.

Committee on Audit and Oversight (A&O)

Closed Session: 10:15 a.m.–10:30 a.m., Room 1295.

- Contract Administration Issues.

Committee on Education and Human Resources (CEH)

Open Session: 10:30 a.m.–12 p.m., Room 1295.

- Approval of August 2009 Minutes.
- Preparing the Next Generation of STEM Innovators.
  - White Paper Draft Outline.
  - Discussion of Recommendations and Next Steps.
- Decadal Survey Update.
- NSF Merit Review Broader Impacts Criterion.
  - Presentation of Committee Member Concerns.
  - Presentation on Broader Impacts Reviews in Chemistry and Geosciences.
  - Discussion.
- Other Committee Business.

Task Force on the NSB 60th Anniversary

Open Session: 11:30 a.m.–12 p.m., Room 1235.

- Approval of Minutes for the August 5, 2009 Meeting.
- Task Force Chairman's Remarks.
- Updates on NSB/NSF Anniversary Activities.

Committee on Science and Engineering Indicators (SEI)

Open Session: 1 p.m.–2 p.m., Room 1235.

- Approval of August 2009 Minutes.
- Committee Chairman's Remarks.
- Progress Report on *Science and Engineering Indicators 2010.*
- *Science and Engineering Indicators 2010* Companion Piece.
- *Science and Engineering Indicators 2010* Rollout.
- *Science and Engineering Indicators 2010* Outreach.
- Chairman's Summary.

Executive Committee

Open Session: 2 p.m.–3:30 p.m., Room 1235.

- Approval of the September 2009 Minutes.
- Committee Chairman's Remarks.
- Discussion and Recommendation to Full Board of FY2010 Priorities.
- New Business.

Thursday, December 10, 2009

Committee on Strategy and Budget (CSB)

Open Session: 8 a.m.–10:10 a.m., Room 1235.

- Approval of Minutes from September 2009 Meeting.
- Committee Chairman's Remarks.
- Subcommittee on Facilities (SCF).
  - Chairman's Remarks.
  - Discussion of the NSF Facilities Portfolio Review Workplan.
- Update on FY 2010 Appropriation.
- Status of NSF Strategic Plan.
- NSF Report on ARRA Spending.
- Other Committee Business.

Committee on Strategy and Budget (CSB)

Closed Session: 10:10 a.m.–10:30 a.m., Room 1235.

- Status of FY 2011 Budget Request/ Passback.
- NSB Budget.

Executive Committee

Closed Session: 10:40 a.m.–11:10 a.m., Room 1235.

- Approval of the October 19, 2009 Closed Session Minutes.
- Approval of the November 4, 2009 Closed Session Minutes.
- Committee Chairman's Remarks.
- Personnel Matters.

Plenary Executive Closed

Closed Session: 11:15 a.m.–11:30 a.m., Room 1235.

- Approval of Plenary Executive Closed Minutes, September 2009.
- Approval of Honorary Awards Recipients.

Plenary Closed

Closed Session: 11:30 a.m.–12 p.m., Room 1235.

- Approval of Plenary Closed Minutes, September 2009.
- Awards and Agreements.
- Closed Committee Reports.

Plenary Open

Open Session: 1 p.m.–2:45 p.m., Room 1235.

- Approval of Plenary Open Minutes, September 2009.
- Chairman's Report.
- Director's Report.
- Open Committee Reports.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. E9–28670 Filed 11–25–09; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 050–206; NRC–2009–0519]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact Approval of the License Termination Plan for the San Onofre Nuclear Generating Station Unit 1 Reactor Facility, San Onofre, CA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: James C. Shepherd, Project Engineer, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852. *Telephone:* (301) 415–6712; *fax number:* (301) 415–5398; *e-mail: james.shepherd@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing an amendment to Facility Operating License No. DPR–13, issued to Southern California Edison (SCE or licensee), that would authorize SCE to remove the off-shore portion of the Circulating Water System (CWS) from its NRC license. SCE has isolated this portion of the system from the plant and will abandon it in place. SCE requested this action in its application dated December 19, 2007, in response to which the NRC staff has prepared a safety evaluation report (SER).

The NRC staff has also prepared an environmental assessment (EA) to determine the environmental effects from the proposed action. Based on the EA, the NRC has concluded that a finding of no significant impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the licensee following publication of this FONSI and EA summary in the **Federal Register.**

II. EA Summary

The purpose of the proposed action is to amend the NRC license to remove the off-shore portion of the CWS from the license for San Onofre Nuclear Generating Station Unit 1. NRC verified that the licensee conducted sampling of the CWS and surrounding area, and performed dose analyses that demonstrate that the calculated dose to a member of the public is below the

NRC limit of 25 millirem per year for areas released for unrestricted use, as defined in 10 CFR 20.1402. Specifically, SCE conducted characterization surveys of the areas to be released, during which it identified low concentrations of radioactive cesium, cobalt, and sodium in the sediments of the SONGS–1 CWS. These concentrations result in a calculated dose to the public of less than 1 millirem per year (mrem/yr), which is well below the NRC unrestricted use limit of 25 mrem/yr.

The staff has prepared this EA in support of the proposed license amendment. The NRC has examined the licensee's proposed amendment request and concluded that there are no significant radiological environmental impacts associated with this action, and it will not result in significant non-radiological environmental impacts.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment, and that preparation of an environmental impact statement is not warranted.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: (1) The licensee's application, dated December 19, 2007, ML080580468, (2) the EA, ML093010071, and (3) the SER, ML092670125. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, OF–21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 20th day of November 2009.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–28509 Filed 11–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0495; Docket No. 50–005]

Penn State Breazeale Reactor; Notice of Issuance of Renewed Facility Operating License No. R–2

The U.S. Nuclear Regulatory Commission (NRC) has issued renewed Facility Operating License No. R–2, held by the Pennsylvania State University (the licensee), which authorizes continued operation of the Penn State Breazeale Reactor (PSBR), located in University Park, Centre County, Pennsylvania. The PSBR is a pool-type, light-water-moderated-and-cooled research reactor licensed to operate at a steady-state power level of 1 megawatt thermal power and pulse mode operation with a peak pulse power of approximately 2,000 megawatts. Renewed Facility Operating License No. R–2 will expire at midnight 20 years from its date of issuance.

The renewed license 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 regulations in Title 10, Chapter 1, ''Nuclear Regulatory Commission,'' of the Code of Federal Regulations (10 CFR), and sets forth those findings in the renewed license. The agency afforded an opportunity for hearing in the Notice of Opportunity for Hearing published in the **Federal Register** on June 8, 2009, at 74 FR 27188. The NRC received no request for a hearing or petition for leave to intervene following the notice.

The NRC staff prepared a safety evaluation report for the renewal of Facility License No. R–2 and concluded, based on that evaluation, that the licensee can continue to operate the facility without endangering the health and safety of the public. The NRC staff also prepared an Environmental Assessment and Finding of No Significant Impact for license renewal, noticed in the **Federal Register** on November 12, 2009, at 74 FR 58319, as corrected on November 20, 2009, at 74 FR 60301, and concluded that renewal of the license will not have a significant impact on the quality of the human environment.

For details with respect to the application for renewal, see the licensee's letter dated December 6, 2005 (ADAMS Accession No. ML091250487), as supplemented on October 31, 2008 (ADAMS Accession No. ML092650603), and April 2 (ADAMS Accession No. ML093030395), June 11 (ADAMS Accession No. ML092030312), September 1 (ADAMS Accession No. ML092580215), and October 21, 2009 (ADAMS Accession No. ML092990409). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on 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 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of November, 2009.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Chief, Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28511 Filed 11–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0520]

Notice of Public Meeting and Request for Comment on Blending of Low-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Public Meeting and a Request for Comment on Issues Related to Blending of Low-Level Radioactive Waste.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) plans to conduct a public meeting on January 14, 2010, in Rockville, MD, to solicit input on issues associated with blending of low-level radioactive waste (LLRW). Since the closure of the LLRW disposal facility at

Barnwell, South Carolina on June 30, 2008 to out-of-compact generators, the issue of blending of LLRW has received increased attention from stakeholders, industry, and Agreement States, especially blending that results in a change in the classification of the waste, as defined by the radionuclide concentrations in 10 CFR part 61.55. Blending, as defined here, refers to mixing of LLRW of different concentrations. It does not involve mixing radioactive waste with non-radioactive waste, (*i.e.,* dilution) and concerns only disposal in a licensed facility, not release of radioactivity to the general environment.

Blending is not prohibited or explicitly addressed in NRC regulations. In addition, while NRC staff guidance discourages blending in some circumstances, it also recognizes that some blending—including blending that lowers the classification of a waste—may be appropriate in others. However, the closure of the Barnwell facility to LLRW generators in 36 States means that there is no disposal option for Class B or C LLRW generated in these States; LLRW generators have been storing Class B and C LLRW onsite since the closure of Barnwell. The lack of a disposal pathway for Class B and C LLRW from these generators has increased interest in blending to reduce the radioactivity concentrations of wastes that might otherwise be classified as B or C waste. A disposal pathway exists for Class A waste, which means that Class A waste does not have to be stored at licensees' sites. While some blending of LLRW resulting in reduced waste classification has occurred in the past, the scale of blending being considered since the closure of Barnwell is potentially much larger than current practice.

On October 8, 2009, NRC Chairman Gregory B. Jaczko directed the staff to prepare a vote paper for the Commission to consider issues related to blending of LLRW, including the following:

- Issues related to intentional changes in waste classification due to blending, including safety, security, and policy considerations.
- Protection of the public, the intruder, and the environment.
- Mathematical concentration averaging and homogeneous physical mixing.
- Practical considerations in operating a waste treatment facility, disposal facility, or other facilities, including the appropriate point at which waste should be classified.
- Recommendations for revisions, if necessary, to existing regulations, requirements, guidance, or oversight related to blending of LLW.

The staff is holding a public meeting to obtain additional information on these and other related issues. Stakeholder views will be presented in the vote paper that the staff prepares for the Commission.

DATES: Members of the public may provide feedback at the transcribed public meeting or may submit written comments on the issues discussed in this notice. Comments on the issues and questions presented in this notice and discussed at the meeting should be postmarked no later than January 29, 2010. Comments received after this date will be considered if it is practical to do so. NRC plans to consider these stakeholder views in the development of a vote paper for the Commission's consideration. Written comments may be sent to the address listed in the **ADDRESSES** Section. Questions about participation in the public workshops should be directed to the facilitator at the address listed in the **ADDRESSES** Section. Members of the public planning to attend the workshops are invited to RSVP at least ten (10) days prior to each workshop. Replies should be directed to the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

The public meeting will be held in Rockville, Maryland on January 14, 2010, from 8 a.m. to 5:30 p.m. at: The Legacy Hotel & Meeting Centre, The Georgetown Room, 1775 Rockville Pike, Rockville, MD 20852, 240–283–1116.

The final agenda for the public meeting will be noticed no fewer than ten (10) days prior to the meeting on the NRC's electronic public workshop schedule at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* Please refer to the **SUPPLEMENTARY INFORMATION** section for questions that will be discussed at the meeting.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0520 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–2009–0520. 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.

Questions regarding participation in the public meeting should be submitted to the facilitator, Francis Cameron, by mail to Mail Stop O16–E15, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 240–205–2091, or by e-mail at *fxcameo@gmail.com.*

FOR FURTHER INFORMATION CONTACT: Brooke Traynham, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 404–729–3366; e-mail *Brooke.Traynham@nrc.gov.*

The public may examine and have copies for a fee, publicly available documents at the Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Publicly available documents created or received at NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, contact the Public Document Room at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

Existing NRC guidance on blending of LLRW is contained in the NRC's 1995 ''Final Branch Technical Position on Concentration Averaging and Encapsulation'' (CA BTP), Section 3.1 (ADAMS Accession No. ML033630732). The staff has recently issued several letters that describe NRC's position on blending of LLRW that should also be useful to interested persons. These include letters to EnergySolutions (ADAMS Accession No. ML092170561),

Studsvik (ADAMS Accession No. ML092930251), and Waste Control Specialists (ADAMS Accession No. ML092920426). Multiple meetings are being scheduled for the week of December 14, 2009, to better understand the positions of these three companies on blending of LLRW. Additional information on these meetings will be posted on the NRC public web site in the near future at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* The public is invited to participate. Chairman Jaczko's October 8, 2009, memorandum to the staff on blending of LLRW can be found in ADAMS (Accession No. ML093070605).

SUPPLEMENTARY INFORMATION:

I. Background

On June 30, 2008, the Barnwell disposal facility closed to most LLRW generators in the U.S. Now, only generators in the Atlantic Compact—the States of South Carolina, Connecticut, and New Jersey—are able to dispose of their waste at that facility, and generators in 36 States must store their Class B/C waste onsite until a new disposal option becomes available.[1] In the meantime, the EnergySolutions' disposal facility in Clive, Utah, remains available for Class A waste disposal by these generators that lost access to the Barnwell facility for their Class B/C wastes.

To help mitigate the impact of Barnwell's closure, industry is exploring the blending of LLRW that would otherwise be Class B and C into a homogeneous Class A mixture that could be disposed of as Class A waste. Such blending would eliminate the need for indefinite onsite storage of these wastes, while furthering the goal of permanent waste disposal. Not all LLRW can be blended into a homogeneous mixture suitable for disposal as Class A waste: irradiated reactor components, reactor pressure vessels, and other types of solid waste are not amenable to blending. Other reactor waste streams, particularly ion exchange resins, which account for about half of the volume of Class B and C waste generated each year, can be blended into a homogeneous mixture with a relatively uniform concentration of radioactivity, and some of these Class B and C resins could be blended with resins having radioactivity concentrations well below the Class A limits to produce a Class A final mixture.

Blending, as the staff uses the term in this context, is the mixing of LLRW having different concentrations of radionuclides to form a relatively homogeneous mixture for disposal in a licensed facility. The concentration of the resulting mixture is total radioactivity in the mixture divided by its volume or weight.

Blending may be done for a variety of reasons: (1) To consolidate wastes from a number of different sources within a plant for reasons of operational efficiency; (2) to reduce radiation exposures to workers; and (3) to lower the waste classification of some of the waste by averaging its concentration over a larger volume. Because it is more efficient to combine wastes in a single tank in a facility, licensees may also mix certain wastes such as ion exchange resins that are removed from various locations in their plants, rather than characterize and classify individual batches of resins. Blending may also be performed to keep radiation exposures to workers as low as reasonably achievable, since the doses from a mixture of two or more streams of LLRW with different radiation levels may result in a combined mixture that has lower radiation levels. Waste disposal may also be facilitated by blending. For example, if two batches of waste are blended together, they may meet the waste acceptance criteria for a specific disposal facility, but the higher concentration batch by itself would not. With respect to waste class reduction, it may result from mixing for operational reasons or efforts to reduce worker exposures, or could be performed solely for the purposes of reducing the classification to enable prompt disposal, rather than storage.

A particular topic of interest to some stakeholders is blending that reduces the classification of the waste. Waste classification is one of the requirements in NRC's LLRW disposal regulations in 10 CFR part 61. 10 CFR part 61 establishes the procedures, criteria, and terms and conditions for the issuance of licenses for the disposal of LLRW. Four performance objectives, including protection of an inadvertent intruder into the waste disposal site, define the overall level of safety to be achieved by disposal.[2] Intruder protection is provided in part by the waste classification concentration limits in 10 CFR 61.55, which are designed to ensure that an inadvertent intruder does not receive an unsafe exposure to radiation. Any blended LLRW must meet the concentration limits in the waste classification tables. If batches of waste were not blended into a relatively homogeneous final mixture, hot spots above the concentration limits for a particular waste class might expose an inadvertent intruder to unacceptable levels of radiation. Any blended waste must also not affect a facility's ability to meet the other performance objectives in 10 CFR part 61.

Waste classification is also addressed in NRC's regulations in 10 CFR part 20 specifying requirements for the preparation of shipping papers for LLRW. 10 CFR part 20, Appendix G, Section III.A allows waste generators to defer classifying waste until the time that waste is ready for disposal and does not require generators to classify waste before it is shipped from a generator to a processor. In practice, generators often classify waste before it is shipped for disposal, even though waste classification need not occur until the waste is ready for disposal. As noted above, the 10 CFR 61.55 waste classification tables are based on protection of an inadvertent intruder into waste at a disposal facility at some future time after the disposal facility is closed. The classification of the waste in accordance with 10 CFR 61.55 is not directly related to the safety of the waste at intermediate points in its management.

While recognizing that some blending is unavoidable and even desirable for efficiency or dose reduction purposes, NRC has historically discouraged blending to lower the waste classification, while acknowledging that it is appropriate in some circumstances. The maxim ''dilution is not the solution to pollution'' appears to have been a factor in developing agency positions that discourage, but do not prohibit, the mixing of wastes. Dilution can increase the amount of waste by mixing clean and contaminated materials together, and may enable the mixture to be released to the general environment where members of the public will be exposed to the hazard, however small. Blending, as defined in this FRN, involves the mixing of higher and lower concentrations of contaminated materials, not clean materials, and disposal in a licensed disposal site, not release to the general environment. Thus, the undesirable characteristics of dilution are not present in this kind of blending, while safety and efficiency may be improved by selection of appropriate criteria to be applied to such blending. Some LLRW

[1] Generators in the Northwest Compact (WA, ID, MT, HI, AK, OR, WY, and UT) and Rocky Mountain Compact (CO, NM, and NV) can dispose of their LLRW at a commercial disposal facility in Hanford, WA.

[2] The others are protection of the general population from releases of radioactivity; protection of individuals during the operation of the facility (as opposed to after the facility is closed), and stability of the disposal site.

stakeholders have noted that there may be potential adverse impacts from and issues with blending, particularly large scale blending. For example, blending can be contrary to volume reduction principles.[3] Waste with Class B and C concentrations of radionuclides is often processed to reduce its volume. If this waste were instead mixed with Class A wastes, these reductions in volume would not be achieved. Blending may also be viewed by some as equivalent to disposing of Class B or C waste in a Class A disposal facility. The purpose of the public meeting and NRC's solicitation of public comments is for NRC to better understand these impacts and issues.

NRC's 1995 CA BTP recommends limits on blending of LLRW by applying a ''factor of 10'' rule, whereby the concentrations of batches of LLRW to be mixed must be within a factor of 10 of the average concentration of the final mixture. The safety benefit of the ''factor of 10'' rule is unclear for final mixtures that are homogeneous, since any concentrated materials that go into a mixture are blended down to lower concentrations that are relatively uniform over the volume of the material. By placing limits on the amount of mixing, however, the ''factor of 10'' rule furthers the agency's policy that discourages mixing to reduce waste classification. It should be noted that some waste class reduction could occur when waste is mixed in accordance with the ''factor of 10'' rule, since some of the waste classes of some radionuclides differ by a ''factor of 10.'' The mixing constraint in the CA BTP specifies that batches of greater than a factor of 10 difference in concentration can be mixed. The CA BTP also includes in an appendix with staff responses to public comments received on an earlier draft of the CA BTP. The appendix states that wastes should not be intentionally mixed solely to lower the waste classification. The staff positions in the CA BTP itself do not contain this guidance, however.

The CA BTP allows important exceptions from the ''factor of 10'' rule when operational efficiency or worker dose reductions can be demonstrated, and one of the current industry blending proposals relies on these exceptions to conduct expanded blending operations. Although not explicitly stated, the CA BTP positions appear to be based on a combination of practical considerations in the operation of a facility, whereby wastes are routinely combined or mixed for operational efficiency and ALARA reasons, and NRC's general position that discourages mixing for the purposes of reducing the waste class. These two objectives are not fully compatible, but the CA BTP attempts to provide positions that balance them.

NRC guidance for other programs similarly discourages blending, while recognizing that it may be appropriate in some circumstances. In a document for the decommissioning program, ''Consolidated Decommissioning Guidance'' (NUREG–1757, Volume 1, Revision 2), NRC staff states that mixing of soils to meet the waste acceptance criteria of an offsite disposal facility ''should not result in lowering the classification of the waste.'' As a practical matter, contaminated soils from sites undergoing decommissioning are rarely Class B/C concentrations. At the same time, the guidance allows for blending to reduce the classification of the waste from licensable material that must be disposed of in a licensed disposal facility to exempt material suitable for disposal in landfills. This decommissioning guidance also recognizes that mixing of clean and contaminated soils may be appropriate under certain very limited circumstances to meet the dose standard in 10 CFR part 20, subpart E.

II. Questions Related to Blending of LLRW

This section identifies questions associated with blending of LLRW that results in lower waste classification of components of the mixture. These questions are not meant to be a complete or final list, but are intended to initiate discussion. These questions will help to focus the discussion at the public meetings. All public feedback will be used in developing options for NRC consideration.

1. What safety and security considerations are associated with blending of LLRW, particularly large scale blending that result in a change in waste classification?

2. What are the practical considerations in operating a facility that bear on blending of LLRW?

3. What policy issues are raised by blending of LLRW that lowers the waste classification?

4. What are the potential blending policies/positions that NRC could take and the advantages and disadvantages of each?

5. How should NRC implement a position on blending of LLRW (*i.e.,* by rulemaking, guidance, policy statement or other means)?

6. If a rule were to be promulgated, what compatibility category should it be; *i.e.,* how strictly must Agreement States follow any NRC rule?

7. NRC regulations only require waste to be classified when it's ready for disposal. What advantages or disadvantages might there be to classifying it earlier?

8. If blended waste could not be attributed to the original generator of the waste, what issues does this raise that NRC should address, if any?

9. What would be a risk-informed, performance-based approach to addressing blending?

10. Given that Agreement States are not required to adopt NRC's guidance on blending, how are different States addressing this issue? What are the advantages and disadvantages of these approaches?

11. NRC is budgeting resources to initiate a long-term rulemaking to revise the waste classification system. How might alternative waste classification systems be affected by blending?

12. What oversight might be needed to ensure that blending is performed appropriately?

13. What other issues should NRC staff consider in developing options for Commission consideration related to blending?

Dated at Rockville, Maryland this 23rd day of November, 2009.

For The Nuclear Regulatory Commission.

Gregory F. Suber,

Acting Deputy Director, Environmental Protection, and Performance Assessment Directorate, Division of Waste Management, and Environmental Protection, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. E9–28507 Filed 11–27–09; 8:45 am]

BILLING CODE 7590–01–P

[3] NRC issued a ''Policy Statement on Low-Level Waste Volume Reduction'' on July 16, 1981, which encourages licensees to reduce the volume of waste for disposal. *See* July 16, 1981, **Federal Register** Notice, 46 FR 51100.

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0517; Docket Nos. 50–250 and 50–251; License Nos. DPR–31 and DPR–41]

Florida Power and Light Company; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated January 11, 2009, Mr. Thomas Saporito (petitioner) has requested that the NRC take action with regard to Florida Power & Light Company's Turkey Point Nuclear Generating Units 3 and 4. The petitioner requests that the NRC take enforcement action against Florida Power & Light Company (FPL) by issuing a Notice of Violation and Imposition of Civil Penalty in the

amount of $1,000,000 and further issue a Confirmatory Order modifying FPL's operating licenses DPR–31 and DPR–41 for the Turkey Point Nuclear Generating Units 3 and 4, Docket Nos. 50–250 and 50–251. The Order would include requiring an independent assessment of FPL's Employee Concerns Program and management implementation of the program in addition to providing training on the program and advertisement of the program to the employees.

As the basis for this request, the petitioner restates the concerns identified in FPL's self-assessment of their Employee Concerns Program (ECP):

Management attention to the ECP did not meet expectations and management's awareness of the ECP was superficial and program values had not been emphasized with employees.

The ECP facility was of low quality and did not give the impression of being important to management.

There is a perception problem with the ECP in the areas of confidentiality and potential retribution. The perception remains as evidenced by surveys, interviews and the high percentage of anonymous concerns. Previous surveys and assessments identified this perception, but little or no progress has been made in reversing this perception.

The ECP was most frequently thought to be a mechanism to use in addition to discussing concerns with the NRC and not as the first alternative to the Correction Action Program ''CAP.''

While meeting most of the program requirements and having a technically qualified individual in the ECP coordinator position, the overall effectiveness of the program was marginal.

The ECP representative has very low visibility or recognition in the plant and has not been integrated into the management team or plant activities.

The large percentage of concerns submitted anonymously hampers feedback to concerned individuals. The written feedback process to non-anonymous individuals is impersonal and lacks feedback mechanisms for the ECP coordinator to judge the program's effectiveness.

The ECP process also does not provide assurance that conditions adverse to quality identified in the ECP review process would get entered into CAP, creating potential to miss correction and trending opportunities.

The request is being treated pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner met with the Office of Nuclear Reactor Regulation petition review board on March 19 and May 7, 2009, to discuss the petition. The results of that discussion were considered in the board's determination regarding the schedule for the review of the petition. A copy of the petition is available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 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*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr.Resource@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of November 2009.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28510 Filed 11–27–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29062; File No. 812–13654]

Members Mutual Funds, et al.; Notice of Application

November 23, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Members Mutual Funds (''MMF''), Ultra Series Fund (''USF'') and Madison Asset Management, LLC (''MAM'').

DATES: *Filing Dates:* The application was filed on April 16, 2009, and amended on September 23, 2009 and November 23, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 18, 2009 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, W. Richard Mason, Esq., Corporate Counsel and CCO, Madison Asset Management, LLC c/o Madison/Mosaic Legal and Compliance Department, 8777 N. Gainey Center Drive, Suite 220, Scottsdale, AZ 85258.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel at (202) 551–6915, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. MMF and USF are open-end management investment companies registered under the Act. MMF is organized as a Delaware business trust. USF is organized as a Massachusetts business trust. MMF is currently comprised of 14 separate series and USF is currently comprised of 18 separate series each of which has its own investment objectives and policies (such series, together with the future series of MMF and USF, the ''Funds,'' and each a ''Fund''). Applicants also request relief with respect to current and future series of all registered open-end management investment companies and their series that are now, or in the future, advised by MAM or any entity controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with MAM, or any successor to MAM (collectively, the ''Adviser'') that comply with the terms and conditions as set forth in the application and that

uses the services of one or more subadvisors to manage all or a portion of their investment portfolios (the ''Management Structure,'' and such companies and their series included in the term ''Funds''), as described more fully in the application.[1]

2. MAM, a Wisconsin limited liability corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). MAM provides overall investment management to MMF, USF and each Fund, subject to the supervision of the board of directors or trustees of each Fund (''Board'') pursuant to written agreements (''Management Agreements'').[2]

3. The Management Agreements have been approved by a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Board (the ''Independent Trustees'') and Fund shareholders in the manner required by sections 15(a) and (c) of the Act and rule 18f–2 under the Act. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets subject to review and approval of the Board. For the investment management services the Adviser provides to the Funds, the Adviser will receive fees at an annual rate based on each Fund's average net assets. Each investment subadvisor will be recommended by the Adviser and selected and approved by the Board, including a majority of the Independent Trustees, and is (or will be) registered as an investment adviser under the Advisers Act. Each investment subadvisor has discretionary authority to invest all or a portion of the assets of a particular Fund pursuant to a written investment subadvisory agreement between the investment subadvisor and the Adviser. The fees of the investment subadvisors are paid by the Adviser at rates negotiated with the investment subadvisors by the Adviser and evaluated by the Board. The Adviser will monitor the performance of each investment subadvisor and of the Fund's portfolio and reallocate Fund assets among individual investment subadvisors, or recommend to the Board that the Fund employ or terminate particular investment subadvisors, to the extent the Adviser deems appropriate to achieve the Fund's overall investment objectives.

4. Applicants request an order to eliminate the need for Funds to submit new investment subadvisory agreements, and material amendments to existing investment subadvisory agreements, to shareholders for their approval. The requested relief will not extend to any investment subadvisor who is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Funds or the Adviser (other than by reason of serving as investment subadvisor to one or more Funds) (''affiliated investment subadvisor''). Shareholder approval will continue to be required for each investment subadvisory agreement with an affiliated investment subadvisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

3. Applicants state that investors in any subadvised Fund are, in effect, electing to have the Adviser select one or more investment subadvisors best suited to achieve a Fund's investment objectives. Applicants assert that, the role of the investment subadvisor, from the perspective of the investor, is comparable to that of individual portfolio managers employed by other investment company investment advisory firms. Applicants contend that requiring shareholder approval of investment subadvisory agreements would not serve the purpose intended by the Act. Such requirements would place costs and burdens on the Funds and their shareholders that would not advance such shareholders' interests and would merely increase the Fund's expenses and delay the prompt implementation of actions deemed advisable by the Adviser and the Board. Applicants also note that the Management Agreement between the Adviser and each of the Funds will be subject to the shareholder approval requirements in section 15(a) and 15(c) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to the review and approval of the Board, will: (i) Set the overall investment strategies of the Funds; (ii) evaluate, select and recommend investment subadvisors to manage all or part of a Fund's assets; (iii) allocate and, when appropriate, reallocate the assets of the Funds among investment subadvisors in those cases where a Fund has more than one investment subadvisor; (iv) monitor and evaluate the investment performance of the investment subadvisors, including their compliance with the investment objectives, policies and restrictions of the Funds; and (v) implement procedures reasonably designed to ensure that the investment subadvisors comply with the relevant Fund's investment objective, policies and restrictions.

2. Before any Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund

[1] The term ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. Any existing entity that currently intends to rely on the requested relief is named as an applicant. If a Fund has the name of any investment subadvisor in the Fund's name, the investment subadvisor's name will be preceded by the name of the Adviser.

[2] Under a prior order, the Commission granted relief to Members Capital Advisors, Inc. (''MCA'') (f/k/a CIMCO, Inc.) and MMF from the provisions of section 15(a) of the Act and rule 18f–2 under the Act, pursuant to which MCA retained investment subadvisors for certain of the Funds. *Members Mutual Funds and CIMCO, Inc.*, Investment Company Act Release Nos. 23365 (July 29, 1998) (notice) and 23400 (August 25, 1998) (order) (''Existing Order''). On April 15, 2009, MCA, an indirectly wholly owned subsidiary of CUNA Mutual Insurance Society (''CMIS'') and CMIS entered into an agreement under which MAM would become the investment adviser to the Funds (the ''Transaction''). The Transaction was approved by Fund shareholders and MAM now serves as the Funds' investment adviser. The Funds wish to continue to operate in a manner consistent with the Existing Order. On June 30, 2009, MAM received a no-action letter (Ref. No. 2009–3–1CR), permitting MAM to rely on the Existing Order until the earlier of the receipt of any order granted by the Commission on the application or December 30, 2009.

whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 4 below, by the initial shareholder(s) before offering shares of such Fund to the public.

3. Within 90 days of the hiring of any new investment subadvisor, the Adviser will furnish shareholders of the affected Fund with all information about such investment subadvisor that would be included in a proxy statement, including any change in such disclosure caused by the addition of the new investment subadvisor. To meet this condition, the Funds will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the Management Structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee investment subadvisors and recommend their hiring, termination and replacement.

5. No trustee or officer of any Fund, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in an investment subadvisor except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either an investment subadvisor or an entity that controls, is controlled by or is under common control with an investment subadvisor.

6. The Adviser will not enter into investment subadvisory agreements on behalf of a Fund with any affiliated investment subadvisor without such agreement, including the compensation to be paid under the agreement, being approved by the shareholders of the applicable Fund.

7. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

8. When a change of investment subadvisor is proposed for a Fund with an affiliated investment subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of meetings of the Board, that any such change of investment subadvisors is in the best interest of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the affiliated investment subadvisor derives an inappropriate advantage.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the requested order, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28560 Filed 11–27–09; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Customer Sports, Inc., Leonidas Films, Inc. (n/k/a Consolidated Pictures Group, Inc.), Sportsprize Entertainment, Inc., U.S. Interactive, Inc., and USA Biomass Corp.; Order of Suspension of Trading

November 25, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Customer Sports, Inc. because it has not filed any periodic reports since the period ended April 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Leonidas Films, Inc. (n/k/a Consolidated Pictures Group, Inc.) because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sportsprize Entertainment, Inc. because it has not filed any periodic reports since the period ended August 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Interactive, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Biomass Corp. because it has not filed any periodic reports since the period ended December 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. 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 companies is suspended for the period from 9:30 a.m. EST on November 25, 2009, through 11:59 p.m. EST on December 9, 2009.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E9–28639 Filed 11–25–09; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61043; File No. SR–NYSE–2009–116]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Increase the Ceiling on Its Equity Ownership Interest in BIDS Holdings L.P. to Less Than 10%

November 20, 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 November 18, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the ceiling on the Exchange's equity ownership interest in BIDS Holdings L.P. (''BIDS''), a member of the Exchange, to less than 10% from the current level of less than 9%, pursuant to the pilot program that provides an exception to NYSE Rule 2B by permitting such equity ownership as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

well as allowing BIDS's affiliation with the New York Block Exchange LLC, an affiliate of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 22, 2009, the Commission approved the governance structure proposed by the Exchange with respect to the New York Block Exchange (''NYBX''), a new electronic trading facility of the Exchange for NYSE-listed securities that was established by means of a joint venture between the Exchange and BIDS.[3] The governance structure that was approved is reflected in the Limited Liability Company Agreement of New York Block Exchange LLC (the ''Company''), the entity that owns and operates NYBX. Under the governance structure approved by the Commission, the Exchange and BIDS each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc. (''NYSE Market''), owns less than 9% of the aggregate limited partnership interest in BIDS, which became a member of the Exchange in connection with the establishment of NYBX.

The foregoing ownership arrangements would violate NYSE Rule 2B without an exception from the Commission.[4] First, the Exchange's indirect ownership interest in BIDS violates the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS is an affiliate of an affiliate of the Exchange,[5] which violates the prohibition in Rule 2B against a member of the Exchange having such status. Consequently, in the Approval Order, the Commission permitted an exception to these two potential violations of NYSE Rule 2B, subject to a number of limitations and conditions. One of the conditions for Commission approval was that: ''[t]he proposed exception from NYSE Rule 2B to permit NYSE's ownership/interest in BIDS and BIDS's affiliation with the Company (which is an affiliate of NYSE) would be for a pilot period of 12 months.'' [6] Noting that ''NYSE Market currently owns less than a 9% equity interest in BIDS,'' the Approval Order stated as another condition for Commission approval that: ''NYSE, or any of its affiliates, may not directly or indirectly increase such equity interest without prior Commission approval.'' [7]

The Exchange is proposing an increase in the ceiling on its equity ownership in BIDS from the current limit of less than 9% to a new limit of less than 10%. The purpose of the increase is to allow the Exchange to participate in a new round of capital raising by BIDS without inadvertently exceeding the current limit. BIDS is offering its members the opportunity to invest, on a pro rata basis, in a new class of preferred equity interests. The Exchange has determined that, based on its expectations regarding the participation of certain other BIDS members in the offering, full participation by the Exchange could result in a slight increase in its percentage of equity ownership to a number somewhere between 9% and 10%. The Exchange does not believe that this slight increase in its equity ownership of BIDS is material, but it is nonetheless required by the terms of the Approval Order to obtain Commission approval for such an increase. Other than this non-material increase in the ceiling for the Exchange's equity ownership of BIDS, all of the other limitations and conditions required by the terms of the Approval Order for the exception to NYSE Rule 2B will continue to be applicable during the pilot period.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [9] of the Act,[10] in general, and furthers the objectives of Section 6(b)(1) [11] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of Section 6(b)(5) [12] of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In the Approval Order, the Commission determined that: ''the proposed exception from NYSE Rule 2B to permit NYSE's ownership interest in BIDS and BIDS's affiliation with the Company is consistent with the Act. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act * * * '' [13] As the basis for its determination, the Commission cited the specific limitations and conditions listed in the Approval Order to which its approval of the exception to NYSE Rule 2B was subject,[14] stating: ''These conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. * * * These conditions appear reasonably designed to promote robust and independent regulation of BIDS. * * * The Commission believes that, taken together, these conditions are reasonably designed to mitigate potential conflicts between the Exchange's commercial interest in BIDS and its regulatory responsibilities with respect to BIDS.'' [15] Other than the small, non-material increase of one percentage point in the ceiling on its equity ownership of BIDS that the Exchange is proposing, all of the other limitations and conditions will continue to be applicable during the pilot

[3] *See* Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving SR–NYSE–2008–120) (''Approval Order'').

[4] NYSE Rule 2B provides, in relevant part, that: ''[w]ithout 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, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. * * * The term affiliate shall have the meaning specified in Rule 12b–2 under the Act.''

[5] Specifically, the Company is an affiliate of the Exchange, and BIDS is an affiliate of the Company. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS.

[6] *See* Approval Order, 74 FR at 5018.

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78.

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Approval Order, 74 FR at 5018–5019.

[14] *Id.* at 5018.

[15] *Id.* at 5019.

period.[16] Consequently, the Exchange believes that the exception from NYSE Rule 2B described above will continue to be consistent with the Act.

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

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–116. 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 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–116 and should be submitted on or before December 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28470 Filed 11–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61033; File No. SR–NYSEArca–2009–100]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rules 5.17 and 6.8

November 19, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 5, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Exchange Rules 5.17 and 6.8 pertaining to Exemptions from Position Limits. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NYSE Arca Rules 5.17 and 6.8 to enable OTP Holders and OTP Firms to rely on position limit exemptions granted by other options exchanges under specified circumstances. This proposed rule change is based on Chapter III, Section 8 and Chapter XIV Section 8, of Options Rules of the NASDAQ Stock Market, LLC (''NOM'').

NYSE Arca rules governing position limit exemptions for stock index options are generally found in Rule 5.17. NYSE Arca rules governing position limit exemptions for non-index options are generally located in Rule 6.8, Commentary .07–.09. These rules include a number of position limit exemptions available to OTP Holders and OTP Firms. Rules 5.17 and 6.8,

[16] The Exchange has previously stated that it and its affiliates do not have any voting or other control arrangement with any of the other limited partners or general partner of BIDS, and this statement will continue to be valid. *See* Approval Order, 74 FR at 5018, n. 69.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

however, do not have a provision that recognizes position limit exemptions that are granted to OTP Holders and OTP Firms by other option exchanges, as provided for in NOM Rules in Chapter III, Section 8 for non-index options and Chapter XIV, Section 8 for index options. In light of the desirability to have similar position limit standards, the Exchange proposes to add a similar an [sic] exemption to both Rule 5.17 and Rule 6.8.

Specifically, the Exchange proposes to add new Rule 5.17(c) and new Rule 6.8 Commentary .07(iv) to address position limit exemptions granted by other options exchanges. This proposed rule [sic] will provide that an OTP Holder or OTP Firm may rely upon any valid exemption from applicable position limits that has been granted by another options exchange for any options contract traded on NYSE Arca, provided that such OTP Holder or OTP Firm provides the Exchange either with a copy of any written exemption issued by another options exchange or with a written description of any exemption issued by another options exchange that is not in writing, where such description contains sufficient detail for Exchange [sic] to verify the validity of that exemption with the issuing options exchange. In addition, such OTP Holder or OTP Firm must fulfill all conditions precedent for such exemption and comply at all times with the requirements of such exemption with respect to trading on the Exchange.

The Exchange notes that position limits tend to be similar across options exchanges, which is desirable in light of cross option exchange membership(s) and multiple listing and trading of similar product(s) on different exchanges. Because OTP Holders and OTP Firms frequently have membership and/or trading privileges on other options exchanges, it is important that ad hoc position limit exemptions granted by other options exchanges (''exemption grants'') are available to OTP Holders and OTP Firms to the extent that such exemption grants are reduced to writing and verifiable by the Exchange.

These new proposed rules do not give the Exchange the ability to alter the scope of these exemptions but only to recognize the exemption so that the position limit process would be the same across the exchanges.

For example, an OTP Firm may go to another options exchange of which it is a member, such as the International Securities Exchange (''ISE''), or NOM to request a position limit exemption (exemption grant) for option contracts in the SPDRs (SPY). The other exchange provides the exemption grant until expiration in the same month to this particular firm for this particular issue (SPY). Should the same OTP Firm want to trade SPY on the NYSE Arca to the extent of the exemption grant, the Exchange's proposed rule change would allow it to do so, but only to the extent that the firm provides the Exchange with a copy of the written exemption grant provided by the issuing exchange or, if the exemption is not in writing, to the extent that said OTP Firm provides the Exchange with sufficient detail for Exchange regulatory staff to be able to verify the validity of the exemption grant with the issuing options exchange.[4]

The Exchange believes that by adding uniformity and predictability to the position limit process, the proposed rule change should be beneficial to the Exchange, OTP Holders and OTP Firms, and their customers. Moreover, the proposed rule change should promote competition by allowing trades across options exchanges that are similar in respect of position limits.[5]

The Exchange is also proposing to revise the rule numbering convention contained in the Commentary to Rule 6.8. This change is being made for technical purposes only in order to provide clarity to rules governing position limit exemptions on NYSE Arca. The renumbering of the rules has no material effect on the actual meaning of the rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing the Exchange to have uniform position limit procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become 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 such waiver will bring uniformity and predictability to the position limit process. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[14]

[4] Additionally, the OTP Firm would have to fulfill all conditions precedent for such exemption grant and comply with the requirements of such exemption with respect to trading on the Exchange.

[5] The Exchange notes that all reporting requirements, such as Rule 6.6 (Reporting of Options Positions) remains in force.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the

Continued

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–NYSEArca–2009–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[15] 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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *www.nyse.com.* 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–2009–100 and should be submitted on or before December 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

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proposed rules impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61042; File No. SR–FINRA–2009–057]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Section 1(c) of Schedule A to the FINRA By-Laws To Amend the Personnel Assessment and Gross Income Assessment

November 20, 2009.

I. Introduction

On August 20, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (formerly known as the National Association of Securities Dealers, Inc. (''NASD'')) 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 Section 1(c) of Schedule A to the FINRA By-Laws (''Schedule A'') to increase the Personnel Assessment and to revise the formulation of the Gross Income Assessment calculation to be paid by each FINRA member. The proposed rule change was published for comment in the **Federal Register** on September 11, 2009.[3] The Commission received 745 comment letters on the proposal.[4] FINRA submitted a response to the comment letters on November 18, 2009.[5] This order approves the proposal.

II. Description of FINRA's Proposal

Currently, FINRA's primary fee structure to support its regulatory programs consists of the following fees: the Personnel Assessment (''PA''); the Gross Income Assessment (''GIA''); the Trading Activity Fee; and the Branch Office Assessment. These fees are used to fund FINRA's regulatory activities, including rulemaking and FINRA's examination and enforcement programs. According to FINRA, the economic and industry downturns experienced in 2008 and 2009 have strained FINRA's resources, yet its regulatory responsibilities remain constant and its programs robust. To stabilize its revenues and provide protection against future industry downturns, FINRA proposes to increase the PA and revise the calculation of the GIA. This will enable FINRA to achieve a more consistent and predictable funding stream to carry out FINRA's regulatory mandate.

To those ends, the proposed rule change will increase the PA for all members. The PA currently is assessed on a three-tiered rate structure based on the number of the firm's registered representatives and principals (''registered persons'') as follows: members with one to five registered persons are assessed $75 for each such registered person; 6–25 registered persons, $70 for each such registered person; and 26 or more registered persons, $65 for each such registered person. The proposed rule change will increase those rates, for the first time in five years, to $150, $140, and $130, respectively, based on the same tiered structure. FINRA notes that there is a correlation between the cost of FINRA's regulatory programs and the number of registered persons within a firm and that the population of registered persons has remained fairly stable, even throughout the recent economic downturn.[6] Accordingly, FINRA believes that an increase of the PA is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60624 (September 3, 2009), 74 FR 46828 (September 11, 2009) (''Notice'').

[4] 676 of the letters were form comment letters. Of these, four utilized ''Letter Type A'' and 672 utilized ''Letter Type B.'' An example of Letter Type A and Letter B as well as all of the non-form comment letters are posted on the Commission's Internet Web site (*http://www.sec.gov/comments/sr-finra-2009–057/finra2009057.shtml*). *See* Exhibit 1 for a list of comment letters noted on the Commission's Internet Web site. All 745 comment letters are available for inspection and copying at the Commission's Public Reference Room.

[5] *See* letter from Phillip Shaikun, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2009. (''Response Letter'').

[6] For example, FINRA records show that since 2000, the average number of registered persons per year has been approximately 667,680 and that for each of the past three years the population has been 669,626 (2009), 676,927 (2008) and 662,742 (2007) (based on numbers at the end of the preceding calendar year).

both a fair and appropriate means to achieve a more consistent and reliable foundation to fund its regulatory operations.

FINRA states that even with the proposed increase of the PA, the GIA remains the most important component of FINRA's regulatory funding. The GIA is currently assessed through a seven-tier rate structure with a minimum GIA of $1,200.00. Under the existing GIA rate structure, members are required to pay an annual GIA as follows:

(1) $1,200.00 on annual gross revenue up to $1 million;

(2) 0.1215% of annual gross revenue greater than $1 million up to $25 million;

(3) 0.2599% of annual gross revenue greater than $25 million up to $50 million;

(4) 0.0518% of annual gross revenue greater than $50 million up to $100 million;

(5) 0.0365% of annual gross revenue greater than $100 million up to $5 billion;

(6) 0.0397% of annual gross revenue greater than $5 billion up to $25 billion; and

(7) 0.0855% of annual gross revenue greater than $25 billion.

For 2010, the current year GIA will be subject to the cap set forth in *Regulatory Notice* 08–07 (February 2008), which describes the funding structure that resulted from the consolidation of NASD's and the New York Stock Exchange's member regulation operations. FINRA states in *Regulatory Notice* 08–07 that it will apply a 10% cap on any increase or decrease to a firm's 2010 current year GIA [7] resulting from the new pricing structure implemented in January 2008.

According to FINRA, since the GIA is assessed based on a member's annual gross revenue for the preceding calendar year,[8] FINRA's revenues derived from the GIA are subject to the year-to-year volatility of member revenues. In years when industry revenues are significantly lower, FINRA's operating revenues can drop precipitously. In 2009, for example, GIA revenues are down by approximately 37% compared to 2008 due to 2008 fourth quarter write-offs taken by members, particularly the largest securities firms.

The proposed rule change seeks to ameliorate this vulnerability not only by shifting some of FINRA's revenue generation to the more consistent PA stream, but also by smoothing out the volatility inherent in the GIA. To that end, the proposed rule change will amend Schedule A to assess a GIA that is the greater of: (1) The amount that will be the GIA based on the existing rate structure (''current year GIA''); or (2) a three-year average of the GIA to be calculated by adding the current year GIA plus the GIA assessed on the member over the previous two calendar years, divided by three. For a newer firm that has been assessed only in the prior year, FINRA will compare the current year GIA to the two-year average and assess the greater amount. The existing GIA rate structure and phase-in implementation through 2010 will remain the same.[9] Accordingly, the proposed rule change will preserve the current rate structure, while building a buffer against industry downturns. FINRA notes that it has a long history of providing rebates to members when revenues exceed the expenditures necessary to discharge its regulatory obligations and is committed to continuing that practice in the future.

FINRA believes that the proposed rule change will stabilize its operating cash flows by augmenting revenues based on the registered person population (on which FINRA's costs are more closely aligned) and reducing dependency on, and exposure to, less predictable industry revenues. FINRA estimates that, if the proposed rule change had been in effect for 2009, it would have replaced about 90% of the revenue shortfall that resulted primarily from the significant drop in GIA revenues. FINRA notes that, in general, those replacement revenues will come from several larger firms whose steep income declines in 2008 primarily account for FINRA's current revenue deficit.

FINRA intends to announce the proposed rule change and its approval by the Commission in a *Regulatory Notice.* The proposed rule change will become effective January 1, 2010.

III. Discussion of Comments and Commission Findings

The Commission received 676 form comment letters, and 69 individual comment letters, regarding this proposal. FINRA responded to the comment letters on November 18, 2009.[10] After careful review of the proposal and consideration of the comment letters and the Response Letter, the Commission finds, for the reasons discussed below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[12] which requires, among other things, that FINRA's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

The commenters object to FINRA's fee proposal primarily for the following reasons: (1) FINRA should have anticipated the market downturn and budgeted accordingly; (2) the proposed assessment increases are unreasonable in light of the difficult economic times for the industry and fee increases imposed by other entities, including regulators and market operators; (3) the percentage increase of the PA is too steep and out of step with inflation; and (4) the proposed increases will disproportionately impact small and independent broker-dealers that were not responsible for FINRA's revenue shortfalls. Some commenters question whether the proposed rule change meets the statutory requirements of Section 15A(b)(5) of the Act. Several commenters offer alternative approaches to the proposed changes to the PA and GIA fees, including: implementing caps on the PA and GIA increases; implementing a phase-in period for the PA and GIA increases; reversing the volume discount structure for the PA assessment; and using a three-year GIA average instead of the proposed higher of actual year GIA or the three-year GIA average.

As an initial matter, the Commission notes that, as a national securities association, FINRA is obligated to be so organized and to have the capacity to be able to carry out the purposes of the Act and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Act) [13] to enforce compliance by its members and persons associated with its members, with the provisions of the Act, and rules and

[7] ''2010 current year GIA'' means the amount of GIA assessment due under the proposed new formulation. However, if 2010 current year GIA represents an increase or decrease of more than 10% compared to 2009 current year GIA, the increase or decrease will be capped at 10%.

[8] Gross revenue for assessment purposes is set out in Section 2 of Schedule A, which defines gross revenue as total income as reported on FOCUS form Part II or IIA excluding commodities income.

[9] The actual amount of GIA assessed in any given year, *e.g.,* the current year GIA (including a cap, if applicable) or the three-year average, will be used to calculate subsequent three-year average determinations.

[10] *See* Response Letter, *supra* note 5.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] *See* 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2).

regulations thereunder, and FINRA's own rules.[14] Adequate regulatory funding is critical to FINRA's ability to meet these statutory requirements.

While some member firms understandably question whether it is reasonable for FINRA to increase regulatory fees at a time when the securities industry has faced declining revenues as a result of the economic downturn, it is incumbent on FINRA to continue to support a robust regulatory program irrespective of market events. The discussion below addresses the significant issues raised by the commenters, FINRA's response to those comments, and the Commission's views with respect to those issues.

A. PA Increase Is Equitable

Currently, FINRA member firms are charged annually per registered person at the following rates: firms with up to five registered persons pay $75 for each such person; firms with between 6–25 registered persons pay $70 for each such person (a 6.7% discount from $75); firms with over 25 registered persons pay $65 for each person (a 13.3% discount from $75). The proposal will increase the rates to $150, $140 (a 6.7% discount from $150), and $130 (a 13.3% discount from $150), respectively. While most commenters, including the 672 Form B commenters, state specifically that the GIA assessment changes unfairly burden small independent broker-dealers,[15] some commenters note in general that any increase in fees, including the PA increase, unfairly burdens independent broker-dealers, especially in the current economic climate.[16] One of these commenters advocates for a reversal of the discount structure, noting that FINRA should offer per person discounts to the smallest firms instead of the largest firms, to remedy the alleged inequities.[17] Another commenter argues that the number of representatives is not necessarily a better indicator of FINRA resources consumed than overall income.[18] This commenter advocates for a more complex PA structure with additional tiers and possible differentiation of PA rates based on the activity that the registered representative conducts, *e.g.,* a higher PA rate for Series 7 registered representatives than for Series 6. Another commenter supports placing a limit on the annual percentage increase in the PA to ten percent, if the PA increase is approved.[19] This commenter favors a fee structure in which firms engaging in higher-risk activities would be subject to higher fees.

The Commission notes that the current three-tiered PA structure, including the discount percentages, was found to be consistent with the Act and was approved by the Commission nearly seven years ago.[20] The proposed increase to the PA will not change the three-tiered structure of the PA or the level of the discount percentages for larger firms. Also, the manner of allocation of the PA fee among FINRA members will remain unchanged. Moreover, viewing the increase in absolute dollar terms, FINRA estimates that the average increase in total PA fees for firms with 100 or fewer registered persons, a population that constitutes 4,074 out of 4,868, or nearly 84%, of FINRA firms, will amount to approximately $1,000 per firm, whereas the largest 100 firms (based on the number of registered persons as of year end 2008) will experience an average increase of approximately $300,000.[21] Lastly, as FINRA notes, the number of registered representatives is a significant factor that impacts FINRA's oversight responsibilities and thus is an equitable criterion for assessing PA fees.[22] Therefore, additional tiers and/or differentiation based on Series 6 or Series 7 or other criteria is not necessarily a better solution. The Commission finds that the PA increase based on the current three-tiered PA fee structure is an equitable allocation of fees.[23]

B. PA Increase Is Reasonable

735 commenters argue that a 100% increase in annual PA fees is an unreasonably large increase.[24] Many commenters note that an increase of 100% is not commensurate with the rate of inflation over the past five years and, in general, is not justified.[25] FINRA responds to these comments by stating that assessing the proposed fee change in percentage terms and measuring it against an inflation benchmark such as the Consumer Price Index is not the proper method of analysis.[26] FINRA contends that the proper measure of reasonableness is arrived at by comparing the absolute dollar value of the increase against the costs associated with operating FINRA's regulatory oversight programs and examination and enforcement responsibilities.[27]

FINRA notes that over the past two years, a time marked by modest inflation, FINRA's annual funding mechanisms have proven insufficient to sustain its regulatory programs.[28] FINRA believes that, by assessing the fee increase from this perspective, the PA increase is reasonable and will better align FINRA's revenues with its costs. Based on projections that the registered representative population will modulate at a rate consistent with historical trends, FINRA estimates that the proposal will result in a total increase of $42 million in PA fees, an average of approximately $8,600 per firm. As noted above, FINRA further estimates that the average increase in total PA fees for firms with 100 or fewer registered persons—a population that constitutes 4,074 out of 4,868, or nearly 84%, of FINRA firms—will amount to approximately $1,000 per firm, whereas the largest 100 firms (based on the number of registered persons as of year end 2008) will see an average increase of approximately $300,000. FINRA notes that these estimates assume that firms do not pass along the PA to the individual registered persons, a practice that FINRA understands is done in certain segments of the securities industry. For firms that do engage in such practice, FINRA notes that the impact will shift from the firm to the registered persons.[29]

Furthermore, FINRA believes that a PA fee of between $130 and $150 per year is reasonable, particularly when compared to other professional licensing fees.[30] According to FINRA, for the past two years, the PA has accounted for approximately 10–11% of FINRA's regulatory revenue.[31] With

[14] 15 U.S.C. 78*o*–3(b)(2).

[15] The issue of whether the GIA fee revision is equitable is addressed in Section III.C. *infra.*

[16] *See, e.g.,* First Independent Letter, Financial Network Letter, Form Letter B, Sykes Financial Letter, and Whitestone Letter, *infra* in Exhibit 1.

[17] *See* Abel Noser Letter, *infra* in Exhibit 1.

[18] *See* State Farm Letter, *infra* in Exhibit 1.

[19] *See* MetLife Letter, *infra* in Exhibit 1.

[20] *See* Securities Exchange Act Release No. 47106 (December 30, 2002), 68 FR 819 (January 7, 2003) (NASD–2002–99) (order approving current PA fee structure).

[21] *See* Response Letter, *supra* note 5 at page 6.

[22] In 2008, FINRA conducted 4,924 oversight and cause examinations. These examinations, in large part, focused on broker-dealer conduct and activity involving interaction with customers. As result, in that year, FINRA brought 586 formal disciplinary actions against registered representatives and an additional 115 formal actions against member firms for failing to supervise their employees. *See* Response Letter, *supra* note 5 at page 6.

[23] A discussion of the appropriateness of a PA fee increase given these economic circumstances follows in Section III.E.2. *infra.*

[24] *See, e.g.,* Form Letter B, Sykes Financial Letter, and Whitestone Letter, *infra* in Exhibit 1.

[25] *See, e.g.,* Form Letter B, Curnes Financial Letter, and Marvel Financial Letter, *infra* in Exhibit 1.

[26] *See* Response Letter, *supra* note 5 at page 5.

[27] *See Id.* at page 5.

[28] *See Id.* at page 5.

[29] *See Id.* at page 6.

[30] *See Id.* at page 6.

[31] In 2008, PA accounted for $44 million of $454 million in total revenue or 9.7% and in 2009, PA accounted for $44 million of $383 million in total

adoption of the proposed rule change, PA assessments will account for approximately 19% of FINRA's regulatory revenue.[32] FINRA believes that this PA increase as a percentage of total regulatory revenue creates a more stable funding source with respect to FINRA's ability to mitigate any potentially negative fluctuations in GIA due to market conditions. FINRA believes that this is particularly important because regulatory demands typically rise in declining markets.[33]

After reviewing the comment letters and considering FINRA's response to the commenters' issues, the Commission believes that the PA increase is reasonable. As FINRA notes, PA revenue is less vulnerable to economic fluctuations than the GIA. As a result, increasing the portion of regulatory revenue FINRA derives from the PA should reduce overall revenue volatility. In addition, the Commission believes that the dollar amount of the PA increase is reasonably correlated to FINRA's oversight of member firms and their registered representatives and will assist FINRA to comply with the statutory requirement that it have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members, with provisions of the Act, the rules and regulations thereunder, and FINRA's own rules.[34] Therefore, the Commission finds the increase in PA fees to be reasonable.[35]

C. GIA Reformulation Is Equitable

719 commenters argue that the burdens resulting from the reformulation of the GIA calculation will fall disproportionately on small firms and independent broker-dealers. Under the existing GIA rate structure, members are required to pay an annual GIA as follows:

(1) $1,200.00 on annual gross revenue up to $1 million;

(2) 0.1215% of annual gross revenue greater than $1 million up to $25 million;

(3) 0.2599% of annual gross revenue greater than $25 million up to $50 million;

(4) 0.0518% of annual gross revenue greater than $50 million up to $100 million;

(5) 0.0365% of annual gross revenue greater than $100 million up to $5 billion;

(6) 0.0397% of annual gross revenue greater than $5 billion up to $25 billion; and

(7) 0.0855% of annual gross revenue greater than $25 billion.

The proposed rule change will leave this seven-tiered structure unchanged but will assess GIA based on the greater of the amount that will be the current year GIA or a three-year average of the GIA to be calculated by adding the current year GIA plus the GIA assessed on the member over the previous two calendar years.[36] In its Response Letter, FINRA disagrees with the commenters that the revised GIA formulation will disadvantage small firms.[37] FINRA believes that the proposal instead aligns the fee revision with the largest 100 firms (based on the number of registered persons as of year-end of 2008 for PA and the amount of GIA assessed for 2008) [38] that primarily caused the GIA shortfall because of substantial write-downs against their FOCUS income. FINRA offers evidence, discussed in detailed below, in the form of data and projections to demonstrate that the change to the GIA formulation will not unfairly burden small firms and independent broker-dealers but will largely fall on the largest 100 firms (based on the number of registered persons as of year-end of 2008 for PA and the amount of GIA assessed for 2008 for GIA) whose dramatic GIA decline in 2009 resulted in FINRA's need for additional fees.

FINRA notes that revenues from the GIA have dropped nearly $100 million since 2008. Nearly $95 million of that decline relates to the GIA paid in by the largest 100 GIA-assessed firms. Had the new proposed GIA calculation been in place for the 2009 billing cycle, FINRA projects that approximately $47 million (nearly 49%) of the lost revenues would have been replaced, and these largest 100 GIA-assessed firms would have absorbed approximately $44 million, or nearly 94%, of the shortfall. For 2010, FINRA estimates that with the proposed fee structure, the percentage of GIA paid will shift back toward the largest 100 GIA-assessed firms, rising to 63% from 57% in 2009. If the current GIA structure remains in place, these 100 firms are estimated to account for only 59% of GIA in 2010.[39]

For firms with 100 or fewer registered persons, FINRA estimates that, if the proposal had been implemented for 2009, the new GIA calculation would have resulted in an average increased GIA of $850 as compared to the actual amount assessed on those firms.[40] FINRA notes that these firms currently receive a rebate of $1,200 against their GIA fee and that that rebate will continue until at least 2012. Therefore, under the current and the proposed GIA, these firms, if they have FOCUS revenues of less than $1 million, effectively pay no GIA assessment.[41]

The Financial Services Institute (''FSI''), which represents the interests of independent broker-dealers, believes that the GIA modification is inequitably allocated and will ''fall particularly heavily on independent broker-dealer firms. * * * '' [42] FINRA believes that its data shows that the proposal, if implemented, will not disparately impact the GIA of independent firms.[43] FINRA reports that, for 2009, independent broker-dealers paid a total of $11.63 million in GIA fees. Under the proposal, that figure is estimated to fall to $11.17 million for 2010. By comparison, the GIA of the largest 100 GIA-assessed firms is projected to rise from $94 million in 2009 to $123.53 million under the proposal. Thus, FINRA believes that the increases resulting from the proposed GIA calculation will fall most heavily not on independent broker-dealers but on the largest 100 GIA-assessed firms, which include the several largest firms whose steep income declines primarily account for FINRA's current revenue deficit.

After reviewing the comment letters and considering FINRA's Response Letter, the Commission believes that the GIA reformulation is an equitable allocation of fees. As FINRA notes, nearly 95% of the $100 million in GIA revenue drop since 2008 is attributable to the largest 100 GIA-assessed firms. Had the proposed new GIA calculation been in place for the 2009 billing cycle, FINRA projects that approximately $47 million (nearly 49%) of the lost revenues would have been replaced, and those largest 100 GIA-assessed firms would have absorbed approximately $44 million, or nearly 94%, of the shortfall. FINRA estimates also show that the new GIA calculation will increase the GIA burden for the largest 100 GIA-assessed firms in 2010 from 57% to 63% of total GIA revenue. The GIA assessments for

revenue or 11.5% *See* Response Letter, *supra* note 5 at page 4.

[32] *See Id*. at page 4.

[33] *See Id*. at pages 4 and 6.

[34] *See* 15 U.S.C. 78*o*–3(b)(1)–(2).

[35] In addition, should large revenue surpluses occur in the future, FINRA notes that it will consider rebating those surpluses to members.

[36] For newer firms that have only been assessed in the prior year, FINRA will use a two-year average instead of a three-year average.

[37] *See* Response Letter, *supra* note 5 at page 6.

[38] *See Id*. at pages 6–7.

[39] *See Id*. at page 7.

[40] *See Id*. at page 7.

[41] *See Id*. at page 7.

[42] *See* FSI Letter, *infra* in Exhibit 1.

[43] *See* Response Letter, *supra* note 5 at page at page 7.

the largest 100 GIA-assessed firms are predicted to be $280,000 more per firm in 2010 under the new formulation than under the current formulation. The expected average increase for all other firms is expected to be only $1,000 per firm. The totality of the data appears to show that any increase that results from the new GIA formulation falls primarily on the largest 100 GIA-assessed firms, the same firms largely responsible for the revenue shortfall.

In addition, one commenter argues that using income to determine assessment fees is too simplified an approach and ignores many other factors that may be indicative of FINRA's regulatory costs relative to member firms, such as significant proprietary trading positions held by a member firm, holding of customer funds or securities by the member firm, and whether a member firm is self-clearing.[44] As FINRA notes, it has a large and diverse membership of differing sizes and business models and therefore it is impossible for FINRA to develop a pricing scheme that accounts for the particulars of every firm.[45] FINRA believes, and the Commission agrees, that the current pricing structure is reasonable in that it achieves a generally equitable impact across FINRA's membership and correlates the fees assessed to the regulatory services provided by FINRA.[46] Therefore, the Commission finds that the proposed change to the GIA calculation will result in an equitable allocation that will help reduce the risk of future fluctuations in GIA income.

D. GIA Reformulation Is Reasonable

Based on two quarters of 2009 FOCUS data, FINRA estimates that under the proposed GIA revision, in 2010, the assessment for the largest 100 firms (based on the amount of GIA assessed for 2008) will increase approximately $280,00 per firm over the current formulation.[47] The remaining firms are estimated to experience an average increase of approximately $1,000 per firm. FINRA believes that this increase does not disproportionately burden the firms outside of the largest 100 (based on the amount of GIA assessed for 2008) in terms of the revenue generated by those firms. In addition, FINRA contends that this increase is necessary to cover its costs of regulatory oversight and will ensure that it is able to continue meet its regulatory obligations.[48]

One commenter, while appreciative of the need for stability resulting from the use of a three-year average, suggested that GIA should be based on a three-year average instead of the proposed greater of a three-year average or GIA based on actual current year FOCUS revenue.[49] The Commission notes that using the greater of the two figures allows FINRA to recoup any losses on a faster time frame, thereby reducing the duration of the risk that any deficits in funding would affect FINRA's ability to meet its statutory obligations. Therefore, the Commission finds that FINRA's proposed GIA reformulation is reasonable as proposed.

In addition, the Commission notes that the intent of the GIA reformulation is not to impose additional burdens on FINRA members. The intent is to enable FINRA to fulfill its regulatory obligations by guarding against future revenue declines as a result of drastic reductions in the FOCUS revenue of FINRA members. The introduction of a three-year average should make this revenue stream less volatile and more reliable for FINRA in the future. Therefore, the Commission believes that the proposed GIA increase is appropriate.

E. Other Concerns of Commenters

1. FINRA Should Have Foreseen/Prepared for the Inevitable Shortfall

727 commenters state that FINRA should have predicted the market downturn and taken budgetary steps to account for it. As many commenters stated in Letter Type B, ''FINRA's failure to properly prepare for the inevitable market downturn is the root cause of their operating cash flow concerns.'' [50]

The Commission notes that FINRA is an SRO and is obligated under the Act to carry out its regulatory obligations even during a period of economic downturn. FINRA notes that it actually planned for a decline in GIA from 2008 to 2009 and accordingly adjusted its 2009 budget downward compared to 2008 in anticipation of the reduced revenues.[51] The Commission is aware that, in a market downturn, each element of FINRA's funding sources is vulnerable. A firm's gross income declines as its trading activity declines, thereby affecting FINRA's funding for its regulatory programs. It would be difficult for FINRA to account for economic events outside of its control when planning its regulatory program needs and its budget. This is because one of FINRA's primary means of meeting its regulatory costs is the GIA, and the funding FINRA receives from the GIA is wholly dependent on firms' revenues.[52] Moreover, to the extent that the commenters raise issues with FINRA's balance sheet investments, the Commission agrees with FINRA that those comments are misplaced. The balance sheet is used to augment FINRA's funding and thereby decrease the full cost of regulation assessed to FINRA's member firms; its value does not negate the need to adequately fund FINRA's regulatory programs. As an SRO, FINRA's needs and requirements differ from those of its members and it would be improper for FINRA to cut its regulatory programs to adjust to leaner times when those programs are necessary to meet its statutory obligations. As FINRA has noted, it has established a comprehensive cost-cutting program that so far has reduced expenses that do not directly impact its regulatory programs by more than $70 million from the prior year.[53] This cost-cutting is in addition to the income yield from its balance sheet portfolio that supplements the PA and GIA fees. In the Commission's view, FINRA's fee proposal is fair and reasonable in light of FINRA's regulatory responsibilities.

2. Any Fee Increase Is Inappropriate Given the Current Economic Conditions

728 commenters believe that the proposal is unfair because it occurs at a time when firms are suffering financially and have incurred fee increases from a variety of other entities, including the Commission, the Securities Investor Protection Corporation, a national securities exchange, the Municipal Securities Rulemaking Board and several states. In response, FINRA notes that its regulatory responsibilities have not lessened—if anything, they may have increased.[54] To that end, FINRA refers to statistics that demonstrate that the population of registered representatives has remained fairly constant, even throughout recent market events.[55] The Commission strongly believes that FINRA must have sufficient resources to carry out its statutory obligations, particularly during periods of market turmoil, even when its members also are

[44] *See* MetLife Letter, *infra* in Exhibit 1.

[45] *See* Response Letter, *supra* note 5 at page 2.

[46] *See Id.* at page 2.

[47] *See Id.* at page 2.

[48] *See* Response Letter, *supra* note 5 at page 6.

[49] *See* Committee of Annuity Issuers Letter, *infra* Exhibit 1.

[50] *See* Letter Type B.

[51] *See* Response Letter, *supra* note 5 at page 4–5.

[52] *See Id.* at page 4.

[53] *See Id.* at page 2.

[54] *See Id.* at page 5.

[55] *See supra,* note 6.

assessed fees by other organizations or governmental entities. In the Commission's view, fee increases imposed by other regulators, market operators or securities-related entities are not dispositive regarding whether it is appropriate for FINRA to increase its regulatory fees. The proposed PA and GIA fee increases are designed to allow FINRA to maintain a robust regulatory program, which the Commission believes is both necessary and appropriate so that FINRA can carry out its regulatory responsibilities effectively.

F. Other Approaches Suggested by Commenters

In addition to the concerns and suggestions raised by commenters that are discussed above, commenters offered several alternative approaches to the proposed PA and GIA increases. For example, some commenters suggest that the proposed revisions to PA and GIA assessments be capped at a certain amount or phased in over a period of years.[56] Other commenters note that FINRA has failed to sufficiently demonstrate a need for additional revenue in the form of increased PA and GIA.[57]

1. Caps on Increases or Phase-In Period

Eight commenters suggest that any fee increase should be subject to an annual cap or a gradual phase-in period.[58] One commenter suggests a one year delay in any fee increase[59] while another commenter favors a three year phase-in period for any fee increase.[60] Three other commenters recommend a phase-in period of an unspecified length.[61] Five of the commenters favored a cap on any PA increase. Two of these commenters support a 10% cap,[62] another commenter prefers a 10%-15% cap,[63] and the two others do not suggest a specific amount.[64]

In its Response Letter, FINRA states that it is critical to implement the proposed rule change as of January 2010 and without any limitations. FINRA notes that it has already phased in the need for additional assessed funding by not charging firms in 2008 and 2009 for cash flow shortfalls that are funded out of its capital. FINRA points out that the GIA will remain subject to an existing cap for 2010,[65] but notes that any further caps could leave FINRA facing the same fiscal quandary it currently faces in the event of continuing decreased revenue at firms. For the same reason, FINRA opposes a phased-in implementation period. FINRA believes that prolonging implementation of these changes will only lead to a ''geometric future fee increase, as FINRA perpetuates a budget imbalance and depletes its revenue-producing assets.'' [66]

The Commission agrees with FINRA that by not charging members increases in 2008 and 2009 when its cash flow shortfalls were occurring, FINRA effectively has provided a type of delayed or phased-in implementation of the fee increases. The Commission also agrees with FINRA's view that any further delay in implementing the fee increases could result in a greater financial impact to firms in the future and, in the Commission's view, could potentially impact FINRA's ability to meet its statutory requirements. Therefore, the Commission believes that it is reasonable for FINRA to refrain from implementing a yearly cap on, or a phase-in period for, the PA and GIA fee increases.

2. FINRA Does Not Need the Additional Revenue

Nine commenters suggest that FINRA has failed to sufficiently demonstrate a need for additional revenue and thus argue against any increase in the PA or GIA.[67] One commenter remarks that ''it is apparent from FINRA's annual report that the organization has more than adequate assets and reserves to withstand the recent downturn.'' [68] Another commenter states that ''FINRA's proposed Rule Change lacks proper and adequate support. Nowhere does FINRA provide any disclosure of what proportion PA and GIA fees represent in its revenue or income. Nor does FINRA describe its financial or investment models or state what if any preparations or actions it took or has taken in light of the economic and industry downturns.'' [69]

In its Response Letter, FINRA states that income from its reserves is used to offset a part of the cost of its regulatory program each year, and consequently that funding stream is in lieu of a more substantial fee increase on members.[70] FINRA expects such income to offset regulatory costs by approximately $50 million in 2010.[71] Moreover, FINRA notes that it delayed seeking any fee increase for 2008 and 2009 by utilizing the principal of its reserves. However, FINRA does not believe that it would be prudent to continue to exhaust its reserves to cover all future operating deficits, because such a practice is unsustainable and would inevitably result in a much more substantial fee increase in the future.[72]

FINRA further notes that it has minimized the proposed fee increases through a comprehensive cost-cutting program that so far has reduced expenses that do not directly impact its regulatory programs by more than $70 million from the prior year.[73] According to FINRA, it supplements, where possible, member fees and assessments with the income yield from its balance sheet portfolio. FINRA states that by reallocating assets it has reduced performance volatility, while creating a more reliable income stream to subsidize fees. However, FINRA notes that these actions alone have been insufficient to make up the funding deficits it has experienced over the prior two years. According to FINRA, the proposed rule change is intended to remedy ongoing deficits and ameliorate vulnerability to future revenue shortfalls. Therefore, FINRA believes that the proposed fee increases are necessary and any delay in their implementation will necessitate future fee increases of much greater magnitude.[74]

The Commission believes that FINRA has sufficiently demonstrated that the proposed increases in PA and GIA fees are necessary to adequately support FINRA's regulatory programs. FINRA makes a compelling argument that its balance sheet resources are finite and cannot be relied upon solely to overcome a regulatory revenue shortfall. As an SRO, FINRA needs to maintain adequate reserves to ensure that it can

[56] *See e.g.,* SIFMA Letter, MetLife Letter, and GBS Financial Letter, *infra* Exhibit 1.

[57] *See e.g.,* Whitestone Letter, PFS Investment Letter, and SagePoint Financial Letter, *infra* Exhibit 1.

[58] *See* Foresters Equity Letter, State Farm Letter, FSI Letter, MetLife Letter, GBS Financial Letter, SIFMA Letter, World Group Letter, and Committee of Annuity Insurers Letter, *infra* Exhibit 1.

[59] *See* Foresters Equity Letter, *infra* Exhibit 1.

[60] *See* FSI Letter, *infra* Exhibit 1.

[61] *See* GBS Financial Letter, SIFMA Letter, and World Group Letter, *infra* Exhibit 1.

[62] *See* State Farm Letter and Committee of Annuity Insurers Letter, *infra* Exhibit 1.

[63] *See* Foresters Equity Letter, *infra* Exhibit 1.

[64] *See* SIFMA Letter and World Group Letter, *infra* Exhibit 1.

[65] For 2010, any increase or decrease in GIA will be capped at 10% of what a firm would have paid under the prior NASD or NYSE rate structures that it was subject to before FINRA's GIA rate structure was amended in 2008.

[66] *See* Response Letter, *supra* note 5 at page 8.

[67] *See* IBN Financial Letter, First Independent Letter, Whitestone Letter, JanHobbs Financial Letter, SagePoint Financial Letter, Magdaleno Letter, GBS Financial Letter, FSC Securities Letter, and PFS Investment Letter, *infra* Exhibit 1.

[68] *See e.g.,* First Independent Letter, *infra* Exhibit 1.

[69] *See e.g.,* FSC Securities Letter, *infra* Exhibit 1.

[70] *See* Response Letter, *supra* note 5 at page 3.

[71] *See Id.* at page 3.

[72] *See Id.* at pages 3–4.

[73] *See Id.* at page 2.

[74] *See Id.* at page 2.

continue to operate a vigorous regulatory system. In addition, the Commission notes that FINRA has implemented cost cutting measures and taken other steps to minimize the magnitude of the proposed fee increases. Therefore, the Commission finds that the proposed fee increases are equitable and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[75] that the proposed rule change (SR–FINRA–2009–057), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Elizabeth M. Murphy,

Secretary.

EXHIBIT 1

Comments on FINRA Rulemaking

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Section 1(c) of Schedule A to the FINRA By-Laws to Amend the Personnel Assessment and Gross Income Assessment.

(Release No. 34–60624; File No. SR–FINRA–2009–057).

Total Number of Comment Letters Received—745.

Comments have been received from individuals and entities using the following Letter Types:

a. 4 individuals or entities using Letter Type A.

b. 672 individuals or entities using Letter Type B.

1. Jonathan Zulauf, dated September 2, 2009.

2. Richard J. Carlesco Jr., LUTCF, IBN Financial Services, Inc., dated September 17, 2009 (''IBN Financial Letter'').

3. Phillip H. Palmer, ChFC, President and CEO, First Independent Financial Services Inc. dated September 17, 2009 (''First Independent Letter'').

4. William R. Sykes, President, Sykes Financial Services LLC, dated September 17, 2009 (''Sykes Financial Letter'').

5. Anthony Pappas, Ph.D., President, Whitestone Securities Inc., dated September 21, 2009 (''Whitestone Letter'').

6. David M. Sobel, Esq., EVP/COO, Abel/Noser Corp., dated September 22, 2009 (''Abel Noser Letter'').

7. Kevin Hart Korfield, Kevin Hart Korfield & Co. Inc. dated September 23, 2009.

8. Nancy Wheeler Bertacini, Curnes Financial Group, FNIC, dated September 24, 2009 (''Curnes Financial Letter'').

9. David L. Ehrig, dated September 24, 2009.

10. Janice Hobbs, President, JanHobbs Financial Group, dated September 24, 2009 (''JanHobbs Financial Letter'').

11. Bryon Holz, dated September 24, 2009.

12. John Ikeda, Registered Principal Financial Network Investment Corp., dated September 24, 2009 (''Financial Network Letter'').

13. Timothy Jones, Chairman CJM Wealth Advisers LTD, dated September 24, 2009.

14. Kate Marvel, President, Marvel Financial Planning, Inc., dated September 24, 2009 (''Marvel Financial Letter').

15. Jonathan Meany, CFP, dated September 24, 2009.

16. Gary Orler, Investment Executive, Raymond James Financial Services, Inc., dated September 24, 2009.

17. Suzanne Seay, CFP, Royal Alliance, dated September 24, 2009.

18. John Sklencar, Financial Advisor FSC Securities Corp., dated September 24, 2009.

19. Frank L. Smith, President, Foresters Equity Services, Inc., dated September 24, 2009 (''Foresters Equity Letter'').

20. Daniel G. Trout, Senior Associate, Financial Principles LLC, dated September 24, 2009.

21. James Woytcke, CEO/Owner, Financial Success Ltd., dated September 24, 2009.

22. Tim, dated September 24, 2009.

23. Jeffrey M. Auld, President and Chief Executive Officer, SagePoint Financial Inc., dated September 24, 2009 (''SagePoint Letter'').

24. Kurt Dressler, Capital Investment Counsel, dated September 25, 2009.

25. Bruce Ferguson, Managing Member, Raymond James Financial, dated September 25, 2009.

26. Pamela Fritz, CCO, MWA Financial Services, dated September 25, 2009.

27. Robert B. Lyons, CLU, ChFC, ING Financial Partners, dated September 25, 2009.

28. Brian Perley, ChFC, CFP, Hammond Financial Inc., dated September 25, 2009.

29. S. Ann Pugh, CFP, ING Financial Partners, dated September 25, 2009.

30. William Robbins, Registered Representative, Coordinated Capital Securities, Inc., dated September 25, 2009.

31. Stephen Russell, Senior Vice President, VSR Financial Services, dated September 25, 2009.

32. James G. Timpa, dated September 25, 2009.

33. Sherri White, CPA/PFS, dated September 25, 2009.

34. Martin Cohen, President, Balanced Financial Securities, dated September 26, 2009.

35. Joel Dash, dated September 28, 2009.

36. D.W. Hadley, Jr., Capital Analyst of NC Inc., dated September 28, 2009.

37. Michelle E. Heyne, CCO, McAdams Wright Ragen, Inc., dated September 28, 2009.

38. Penn Rettig, Branch Manager, Multi Financial Securities Corp., dated September 28, 2009.

39. Donna M. Stevenson, dated September 28, 2009.

40. John Terry, President, High Street Securities Inc., dated September 28, 2009.

41. Russell L. Bacon, MBA, CSA, Director, Montgomery Wealth Management, dated September 29, 2009.

42. Robert Black, Jr., President, Legacy Planning Group, dated September 29, 2009.

43. Nicholas C. Cochran, Vice President, American Investors Company, dated September 29, 2009.

44. Pamela Goodall, dated September 29, 2009.

45. Cynthia Iquinto, Registered Representative, FSC Securities Corporation, dated September 29, 2009.

46. Jim Loessberg, Financial Advisor, Raymond James Financial, dated September 29, 2009.

47. Sandra Hay Magdaleno, CFP, dated September 29, 2009 (''Magdaleno Letter'').

48. Edward Skelly, President, Sterling Financial Planners, dated September 29, 2009.

49. Neal E. Nakagiri, President, CEO, CCO, NPB Financial Group LLC, dated September 30, 2009.

50. Kevin Tucker, dated September 30, 2009.

51. Paige W. Pierce, CEO, RW Smith Associates Inc., dated October 1, 2009.

52. Richard P. Woltman, CEO & Chairman, Girard Securities Inc., dated October 1, 2009.

53. David E. Axtell, Compliance Director, State Farm Investment Management Corp, dated October 2, 2009 (''State Farm Letter'').

54. Dale E. Brown, CAE, President & CEO, Financial Services Institute, Inc., dated October 2, 2009.

55. Paul Cellupica, Chief Counsel, Securities Regulation & Corporate Services, MetLife, Inc., dated October 2, 2009 (''MetLife Letter'').

[75] 15 U.S.C. 78s(b)(2).

[76] 17 CFR 200.30–3(a)(12).

56. James M. Clous, Registered Representative, dated October 2, 2009.
57. Gerard P. Gloisten, President, GBS Financial Corp, dated October 2, 2009 (''GBS Financial Letter'').
58. Ronald C. Long, Director, Regulatory Affairs, Wells Fargo Advisors, dated October 2, 2009.
59. Debra G. McGuire, CPA, McGuire Dyke Investment Group, dated October 2, 2009.
60. E. John Moloney, Chairman, SIFMA Small Firms Committee, Securities Industry and Financial Markets Association, dated October 2, 2009 (''SIFMA Letter'').
61. Kevin L. Palmer, CEO/President, World Group Securities Inc., dated October 2, 2009 (''World Group Letter'').
62. Mark J. Schlafly, President & CEO, FSC Securities Corporation, dated October 2, 2009 (''FSC Securities Letter'').
63. Sutherland Asbill & Brennan LLP, on behalf of Committee of Annuity Insurers, dated October 2, 2009 (''Committee of Annuity Insurers Letter'').
64. John S. Watts, SVP & Chief Counsel, PFS Investment Inc., dated October 2, 2009 (''PFS Investment Letter'').
65. Edward Wiles, SVP & CCO, Genworth Financial Securities Corp, dated October 2, 2009.
66. Cuneo, Gilbert & Laduca LLP and Greenfield & Goodman LLC, on behalf of Standard Investment Chartered Inc., dated October 5, 2009.
67. Elliott Harris, dated October 5, 2009.
68. Daniel W. Roberts, President/CEO, Roberts & Ryan Investments Inc., dated October 5, 2009.
69. Mark E. Larson, Esquire, CPA, Academic Director of the Certificate in Financial planning Program at Marquette University, dated October 13, 2009.

[FR Doc. E9–28472 Filed 11–27–09; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61041; File No. SR–BX–2009–073]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the $1.00 Strike Program To Allow Low-Strike LEAPS on the Boston Options Exchange Facility

November 20, 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 November 19, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to amend the $1 Strike Price Program. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the $1 Strike Price Program (''Program'') in a limited fashion to allow BOX to list new series in $1 intervals up to $5 in long-term option series (''LEAPS'') in up to 200 option classes on individual stocks.[5] Currently, under the Program, BOX may not list LEAPS at $1 strike price intervals for any class selected for the $1 Strike Price Program. BOX also is restricted from listing any series that would result in strike prices being $0.50 apart, unless the series are part of the $0.50 Strike Price Program.[6]

The Exchange believes that this proposal is appropriate and will allow investors to establish option positions that are better tailored to meet their investment objectives, vis-à-vis credit risk, using deep out-of-the-money put options. Deep out-of-the-money put options are viewed as a viable, liquid alternative to OTC-traded credit default swaps (''CDS''). These options do not possess the negative characteristics associated with CDS, namely, lack of transparency, insufficient collateral requirements, and inefficient trade processing. Moreover, deep out-of-the-money put options and CDS are functionally similar, as there is a high correlation between low-strike put prices and CDS spreads.

BOX notes that its proposal is limited in scope, as $1 strikes in LEAPS may only be listed up to $5 and in only up to 200 option classes. As is currently the case, BOX would not list series with $1.00 intervals within $0.50 of an existing $2.50 strike price in the same series. As a result, the Exchange does not believe that this proposal will cause a significant increase in quote traffic.

Moreover, as the SEC is aware, BOX has adopted various quote mitigation strategies in an effort to lessen the growth rate of quotations. When it expanded the $1 Strike Price Program several months ago, BOX included a delisting policy that would be applicable with regard to this proposed expansion.[7] The Exchange and the other options exchanges amended the Options Listing Procedures Plan (''OLPP'') in 2008 to impose a minimum volume threshold of 1,000 contracts national average daily volume per underlying class to qualify for an additional year of LEAP series.[8] Most recently, the Exchange, along with the other options exchanges, amended the OLPP to adopt objective, exercise price range

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).

[5] Under the Chapter IV, Section 8 of the BOX Rules LEAPS expire from 12–39 months from the time they are listed.

[6] On October 6, 2009, BOX filed SR–BX–2009–063 for immediate effectiveness, which filing established a $0.50 Strike Price Program.

[7] The delisting policy includes a provision that states BOX may grant Participant requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the $1 Strike Price Program that are otherwise eligible for delisting.

[8] *See* SEC Release No. 34–58630 (September 24, 2008), approving Amendment No. 2 to the OLPP.

limitations applicable to equity option classes, options on ETFs and options on trust issued receipts.[9] The Exchange believes that these price range limitations will have a meaningful quote mitigation impact.

The margin requirements set forth in Chapter XIII of the BOX Rules and the position and exercise requirements set forth in Chapter III, Sections 7 through 10 of the BOX Rules will continue to apply to these new series, and no changes are being proposed to those requirements by this rule change.

With regard to the impact on system capacity, BOX has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the listing of the $1 strike prices in LEAPS series will benefit investors by giving them more flexibility to closely tailor their investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[9] *See* SEC Release No. 34–60531 (August 19, 2009), approving Amendment No. 3 to the OLPP. BOX's proposal to list $1 strikes in LEAPs to $5 would not be subject to the exercise price range limitations contained in new paragraph (3)(g)(ii) of the OLPP.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants that request.[14] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it recently approved a proposal from CBOE which is identical to the current proposal in all material respects and on which no comments were received.[15] Therefore, the proposal is operative upon filing.

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–BX–2009–073 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–BX–2009–073. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–073 and should be submitted on or before December 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28471 Filed 11–27–09; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] *See* Securities Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (SR–CBOE–2009–068).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61034; File No. SR–NYSEAmex–2009–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE AMEX LLC Amending Rules 904 and 904C

November 19, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 5, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Exchange Rules 904 and 904C pertaining to Position Limits. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NYSE Amex Rule 904 and Rule 904C to enable ATP Holders to rely on position limit exemptions granted by other options exchanges under specified circumstances. This proposed rule change is based on Chapter III, Section 8 and Chapter XIV Section 8, of the Options Rules of the NASDAQ Stock Market, LLC (''NOM'').

NYSE Amex rules governing position limit exemptions for non-index options are generally found in the Commentary section of Rule 904. NYSE Amex rules governing position limit exemptions for stock index options are generally found in the Commentary section of Rule 904C. These rules include a number of position limit exemptions available to ATP Holders. Rules 904 and 904C, however, do not have a provision that recognizes position limit exemptions that are granted to ATP Holders by other option exchanges, as provided for in NOM Rules in Chapter III, Section 8 for non-index options and Chapter XIV, Section 8 for index options. In light of the desirability to have similar position limit standards, the Exchange proposes to add a similar exemption to both Rules 904 and 904C.

Specifically, the Exchange proposes to add new Commentary to Rules 904 and 904C to address position limit exemptions granted by other options exchanges. This proposed rule [sic] will provide that an ATP Holder may rely upon any valid exemption from applicable position limits that has been granted by another options exchange for any options contract traded on NYSE Amex, provided that such ATP Holder provides the Exchange either with a copy of any written exemption issued by another options exchange or with a written description of any exemption issued by another options exchange that is not in writing, where such description contains sufficient detail for Exchange regulatory staff to verify the validity of that exemption with the issuing options exchange. In addition, such ATP Holder must fulfill all conditions precedent for such exemption and comply at all times with the requirements of such exemption with respect to trading on the Exchange.

The Exchange notes that position limits tend to be similar across options exchanges, which is desirable in light of cross option exchange membership(s) and multiple listing and trading of similar product(s) on different exchanges. Because ATP Holders frequently have membership and/or trading privileges on other options exchanges, it is important that ad hoc position limit exemptions granted by other options exchanges (''exemption grants'') are available to ATP Holders to the extent that such exemption grants are reduced to writing and verifiable by Exchange regulatory staff.

These new proposed rules do not give the Exchange the ability to alter the scope of these exemptions but only to recognize the exemption so that the position limit process would be the same across the exchanges.

For example, an ATP Holder may go to another options exchange of which it is a member, such as the International Securities Exchange (''ISE''), or NOM to request a position limit exemption (exemption grant) for option contracts in the SPDRs (SPY). The other exchange provides the exemption grant until expiration in the same month to this particular firm for this particular issue (SPY). Should the same ATP Holder want to trade SPY on NYSE Amex to the extent of the exemption grant, the Exchange's proposed rule change would allow it to do so, but only to the extent that the firm provides the Exchange with a copy of the written exemption grant provided by the issuing exchange or, if the exemption is not in writing, to the extent that said ATP Holder provides the Exchange with sufficient detail for Exchange regulatory staff to be able to verify the validity of the exemption grant with the issuing options exchange.[4]

The Exchange believes that by adding uniformity and predictability to the position limit process, the proposed rule change should be beneficial to the Exchange, ATP Holders, and their customers. Moreover, the proposed rule change should promote competition by allowing trades across options exchanges that are similar in respect of position limits.[5]

The Exchange is also proposing a minor revision [sic] the rule numbering convention contained in the Commentary section of Rules 904 and 904C. This change is being made for technical purposes only in order to provide clarity to rules governing position limit exemptions. The renumbering of the Commentary has no material effect on the actual meaning of the rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [6] in general, and

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Additionally, the ATP Holder would have to fulfill all conditions precedent for such exemption grant and comply with the requirements of such exemption with respect to trading on the Exchange.

[5] The Exchange notes that all reporting requirements, such as Rule 906 and 906C (Reporting of Options Positions), remains in force.

[6] 15 U.S.C. 78f (b).

furthers the objectives of Section 6(b)(5) of the Act[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing the Exchange to have uniform position limit procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become 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 such waiver will bring uniformity and predictability to the position limit process. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[14]

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–2009–80 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–2009–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[15] all subsequent amendments, all written statements 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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–80 and should be submitted on or before December 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28519 Filed 11–27–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f (b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/*

[16] 17 CFR 200.30–3(a)(12).

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of public hearing and commission meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 1 p.m. on December 17, 2009, in Lancaster, Pa. At the public hearing, the Commission will consider: action on certain water resources projects; a compliance matter involving one project; the rescission of a previous docket approval; a request for an extension of an approval; a request for an administrative hearing; the 2010 Regulatory Program Fee Schedule; and amendments to the SRBC Comprehensive Plan. Details concerning the matters to be addressed at the public hearing and business meeting are

contained in the Supplementary Information section of this notice.

DATES: December 17, 2009, at 1 p.m.

ADDRESSES: Lancaster Marriot at Penn Square, 25 South Queen Street, Lancaster, PA 17603.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: (1) A special presentation by Secretary of the Pennsylvania Department of Environmental Protection John Hanger; (2) presentation of the Frederick L. Zimmermann Award; (3) hydrologic conditions of the basin; 4) FY–2011 funding of the Susquehanna Flood Forecast and Warning System; (5) the 2010 Annual Water Resources Program; (6) a Low Flow Monitoring Plan for the basin; (7) ratification/approval of grants/contracts; and (8) the FY–2009 Audit Report. The Commission will also hear a Legal Counsel's report.

Public Hearing—Compliance Matter

1. *Project Sponsor:* TYCO Electronics Corporation. Project Facility: Lickdale, Union Township, Lebanon County, Pa.

Public Hearing—Projects Scheduled for Action

1. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River—Hicks), Great Bend Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.750 mgd.

2. *Project Sponsor and Facility:* East Resources, Inc. (Susquehanna River—Welles), Sheshequin Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.850 mgd.

3. *Project Sponsor and Facility:* Eastern American Energy Corporation (West Branch Susquehanna River—Moore), Goshen Township, Clearfield County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

4. *Project Sponsor and Facility:* Fortuna Energy Inc. (Fall Brook—Tioga State Forest C.O.P.), Ward Township, Tioga County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

5. *Project Sponsor and Facility:* Fortuna Energy Inc. (Fellows Creek—Tioga State Forest C.O.P.), Ward Township, Tioga County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

6. *Project Sponsor and Facility:* Fortuna Energy Inc. (Susquehanna River—Thrush), Sheshequin Township, Bradford County, Pa. Modification to increase surface water withdrawal from 0.250 mgd up to 2.000 mgd (Docket No. 20080909).

7. *Project Sponsor and Facility:* Montgomery Water and Sewer Authority, Clinton Township, Lycoming County, Pa. Application for groundwater withdrawal of up to 0.252 mgd from Well 2R.

8. *Project Sponsor and Facility:* Nissin Foods (USA) Co., Inc., East Hempfield Township, Lancaster County, Pa. Modification to increase consumptive water use from 0.090 mgd up to 0.150 mgd (Docket No. 20021021).

9. *Project Sponsor and Facility:* Southwestern Energy Company (Lycoming Creek—Reichenbach), Lewis Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

10. *Project Sponsor and Facility:* Southwestern Energy Company (Lycoming Creek—Wascher), Lewis Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

11. *Project Sponsor and Facility:* Southwestern Energy Company (Lycoming Creek—Parent), McIntyre Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

12. *Project Sponsor and Facility:* Southwestern Energy Company (Lycoming Creek—Schaefer), McIntyre Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

13. *Project Sponsor and Facility:* Sunbury Generation LP, Monroe Township and Shamokin Dam Borough, Snyder County, Pa. Modification for use of up to 0.100 mgd of the approved surface water withdrawal by natural gas companies (Docket No. 20081222).

Public Hearing—Request for Extension

1. Project Sponsor and Facility: Sunnyside Ethanol, a wholly owned-subsidiary of Consus Ethanol, LLC, Curwensville Borough, Clearfield County, Pa. Request for a waiver of the 120-day period for applying for extension and a retroactive 2-year extension for the project scheduled to expire on December 5, 2009 (Docket No. 20061203).

Public Hearing—Project Scheduled for Rescission Action

1. Project Sponsor: Eastern American Energy Corporation. Pad ID: Whitetail Gun and Rod Club #1, ABR–20090418, Goshen Township, Clearfield County, Pa.

Public Hearing—Request for Administrative Hearing

1. Petitioner Delta Borough, York County, Pennsylvania; RE: Delta Borough Public Water Supply Well No. DR–2; Docket No. 20090315, approved March 12, 2009.

Public Hearing—2010 Regulatory Program Fee Schedule

The revisions implement annual adjustments previously established by the Commission in March 2005. Other changes include annual compliance and monitoring fees for projects approved or modified after December 31, 2009; an increase in certain water withdrawal application fees for new and modified projects in the smaller withdrawal categories; and comprehensive format changes to the fee schedule document to aid applicants, including separate charts for different types of fees and a new application fee worksheet.

Public Hearing—Comprehensive Plan Amendments

The Commission will also consider amendments to its *Comprehensive Plan for the Water Resources of the Susquehanna River Basin.* The proposed amendments include the addition of the 2010 Annual Water Resources Program and a ''Low Flow Monitoring Plan'' (both to be considered separately at this meeting), as well as all water resources projects approved by the Commission during 2009.

Opportunity to Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *e-mail: srichardson@srbc.net.* Comments mailed

or electronically submitted must be received prior to December 11, 2009, to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: November 17, 2009.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. E9–28516 Filed 11–27–09; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of approved projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: October 1, 2009 through October 31, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued

1. Chesapeake Appalachia, LLC, Pad ID: Gowan, ABR–20091001, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 5, 2009.

2. Chief Oil & Gas, LLC, Pad ID: Poor Shot East Unit Drilling Pad #1, ABR–20091002, Anthony Township, Lycoming County, Pa. Consumptive Use of up to 5.000 mgd; Approval Date: October 5, 2009.

3. East Resources, Inc., Pad ID: Pazzaglia 507, ABR–20091003, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 6, 2009.

4. East Resources, Inc., Pad ID: Soderburg 501, ABR–20091004, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 6, 2009.

5. East Resources, Inc., Pad ID: Fitch-1H, ABR–20091005, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 6, 2009.

6. East Resources, Inc., Pad ID: Palmer 112, ABR–20091006, Canton Township, Bradford County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 6, 2009.

7. East Resources, Inc., Pad ID: Allen 264, ABR–20091007, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2009.

8. East Resources, Inc., Pad ID: Howe 257, ABR–20091008, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2009.

9. East Resources, Inc., Pad ID: Ostrander 412, ABR–20091009, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2009.

10. Chief Oil & Gas, LLC, Pad ID: Ritchey Unit Drilling Pad, ABR–20091010, Juniata Township, Blair County, Pa.; Consumptive Use of up to 1.990 mgd; Approval Date: October 7, 2009.

11. East Resources, Inc., Pad ID: Bryan 406, ABR–20091011, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 8, 2009.

12. East Resources, Inc., Pad ID: Benson 130D, ABR–20091012, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 13, 2009.

13. East Resources, Inc., Pad ID: Cooper 400, ABR–20091013, Tioga Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 13, 2009.

14. Citrus Energy, Pad ID: Procter and Gamble Mehoopany Plant IV, ABR–20091014, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: October 13, 2009.

15. East Resources, Inc., Pad ID: Burleigh 508, ABR–20091015, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 14, 2009.

16. East Resources, Inc., Pad ID: Busia 457, ABR–20091016, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2009.

17. Chesapeake Appalachia, LLC, Pad ID: Harry, ABR–20091017, West Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2009.

18. East Resources, Inc., Pad ID: Phillips 504, ABR–20091018, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2009.

19. East Resources, Inc., Pad ID: Hungerford 458, ABR–20091019, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2009.

20. Chesapeake Appalachia, LLC, Pad ID: James Smith, ABR–20091020, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2009.

21. Chesapeake Appalachia, LLC, Pad ID: Jayne, ABR–20091021, Auburn Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2009.

22. Victory Energy Corporation, Pad ID: Brown #1, ABR–20091022, West Branch Township, Potter County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: October 20, 2009.

23. Cabot Oil and Gas Corporation, Pad ID: ShieldsG P2, ABR–20091023, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: October 22, 2009.

24. Fortuna Energy, Inc., Pad ID: DCNR 587 Pad #9, ABR–20091024, Ward Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: October 24, 2009.

25. Fortuna Energy, Inc., Pad ID: Knights 24, ABR–20091025, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: October 24, 2009.

26. Penn Virginia Oil & Gas Corporation, Pad ID: Cady #1; ABR–20091026, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 27, 2009.

27. East Resources, Inc., Pad ID: Schildt 259, ABR–20091027, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 27, 2009.

28. EOG Resources, Inc., Pad ID: PHC 6H, ABR–20090721.1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Modification Date: October 28, 2009.

29. EOG Resources, Inc., Pad ID: PHC 7H, ABR–20090722.1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Modification Date: October 28, 2009.

30. EOG Resources, Inc., Pad ID: PHC 8H, ABR–20090723.1, Lawrence Township, Clearfield County, Pa.;

Consumptive Use of up to 1.999 mgd; Modification Date: October 28, 2009.

31. Novus Operating, LLC, Pad ID: Wilcox #1, ABR–20090803, Covington Township, Tioga County, Pa.; Consumptive Use of up to 0.999 mgd; Transferred Date: October 22, 2009.

32. Novus Operating, LLC, Pad ID: Brookfield #1, ABR–20090804, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 0.999 mgd; Transferred Date: October 22, 2009.

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: November 17, 2009.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. E9–28514 Filed 11–27–09; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wake and Johnston Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI).

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Wake and Johnston Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. George Hoops, P.E., Major Projects Engineer, Federal Highway Administration, 310 Bern Avenue, Suite 410, Raleigh, North Carolina 27601–1418, *Telephone:* (919) 747–7022.

SUPPLEMENTARY INFORMATION: Pursuant to Title 23, Code of Federal Regulations, Part 771, Environmental Impact and Related Procedures, the FHWA, in cooperation with the North Carolina Turnpike Authority (NCTA), a division of the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) addressing the proposed completion of the Raleigh Outer Loop. The proposed study area boundary begins in Wake County at NC 55 in the vicinity of Apex and Holly Springs. The boundary extends southward along NC 55 and turns eastward to parallel NC 42, crossing into Johnston County near Benson Road (NC 50). The boundary turns northward near Clayton, extending to US 64/US 264 Bypass, in Knightdale. The study area includes southeastern limits of Raleigh and the southern limits of Garner and Cary. The proposed action is included in the 2035 Long Range Transportation Plan approved by the Capital Area Metropolitan Planning Organization (CAMPO).

This project is designated as three projects in the NCDOT State Transportation Improvement Program (STIP)—Projects R–2721, R–2828, and R–2829. These projects combine to form the southern and eastern portions of the Outer Loop around Raleigh and surrounding communities, completing the Outer Loop. The northern portion of the Outer Loop is open to traffic and the western portion, the Western Wake Freeway, is currently under construction. The southern portion of this project is proposed to tie into the Western Wake Freeway near Apex. The eastern portion of this project is proposed to tie into the northern portion of the Outer Loop at the US 64/US 264 Bypass in Knightdale. The EIS for the proposed action will consider alternatives that include improving existing roadways as well as alternatives that involve building a new location facility. Multiple alternative corridors for a new location facility may be evaluated. The analysis will also include a range of non-highway improvement alternatives, including the ''No-Build'' alternative (continuation of the existing condition), expanding transit service, transportation demand management (TDM), and transportation system management (TSM). As part of the EIS, NCTA will study the feasibility and impacts of developing the proposed project as a tolled facility.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. Scoping will occur over a series of meetings with the agencies and citizens informational workshops with the public. Information on the dates, times, and locations of the citizens informational workshops will be advertised in the local news media, and newsletters will be mailed to those on the project mailing list. If you wish to be placed on the mailing list, contact Jennifer Harris at the address listed below. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above or directed to: Ms. Jennifer Harris, P.E., Staff Engineer, North Carolina Turnpike Authority, at 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina 27612. *Telephone:* (919) 571–3000. *E-mail: sewake@ncturnpike.org.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: November 23, 2009.

George Hoops,

Major Projects Engineer, Federal Highway Administration, Raleigh, North Carolina.

[FR Doc. E9–28626 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[WisDOT Project 1206–07–03]

Notice of Intent to Prepare a Supplemental Draft Environmental Impact Statement; USH 18 & 151, CTH PD to USH 12 & 14, Madison Urban Area; Dane County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to Prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Draft Environmental Impact Statement (SDEIS) is being prepared for transportation improvements to the USH 18 & 151 (Verona Rd) corridor from CTH PD to USH 12 & 14 in the Madison Urban Area, Dane County, Wisconsin, WisDOT Project 1206–07–03. The SDEIS is being prepared in conformance with 40 CFR 1500 and FHWA regulations.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Wisconsin Department of Transportation (WisDOT), is preparing a Supplemental Draft Environmental Impact Statement (SDEIS) on improvements needed to provide capacity for existing and projected traffic demand, to reduce high crash rates, and to provide better connectivity between land areas adjacent to the highways on approximately 2 miles of existing USH 18 & 151 (Verona Road) from CTH PD (McKee Rd) to USH 12 & 14 (Madison South Beltline Hwy). The previous DEIS corridor included three focus areas: (1) The West Madison Beltline Hwy (USH 12 & 14 from USH 14 in Middleton to Todd Dr in Madison), (2) Interchange upgrades and new grade separations on the West Madison Beltline, and (3) the same

section of USH 18 & 151 (Verona Rd) which will be reevaluated by the proposed SDEIS. The proposed SDEIS will evaluate No Build, Interim Improvements, and Freeway Conversion alternatives for this section of USH 18 & 151. Possible improvements for the other two focus areas may be re-evaluated as separate independent environmental studies at some future date.

Participation by the public, local officials, state and federal regulatory agencies, American Indian Tribes and other interested parties are being solicited through public information meetings, agency coordination meetings, and public hearings. Opportunities to be participating and/or cooperating agencies and to provide input on the project's coordination plan and impact assessment methodology are also being provided under Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

This study shall comply with Title VI of the Civil Rights Act and of Executive Order 12898, which prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. To ensure that the full range of issues related to this proposed action is addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to FHWA or WisDOT at the addresses provided below (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

FOR FURTHER INFORMATION CONTACT: Johnny Gerbitz, Field Operations Engineer, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, WI 53717–2157; *Telephone:* (608) 829–7500, Ext ''O''. You may also contact Eugene Johnson, Director, Bureau of Equity and Environmental Services, Wisconsin Department of Transportation, P.O. Box 7916, Madison, Wisconsin, 53707–7916: *Telephone:* (608) 267–9527.

An electronic copy of this document may be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer modem and suitable communications software. Internet users may reach the Office of Federal Register's home page at: *http://www.archives.gov/* and the Government Printing Office's database at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued on: *November 17, 2009.*

Johnny M Gerbitz,

Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. E9–28452 Filed 11–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Establishment of the Federal Transit Administration Advisory Committee for Transit Safety

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to establish a Federal Advisory Committee.

SUMMARY: On November 23, 2009, the Secretary of Transportation authorized the establishment of a Federal Advisory Committee to address transit safety issues. The Transit Rail Advisory Committee for Safety (TRACS) will consist of up to 25 voting members and will provide recommendations to the Secretary of Transportation through the Federal Transit Administrator regarding transit safety and other issues.

DATES: This charter is effective on December 8, 2009.

FOR FURTHER INFORMATION CONTACT: Mike Flanigon, Director, Office of Safety and Security, Federal Transit Administration, 202–366–0235 or *Mike.Flanigon@dot.gov.*

SUPPLEMENTARY INFORMATION

I. Background

Nationwide, rail transit is considered one of the safest modes of transportation with more than 7 million people boarding rail transit vehicles in the United States each day. Transit agencies have fewer fatalities and injuries than does any other mode of transportation. Over the last five years, however, the industry's safety record, while still low, has deteriorated. Rates per million passenger miles between 2003 and 2008 on rail transit systems, not regulated by Federal Railroad Administration are as follows:

Derailment rates are up from 0.23 to 0.38. Collision rates are up from 0.2 to 0.8 .

Passenger Fatality rates are up from 0.43 to 0.60 (all causes except suicide).

Passenger fatality rates from train collisions have held steady at 1 per year (9 in 2009).

Employee right of way fatalities are steady at 3 per year (double the average number during the previous 15 years).

Major accidents in Chicago, Washington, DC, San Francisco, and Boston have captured the attention of the public and raised widespread concern regarding the industry's commitment to the safety of its passengers and employees. For example, the 2006 derailment of a CTA Blue Line train in Chicago involved aging infrastructure that did not meet agency safety standards and yet remained in service.

In response to this series of accidents, the Secretary of Transportation established the Rail Transit Safety Work Group, an internal Departmental work group with representatives from several administrations, to evaluate the Federal role in transit safety. After deliberating, the work group recommended that the Secretary establish an advisory committee for transit safety. The Secretary accepted the recommendation and authorized the establishment of an advisory committee for the purpose of analyzing transit safety issues and developing recommendations for minimum, national transit safety standards.

The establishment of an advisory committee for transit safety serves the public interest by providing a forum for the development, consideration, and communication of information from knowledgeable and independent perspectives. The level of expertise and balanced viewpoints of this committee will enable early identification of potential problem areas and accelerate corrective actions, thereby creating greater safety and public confidence in the Nation's public transportation systems.

In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA), the Federal Transit Administration (FTA) is publishing this notice to announce the Secretary's intent to establish an advisory committee. The Transit Rail Advisory Committee for Safety (TRACS) will have the objective to provide advice and recommendations to the Administrator of FTA regarding transit safety issues.

No determination of fact or policy will be made by the TRACS. The TRACS will meet as necessary to carry out its duties, but is expected to meet at least twice a year. Meetings of subcommittees or work groups may occur more frequently. The FTA Administrator on behalf of the Secretary of Transportation will name an Executive Director for the committee who will also serve as the Designated Federal Official responsible for ensuring compliance with the requirements of FACA. Members of the public may review the draft charter for TRACS at FTA's Web site located at *http://fta.dot.gov.*

Issued this 24th day of November, 2009, in Washington, DC.

Peter M. Rogoff,

Administrator.

[FR Doc. E9–28532 Filed 11–24–09; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Mohawk Adirondack and Northern Railroad Corporation

[Waiver Petition Docket Number FRA–2009–0063]

The Mohawk Adirondack and Northern Railroad (MHWA), a Class III railroad, seeks a waiver of compliance from the requirements of *49 CFR 223.11 Requirements for existing locomotives*. Specifically, MHWA has petitioned FRA for a waiver for one 80-ton, 470 horsepower diesel electric locomotive numbered 1670. This locomotive was built for the United States Air Force by General Electric in March 1952.

MHWA operates this locomotive on a terminal/switching railroad at the former Griffiss Air Force Base in Rome, New York, presently called the Griffiss Industrial Park. MHWA operates at speeds of 10 miles per hour (or less) and hauls 1–3 cars on a twice weekly basis. The locomotive is equipped with safety laminate glass (AS–1, AS–2) and is serviced & maintained by MHWA at Rome, New York. MHWA states that the railroad is private and will occasionally interchange to the general system which is accomplished with CSX Railroad interchange tracks at Rome, NY.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0063) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

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

Issued in Washington, DC on November 23, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–28483 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Association of American Railroads

[Waiver Petition Docket Number FRA–2009–0102]

The Association of American Railroads (AAR) has petitioned, on behalf of its member railroads, for a temporary waiver of compliance from the requirements of 49 CFR 232.109(g)(2), which state that locomotives placed into service for the first time on or after October 1, 2007, shall display in real-time in the cab of the controlling (lead) locomotive the total train dynamic brake retarding force available in the train. AAR petition seeks relief due to conflicts found in the common communication channel, known as ''C–Band'' shared by the dynamic brake system reporting (DBSR) and Electronic Controlled Pneumatic (ECP) brake systems. AAR requests this relief until January 1, 2011, to allow it the time to have conversion modules manufactured and installed on its members' locomotives.

AAR states that when locomotives equipped with ECP brakes were placed in service, it was discovered that operation of the ECP systems and DBSR conflicted due to the sharing of a common communications band, the C–Band. Consequently, AAR developed a standard (S–5509) in February 2008, providing for using the A–Band for DBSR. During the period of modification and conversion of its members' locomotives, there will be times when the total train dynamic brake retarding force required by 49 CFR 232.109(g)(2) cannot be displayed in the controlling locomotive because some locomotives will be equipped to transmit on A–Band and some on C–Band. AAR further states that during the period of conversion, the engineer shall be provided with a record of dynamic brake operational status as required by 49 CFR 232.109(a).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–

0102) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on November 23, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–28482 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Docket Number FRA–2007–28454]

By a letter dated January 16, 2009, FRA granted conditional relief in response to the petition filed by the Union Pacific Railroad Company (UP) for a waiver of compliance from 49 CFR 232.305(b)(2) *Single car air brake tests* as it relates to UP's in-train wheel-set replacement program. Specifically, UP sought relief from the regulation to the extent necessary to permit the replacement of non-FRA-condemnable wheel-sets on railcars as part of an in-train wheel-set replacement program without the need to also perform single car air brake tests (SCABT) as required by § 232.305(b)(2), if the car has not received a SCABT within the previous 12 months. UP now, by a letter dated June 5, 2009, seeks revision of Condition 6 of FRA's January 16, 2009, letter. Condition 6 requires the identification and removal of *wheels exerting 100 kips or greater, or exerting 90 kips and an acoustic bearing detector defect, when the car is empty at the first in-train wheel replacement location.* UP's complete request can be reviewed at *http://www.regulations.gov* under the docket number listed above.

UP states that the threshold of *''100 kips''* in Condition 6 is onerous, is contrary to UP's and other railroads experience of this threshold as being close to 140 kips, is not a requirement in 49 CFR regulations, is an unnecessarily strict standard exclusive to UP's in-train wheel-set replacement program, places UP in a different category than other railroads, and hampers UP's innovative and voluntary effort to improve safety by allowing it to replace an increased numbers of wheel-sets with incipient defects. As a result, UP requests that FRA modify this condition to require replacement of wheels exerting 140 kips or greater, or wheels exerting 90 kips in conjunction with acoustic bearing detector defects.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2007–28454) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the 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).

Issued in Washington, DC on November 23, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–28480 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2005–21711]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22

individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective November 30, 2009. Comments must be received on or before December 30, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2005–21711, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 22 individuals who have requested a renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 22 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Thomas E. Adams
Terry J. Aldridge
Lennie D. Baker, Jr.
Jerry D. Bridges
William J. Corder
Gary R. Gutschow
Richard J. Hanna
James J. Hewitt
Albert E. Malley
Eugene P. Martin
David L. Menken
Rodney M. Mimbs
Walter F. Moniowczak
William G. Mote
James R. Murphy
Chris A. Ritenour
Ronald L. Roy
Thomas D. Walden
Thomas E. Walsh
Kevin P. Weinhold
Charles M. Wilkins
Thomas A. Wise

These exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 22 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 63289; 68 FR 64944; 70 FR 67776; 72 FR 64273; 64 FR 40404; 64 FR 66962; 66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 33937; 67 FR 68719; 68 FR 2629; 70 FR 61165; 68 FR 52811; 68 FR 61860; 70 FR 48797; 70 FR 61493) Each of these 22 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level

of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 30, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 22 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 16, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–28439 Filed 11–27–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 24, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 30, 2009 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0018.

Type of Review: Extension.

Title: Report of Cash Payment over $10,000 Received in a Trade or Business.

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payer. Any transaction which must be reported under Title 31 on FinCEN Form 104 is exempted from reporting the same transaction on Form 8300. The USA Patriot Act of 2001 (Pub. L. 107–56) authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300. In a joint effort to develop a dual use form, IRS and FinCEN worked together to ensure that the transmission of the data collected to...

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 70,200 hours.

Clearance Officer: Russell Stephenson, (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–28599 Filed 11–27–09; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, ''Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.''

DATES: You should submit written comments by January 29, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0184, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from Mary H. Gottlieb, Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0184), Office

of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0184, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

OMB Control No.: 1557–0184.

Form Numbers: MSD, MSDW, MSD–4, MSD–5, G–FIN, G–FINW.

Abstract: This information collection is required to satisfy the requirements of the Securities Act Amendments of 1975 [1] and the Government Securities Act of 1986 [2] which require that any national bank that acts as a government securities broker/dealer or a municipal securities dealer notify the OCC of its broker/dealer activities. The OCC uses this information to determine which national banks are government and municipal securities broker/dealers and to monitor entry into and exit from government and municipal securities broker/dealer activities by institutions and registered persons. The OCC also uses the information in planning bank examinations.

Type of Review: Renewal of a currently approved collection. The collection has not changed. The OCC asks only that OMB approve its revised estimates and extend its approval of the forms, revised only to add a clarification to the instructions.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 26.

Estimated Total Annual Responses: 920.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 867 burden hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

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

(b) The accuracy of the OCC's estimate of the information collection burden;

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

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

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

Dated: November 23, 2009.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. E9–28500 Filed 11–27–09; 8:45 am]

BILLING CODE P

[1] 15 U.S.C. 78a–80b–17.

[2] 15 U.S.C. 78o–5.

Federal Register

Monday,
November 30, 2009

Part II

Federal Communications Commission

47 CFR Part 8
Preserving the Open Internet, Broadband Industry Practices; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[GN Docket No. 09–191; WC Docket No. 07–52; FCC 09–93]

Preserving the Open Internet, Broadband Industry Practices

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Commission considers adopting rules to preserve the open Internet. In this NPRM, the Commission proposes draft language to codify the four principles the Commission articulated in the *Internet Policy Statement*; a fifth principle that would require a broadband Internet access service provider to treat lawful content, applications, and services in a nondiscriminatory manner; and a sixth principle that would require a broadband Internet access service provider to disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in this rulemaking. The Commission also proposes draft language to make clear that the principles would be subject to reasonable network management and would not supersede any obligation a broadband Internet access service provider may have—or limit its ability—to deliver emergency communications or to address the needs of law enforcement, public safety, or national or homeland security authorities, consistent with applicable law. The draft rules would not prohibit broadband Internet access service providers from taking reasonable action to prevent the transfer of unlawful content, such as the unlawful distribution of copyrighted works. Nor would the draft rules be intended to prevent a provider of broadband Internet access service from complying with other laws. The NPRM seeks comment on a category of ''managed'' or ''specialized'' services, how to define such services, and what principles or rules, if any, should apply to them. The NPRM affirms that the six principles the Commission proposes to codify apply to all platforms for broadband Internet access, and seeks comment on how, in what time frames or phases, and to what extent the principles should apply to non-wireline forms of Internet access, including, but not limited to, terrestrial mobile wireless, unlicensed wireless, licensed fixed wireless, and satellite. The NPRM also seeks comment on the enforcement procedures that the Commission should use to ensure compliance with the proposed principles.

DATES: Comments are due on or before January 14, 2010 and reply comments are due on or before March 5, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before January 29, 2010.

ADDRESSES: You may submit comments, identified by GN Docket No. 09–191 and WC Docket No. 07–52, 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://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov*. and include the following words in the body of the message: ''get form.'' A sample form and directions will be sent in response. Include the docket number(s) in the subject line of the message.
- *Blog Filers:* In addition to the usual methods for filing electronic comments, the Commission is allowing comments, reply comments, and ex parte comments in this proceeding to be filed by posting comments on *http://blog.openinternet.gov* and on *http://openinternet.ideascale.com*.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.
- *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. In addition to filing comments with the Secretary of the Commission, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Claude Aiken, Competition Policy Division, Wireline Competition Bureau, at 202–418–1580 or *claude.aiken@fcc.gov*, or John Spencer, Broadband Division, Wireless Telecommunications Bureau, at 202–418–2487 or *john.spencer@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214, or via e-mail at *Judith.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in GN Docket No. 09–191, WC Docket No. 07–52, FCC 09–93 adopted on October 22, 2009. The complete text of this document is available on the Commission's Internet site at *www.fcc.gov* and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, e-mail at *fcc@bcpiweb.com*, or via its Web site at *http://www.bcpiweb.com*.

Pursuant to Sections 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 in the DATES section of this NPRM. Comments may be filed: (1) By using the Commission's Electronic Comment Filing System (ECFS), (2) by using the Federal Government's eRulemaking Portal, (3) by filing paper copies, or (4) by using the Commission's Ideascale and *Openinternet.gov* sites. *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://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- ECFS filers must transmit one electronic copy of the comments for each docket referenced in the caption of this proceeding. In completing the

transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number.

• Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. 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 (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• 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. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• 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.

• *Blog Filers:* In addition to the usual methods for filing electronic comments, the Commission is allowing comments, reply comments, and ex parte comments in this proceeding to be filed by posting comments on *http://blog.openinternet.gov* and on *http://openinternet.ideascale.com*. Accordingly, persons wishing to examine the record in this proceeding should examine the record on ECFS, *http://blog.openinternet.gov*, and *http://openinternet.ideascale.com*. Although those posting comments on the blog may choose to provide identifying information or may comment anonymously, anonymous comments will not be part of the record in this proceeding and accordingly will not be relied on by the Commission in reaching its conclusions in this rulemaking. The Commission will not rely on anonymous postings in reaching conclusions in this matter because of the difficulty in verifying the accuracy of information in anonymous postings. Should posters provide identifying information, they should be aware that although such information will not be posted on the blog, it will be publicly available for inspection upon request.

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments on the proposed information collection requirements are due January 29, 2010.

Comments on the proposed information collection requirements should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: None.

Title: Disclosure of Network Management Practices.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit; not-for-profit institutions; and State, Local or Tribal governments.

Number of Respondents and Responses: 1,674 respondents; 1,674 responses.

Estimated Time per Response: 327 hours.

Frequency of Response: Third party disclosure; reporting on occasion.

Obligation to Respond: Mandatory.

Total Annual Burden: 546,840 hours.

Total Annual Costs: $4,687,000.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission does not expect to provide respondents with any assurance of confidentiality.

Needs and Uses: The Federal Communications Commission proposes to require providers of broadband Internet access service to disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in its October 22, 2009 Notice of Proposed Rulemaking (FCC 09–93).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) or to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Synopsis of Notice of Proposed Rulemaking

1. When the Telecommunications Act of 1996 was enacted, very few Americans had residential broadband Internet access service. Since the competition-based policies ushered in by the Telecommunications Act first took root through Commission implementation in the late 1990s, broadband Internet access service adoption has increased dramatically, with broadband in approximately thirty percent of American households in 2005 and sixty-three percent today. It is important to note that from 1996 to the adoption of the Commission's *Internet Policy Statement* in August of 2005, digital subscriber line (DSL) service offered by telecommunications carriers was regulated under Title II of the Act and experienced explosive growth. Since the Commission adopted the *Internet Policy Statement* over four years ago, our nation has seen even greater expansion of broadband Internet access service. In 2005, access to the Internet was split evenly between dial-up and broadband; now less than ten percent of Americans access the Internet with dial-up. Online retail spending increased 65 percent between 2005 and 2007. Today nearly a fifth of online adults access Internet video on a daily basis, compared with eight percent in 2006. Broadband Internet access has become a vital resource for, among other things, commerce, civic engagement, and communications and telecommuting options for people with

disabilities, health care, and education. For purposes of this proceeding, we propose to define the Internet as the system of interconnected networks that use the Internet Protocol for communication with resources or endpoints (including computers, webservers, hosts, or other devices) that are reachable, directly or through a proxy, via a globally unique Internet address assigned by the Internet Assigned Numbers Authority. To be considered part of the ''Internet'' for this proceeding, an Internet end point must be identified by a unique address assigned through the Internet Assigned Numbers Authority or its delegate registry, not an address created by a user for its internal purposes. We do not intend for this definition of the Internet to encompass private intranets generally inaccessible to users of the Internet. We seek comment on these proposals.

2. The evolution in Internet usage, and associated developments in network technology, have respectively motivated and enabled network operators to differentiate price and service for end users and for providers of content, applications, and services. A significant debate has developed over how best to preserve the Internet's openness. We thus find it appropriate at this time to evaluate the need for oversight of broadband Internet access service providers' practices. Given the evolution of the Internet and the broadband marketplace, we believe that high-level rules specifying impermissible practices will best promote an Internet environment of widespread innovation and light-handed regulation.

A. The Need for Commission Action

3. Despite our efforts to date, some conduct is occurring in the marketplace that warrants closer attention and could call for additional action by the Commission, including instances in which some Internet access service providers have been blocking or degrading Internet traffic, and doing so without disclosing those practices to users. We also believe it is important to provide greater clarity and certainty to Internet users; content, application, and service providers; and broadband Internet access service providers regarding the Commission's approach to safeguarding the open Internet. As discussed below, we seek comment on the reasons either for or against particular types of oversight by the Commission of broadband Internet access service providers' practices, including possible specific rules. In undertaking this examination, we seek to preserve the open, safe, and secure Internet and to promote and protect the legitimate business needs of broadband Internet access service providers and broader public interests such as innovation, investment, research and development, competition, consumer protection, speech, and democratic engagement. Thus, in the subsequent parts of this NPRM, we seek comment on how to tailor rules to achieve this balance.

1. Commission Goals

4. The Communications Act, related statutes, and Commission precedent establish a number of interrelated goals that inform the Commission's approach to broadband Internet access service. For one, the Commission seeks to promote investment and innovation with respect to the Internet, as with other communications technologies. As the Commission has recognized, ''[t]he Internet has served as a critical platform for innovation for nearly two decades,'' and ''[h]istorically, 'the innovation and explosive growth of the Internet [have been] directly linked to its particular architectural design.' ''

5. Promoting competition for Internet access and Internet content, applications, and services is another key goal. In particular, Section 230 of the Act states that ''[i]t is the policy of the United States * * * to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services.'' In adopting its *Internet Policy Statement*, the Commission recognized the importance of such competition not only ''among network providers,'' but also among ''application and service providers, and content providers.'' As the Commission has observed, ''[s]o far in the Internet's history,'' the basic standards underlying the operation of the Internet ''have created 'the equivalent of perfect competition * * * among applications and content * * * with a minimum [of] interference by the network or platform owner.' ''

6. The Act and Commission precedent likewise demonstrate the importance of protecting users' interests as a Commission goal. These interests are wide-ranging, including consumer protection in commercial contexts; the development of technological tools to empower users; and speech and democratic participation. As Congress has observed, ''[t]he rapidly developing array of Internet * * * services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens,'' and the Internet ''offer[s] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.''

7. Other statutory objectives are relevant to our evaluation of broadband Internet access service providers' practices, including addressing the needs of law enforcement and public safety. Each of the goals described above informs our policy analyses, and we seek comment on how these and other relevant policy goals should affect our analysis of the Internet principles discussed below.

8. As a general matter, we believe that our proposals should have broad application so that the protections that we propose are widely enjoyed. As such, we propose to define broadband Internet access service for the purpose of these rules as ''[a]ny communication service by wire or radio that provides broadband Internet access directly to the public, or to such classes of users as to be effectively available directly to the public.'' We do not intend that our proposals would apply to ''establishments that acquire broadband Internet access service from a facilities-based provider to enable their patrons or customers to access the Internet from their respective establishments.'' For example, we would not intend to include coffee shops, waiting rooms, or rest areas. Nor would we intend to include broadband Internet access service that is not intentionally offered for the benefit of others, such as service from personal Wi-Fi networks whose signal may be detectable outside the user's premises. We seek comment on this approach for defining the scope of entities covered by our proposals, including ways to make clear who is and is not subject to these rules.

2. Evolution of the Internet Marketplace and Technologies

9. We also note that Internet technologies have changed markedly along with the evolution of the Internet marketplace. The Internet has traditionally relied on an end-to-end, open architecture, in which network operators use their ''best effort'' to deliver packets to their intended destinations without quality-of-service guarantees. This open architecture ''allowed all application developers to make their innovations available to all by placing a software program on a publicly available server,'' but the best-effort nature of early networks presented challenges for the deployment of applications requiring quality-of-service assurances.

10. With the rapid growth of broadband applications and content, especially video, access providers may

face capacity constraints. In many cases, either provisioning additional bandwidth or using sophisticated software techniques has been sufficient to support applications requiring reliable delivery or low latency, such as real-time voice and video. For example, Skype has more than 440 million registered users for its Internet-based real-time communications application, which runs over the best-effort Internet. As Internet infrastructure and the content, applications, and services delivered over the Internet have evolved, network equipment makers have also responded with new technologies, including more sophisticated routers that enable network operators to distinguish among different classes of traffic and offer different qualities of service to different traffic (service differentiation), which enables charging different prices for different traffic (price differentiation). For example, a broadband Internet access service provider can ensure that one class of traffic enjoys a greater share of capacity than another when there is contention for resources. A broadband Internet access service provider can also differentiate among different packet streams or classes of traffic by scheduling the transmission of certain packets waiting in a buffer ahead of others, determining by algorithm which packets in a buffer are dropped (*i.e.,* discarded and not transmitted), blocking an entire packet stream by means of an admission control algorithm, transmitting data over more (or less) efficient routing, redirecting traffic to another site, or blocking traffic entirely. With ''deep packet inspection,'' a broadband Internet access service provider can determine which packets to favor by examining ''in detail the content of [an] e-mail, or Web page, or downloaded file. It is possible to distinguish music files from text from pictures, or to search for key words within any text.'' A broadband Internet access service provider can also favor certain parties by providing access to information cached at the provider's facility, allowing consumers quicker access to Web sites using the caching services.

11. Any of these techniques may be provided only to an Internet access service provider's own affiliates and partners. Or they may be turned into a service that Internet access service providers offer to content and application providers for a fee. Equipment manufacturers note that these new technologies allow Internet access service providers to maximize the revenue opportunities associated with their networks. For example, Sandvine, a technology vendor, claims to offer a ''range of policy management options such as application-based and subscriber-based approaches, aggregate and per-subscriber shaping, prioritization, caching and content acceleration.'' Procera Networks advertises its PacketLogic technology as giving network providers the ability to ''monetize your network'' by monitoring user traffic on a real-time basis and using ''optimization that distinguishes between interactive and downloading traffic.'' And Cisco offers network providers the ability to ''identify[] services that might be riding an operator's network for free'' and ''extend quality of service guarantees to that third party for a share of the profits.''

12. Four years ago, changes that were already taking place in the Internet marketplace and among network technologies led the Commission to adopt the *Internet Policy Statement*. Since then, the Internet marketplace and underlying technologies have continued to evolve, and we seek more detailed comment on the technological capabilities available today, as offered for sale and as actually deployed in providers' networks. We further seek comment on the effects of those technologies on the content, applications, and services being provided—or capable of being provided—over the Internet.

3. The Debate Regarding Oversight of Traffic Management Pricing and Practices

13. The increasing capability of broadband Internet access service providers to offer differentiated services and prices for traffic flowing over their networks has spurred a debate about the public policy implications of using that capability. In particular, some parties have expressed concerns that, absent appropriate oversight, broadband Internet access service providers could make the Internet less useful for some users or applications by differentiating traffic based upon the user, the application provider, or the type of traffic. Other parties have suggested that ''the problems are all potential problems, not actual problems'' and that the ''fundamental inability to demonstrate any evidence of an actual market failure confirms what all the rhetoric in the world cannot obscure: 'Net neutrality' is a solution in search of a problem.''

14. In determining the Commission's proper role with respect to safeguarding the open Internet, we believe it is helpful to examine this debate and the arguments that have been made in favor of and against open Internet policies. The arguments in this area have largely revolved around four issues: (1) How best to promote investment and innovation; (2) the current and future adequacy of competition and market forces; (3) how best to promote speech and civic participation; and (4) the practical significance of network congestion to the other considerations. We summarize and seek evidence supporting or refuting a number of these key arguments.

a. Investment and Innovation

15. The Commission has recognized that the historically open architecture of the Internet has facilitated entrepreneurs' entry into the market with new Internet services and promoted the Act's policies favoring ''a diversity of media voices'' and ''technological advancement.'' As discussed above, however, technologies now allow network operators to distinguish different classes of traffic, to offer different qualities of service, and to charge different prices to each class.

16. In light of these developments, some parties have contended that safeguarding historic Internet traffic pricing and practices is needed to preserve the end-to-end architecture of the Internet, with intelligence and control at the edge of the network. These proponents of open Internet policies maintain that the end-to-end architecture is essential to give entrepreneurs confidence that they will be free to innovate on the Internet without first seeking permission from broadband Internet access service providers and, accordingly, is necessary to promote innovation and growth. Supporters argue that differentiation by Internet access service providers can be especially harmful to innovation by outsiders—individuals and entities unaffiliated with network owners—who have been responsible for some of the most important innovations in the history of the Internet. These outsiders, many of whom may have limited resources but can innovate on today's Internet with very low marginal costs, could choose not to innovate if faced with fees from Internet access service providers for equal access to end users. And the potential for such fees may deter outsiders from investing in long-term research and development that could benefit all of society.

17. Some parties characterize the Internet as a ''general purpose technology,'' which ''does not create value through its existence alone'' but ''by enabling users to do the things they want or need to do.'' ''[T]he rate at which a general purpose technology

affects economic growth depends on the rate of co-invention (*i.e.,* the rate at which potential uses of the technology are identified and realized).'' In the case of the Internet, this means ''that identifying potential uses for the Internet and developing the corresponding applications is the prerequisite for realizing the enormous growth potential inherent in the Internet as a general-purpose technology. As a result, measures that reduce the amount of application-level innovation have the potential to significantly harm social welfare by significantly limiting economic growth.''

18. Parties opposing further Commission action in this area raise several arguments in response. First, they contend that differentiation in pricing or quality of service may enable different types of innovation that might not be feasible with a network lacking such capabilities. Second, they assert that some traffic imposes greater burdens on the network than other traffic and that ''innovation could be even better for consumers if it could respond to price signals from platform providers,'' such as by ''tak[ing] into account potential congestion costs of bandwidth-intensive applications.'' Third, they often claim that charging content, application, and service providers may be necessary to recover the cost of the investment in their networks and to fund additional investment in research, development, and infrastructure. According to opponents, charging only end users instead would increase end-user prices, limit the number of users, and reduce revenue, discouraging network improvements.

19. Opponents also cite economic theory that holds that benefits can arise from price and quality discrimination, at least in certain cases. For example, they argue that the ability of a provider to price discriminate not only will benefit the provider, but may also benefit the public as a whole (although not necessarily in all cases). Further, economists have recognized that the Internet is an example of a ''two-sided market,'' in that broadband Internet access service providers offer service to both end-user customers and to content, application, and service providers simultaneously. Theoretical economic analyses suggest that price discrimination may be more beneficial in a two-sided market than in the standard one-sided market.

b. Competition and Market Forces

20. Supporters of open Internet policies contend that market forces alone are unlikely to ensure that broadband Internet access service providers will discriminate in socially efficient ways and that, absent regulation, such discrimination is likely to change fundamentally the nature of the Internet, reduce competition, and hinder innovation and growth. Furthermore, some have noted that the justification for government oversight of key infrastructure has not always relied solely on lack of competition in the relevant market, and argue that the long-standing doctrines of common carriage or bailment should inform policies for broadband Internet access service providers.

21. Even where there is effective competition in the Internet access market, individual broadband Internet access service providers may charge inefficiently high prices to content, application, and service providers, even though it may be in the collective interest of all providers to charge a lower price or zero price in order to maximize innovation at the edge of the network and thereby increase the overall value of broadband Internet access. Investing in innovative Internet content, applications, and services is risky, and firms will not invest unless their expected revenues exceed their expected costs. If allowed to do so, broadband Internet access service providers may attempt to extract some of the profit earned by content, application, and service providers by charging them fees for providing access (or prioritized access) to the broadband Internet access service providers' subscribers. These fees will reduce the potential profit that a content, application, or service provider can expect to earn and hence reduce the provider's incentive to make future investments in the quantity or quality of its content, application, or service.

22. If enough broadband Internet access service providers impose a fee, or if the fees are sufficiently high across a small number of broadband Internet access service providers with sufficient market share, then not only will content, application, and service providers' incentive to innovate be reduced, but the fees could drive some content, application, and service providers from the market. This would reduce the quantity and quality of Internet content, applications, and services, reducing the overall value of the Internet to end users and thereby reducing demand for broadband Internet access services. This dynamic raises a collective action problem: Although it might be in the collective interest of competing broadband Internet access service providers to refrain from charging access or prioritization fees to content, application, and service providers, it is in the interest of each individual access provider to charge a fee, and given multiple providers, it is unlikely that access providers could tacitly agree not to charge such fees. Furthermore, it is unlikely that competitive forces are sufficient to eliminate the incentive to charge a fee, particularly where the imposition of such a fee will not cause the access provider to lose many customers. Thus, allowing broadband Internet access service providers to impose access or prioritization fees may inefficiently reduce innovation and investment in content, applications, and services, generating a suboptimal economic outcome.

23. Where effective competition is lacking (*i.e.,* where broadband Internet access service providers have market power), it is more likely that price and quality discrimination will have socially adverse effects. Broadband Internet access service providers possessing market power may have an incentive to raise prices charged to content, application, and service providers and end users. Not only would that harm users overall, but it could reduce innovation at the edge of the network and cause some end users to decide not to subscribe to broadband Internet access service. Moreover, imposing a fee on content, application, and service providers could reduce total welfare more than imposing the same fee on the end users and no fee on the content, application, and service providers. In particular, such pricing may disproportionately affect ''socially produced'' content, *i.e.,* content produced collaboratively by individuals without a direct financial incentive, such as Wikipedia.

24. In addition, broadband Internet access service providers generally, and particularly broadband Internet access service providers with market power, may have the incentive and ability to reduce or fail to increase the transmission capacity available for standard best-effort Internet access service, particularly relative to other services they offer, in order to increase the revenues obtained from content, application, and service providers or individual users who desire a higher quality of service. The result may be insufficient transmission capacity allocated to some content, application, or service providers and a misallocation of transmission capacity across quality-of-service classes.

25. Where broadband Internet access service providers have market power and are vertically integrated or affiliated with content, application, or service

providers, additional concerns may arise. By providing a user's broadband connection to the Internet, a broadband Internet access service provider serves as a gatekeeper to the content, applications, and services offered on the Internet. Broadband Internet access service providers have an incentive to use this gatekeeper role to make it more difficult or expensive for end users to access services competing with those offered by the network operator or its affiliates. For example, a broadband Internet access service provider that is also a pay television provider could charge providers or end users more to transmit or receive video programming over the Internet in order to protect the broadband Internet access service provider's own pay television service. Alternatively, such a broadband Internet access service provider could seek to protect its pay television service by degrading the performance of video programming delivered over the Internet by third parties. The result may be higher prices or worse service for some content and applications and inefficiently low investment in some content and application markets.

26. This analysis is further complicated by control that the broadband Internet access service provider has over the delivery of traffic to its subscribers. In particular, there are typically multiple paths for routing packets over the Internet. For those packets to reach the end users that subscribe to a particular broadband Internet access service, however, they ultimately must be transported on that broadband Internet access service provider's network. Thus, even if there is competition among broadband Internet access service providers, once an end-user customer has chosen to subscribe to a particular broadband Internet access service provider, this may give that broadband Internet access service provider the ability, at least in theory, to favor or disfavor any traffic destined for that subscriber. And as discussed throughout this section, there may be various circumstances when the broadband Internet access service provider would have the incentive to do so.

27. Opponents have responded that the markets for broadband Internet access services are sufficiently competitive to allay these concerns. They further contend that, even if a broadband Internet access service provider possessed market power, it generally would have an incentive to discriminate only in a socially efficient manner. Finally, opponents argue that, even if broadband Internet access service providers occasionally discriminate in a socially inefficient manner, open Internet policies would impose greater costs and inefficiency than the absence of policies.

c. Speech and Civic Participation

28. Congress has recognized that the Internet ''offer[s] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.'' Numerous judicial opinions have noted the Internet's potential for facilitating speech. The bipartisan Knight Commission recently reported that the Internet has brought about ''new forms of collaboration between full-time journalists and the general citizenry,'' opening the age of networked journalism. It also observed that ''[p]olitical leaders and many government agencies are staking out ambitious agendas for openness,'' and ''[t]he potential for using technology to create a more transparent and connected democracy has never seemed brighter.'' At the same time, however, broadband Internet access service providers today could block, slow, or redirect access to Web sites espousing public policy positions that the broadband Internet access service provider considers contrary to its interests, or controversial content to which the service provider wants to avoid any connection. Broadband Internet access service providers also have the ability to delete or hinder e-mail based on inspection of its contents. Because broadband Internet access service providers are not government actors, the First Amendment does not directly govern their actions.

29. Proponents therefore argue that the Commission should take steps to preserve the Internet ''as a general purpose technology that supports wide open speech.'' Others have argued that ''the openness of networks [is] essential to meeting community information needs,'' and that the Internet could be conceived of as a ''new marketplace of ideas''—a ''core common infrastructure'' that ''giv[es] users the capacity to participate in building our common informational and cultural environment and the freedom to construct their personal information environment that is the greatest promise of networked communications.''

30. Some proponents of oversight have thus argued that the Commission should apply a standard similar to strict scrutiny to content-based discrimination, to ensure that any discrimination be carefully tailored to serve the public interest, not merely a private interest. (As discussed below, we do not adopt this standard in the draft rules we propose.) Some parties further argue that broadband Internet access service providers should not be left to balance among competing public interests themselves, but rather that the Commission (or other government entity) must be the one to do so. In support of such oversight, proponents note that the government has undertaken a role in promoting communications technologies as a channel for speech and democratic content in other contexts, such as the cable ''must carry'' rules.

31. Opponents respond that such policies are unnecessary. In particular, they claim that a ''firestorm of controversy * * * would erupt if a major network owner embarked on a systematic campaign of censorship on its network,'' thus mitigating the need for formal policies.

d. Congestion

32. The existence of congestion in the network is a major motivating factor in the open Internet debate, and is central to arguments that differential pricing or service quality is necessary. Moreover, because the effects of delays or dropping of packets arising from congestion are not the same for all applications, broadband Internet access service providers and content, application, and service providers may have incentives to seek agreements for the prioritization of traffic or other quality of service guarantees. Permitting these activities without appropriate oversight could lead to a number of harms, undermining the public interest goals of the Act discussed above.

33. Although network operators may seek to alleviate congestion by increasing capacity, such actions would involve costs—in some cases large costs—and revenue opportunities might not justify the required investment. As a result, we must balance the need for incentives for infrastructure investment with the need to ensure that network operators do not adopt congestion management measures that could undermine the usefulness of the Internet to the public as a whole. We seek further comment on these issues below.

4. Next Steps

34. We summarized above a number of the key arguments in the ongoing open Internet debate. We recognize, however, that this summary may be incomplete. Thus, we seek comment on what other considerations should inform our analysis. We also seek qualitative or quantitative evidence and analysis that illuminates any of the above arguments, including specific examples. To what extent are particular

arguments independent of competitive conclusions regarding particular markets for broadband Internet access services? Even in effectively competitive markets for broadband Internet access service, what impact do switching costs and consumer lock-in effects have on broadband Internet access service providers' ability to act in ways that limit innovation in content, applications, and services and/or reduce overall welfare? To the extent that certain arguments do depend upon the particular competitive state of a market, how should the Commission define and evaluate such markets? What specific evidence is there regarding the competitive state of those markets? We also seek comment on whether and to what extent application of the generally applicable antitrust laws is sufficient to address the concerns we identify here. We further seek comment on the effect of our decision to promulgate or not promulgate rules on the availability of antitrust law to address anticompetitive conduct in the broadband Internet access service market, particularly in light of *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP* and *Credit Suisse Securities (USA) LLC* v. *Billing.* We note that policymakers in a number of other countries are considering similar issues, and we seek comment on the analyses of these issues that have been raised in those contexts, as well.

35. We also seek comment on possible implications that the draft rules we propose here might have on efforts to close the digital divide and encourage robust broadband adoption and participation in the Internet community by minorities and other socially and economically disadvantaged groups. According to a recent study, broadband adoption varies significantly across demographic groups, and African Americans, Hispanics, and lower-income Americans, among others, trail the national average in home broadband adoption. This disparity among broadband adoption rates is significant and impacts efforts to promote employment, education, healthcare, and consumer welfare. Minorities and other socially and economically disadvantaged groups may also face unique or particularly high barriers to innovation, communication, and civic participation on the Internet, and may be susceptible to discrimination. This may make open Internet protections particularly important for these groups. We invite comment on these and related issues.

B. Our Authority To Prescribe Rules Implementing Federal Internet Policy

36. Consistent with the *Comcast Network Management Practices Order*, we may exercise jurisdiction under the Act to regulate the network practices of facilities-based broadband Internet access service providers. We have ancillary jurisdiction over matters not directly addressed in the Act when the subject matter falls within the agency's general statutory grant of jurisdiction and the regulation is ''reasonably ancillary to the effective performance of the Commission's various responsibilities.'' That test is met with respect to broadband Internet access service.

37. As explained in the *Comcast Network Management Practices Order*, we believe that exercising ancillary authority over facilities-based Internet access will ''promote the objectives for which the Commission has been [specifically] assigned jurisdiction'' and ''further the achievement of * * * [legitimate] regulatory goals.'' The proposed rules we enunciate here will, we believe, advance the federal Internet policy set forth by Congress in section 230(b) as well as the broadband goals that section 706(a) of the Telecommunications Act of 1996 charges the Commission with achieving. Section 201(b), moreover, gives the Commission specific authority ''to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of th[e] Act.''

38. Voice and video services are increasingly delivered over the Internet, in actual or potential competition with voice and video offerings of companies that provide broadband Internet access. This growing interrelationship with voice and video services that the Commission has traditionally regulated pursuant to express statutory obligations and its general public interest mandate further supports the Commission's consideration of regulatory requirements for the provision of broadband Internet access service, and its ancillary jurisdiction to establish appropriate rules.

39. With respect to Internet access via spectrum-based facilities, we have additional authority pursuant to Title III of the Communications Act. We have recognized previously that the spectrum allocation and licensing provisions of Title III and the Commission's rules continue to apply to wireless broadband Internet access services because these services use radio spectrum. We have relied upon Title III authority in the past to regulate services provided by wireless carriers.

40. We invite comment on our view that we have jurisdiction over broadband Internet access service sufficient to adopt and enforce the proposed rules, or other rules that commenters propose.

C. Codifying the Existing Four Internet Principles

41. We believe that the four Internet principles have performed effectively their role of explicating statutory federal Internet policy. At the time the Commission adopted the principles, it stated that they were not rules but that it would ''incorporate the above principles into its ongoing policymaking activities.'' Those ongoing activities included a broadband practices proceeding, two public field hearings, and an enforcement action. After four years of evaluating market developments, we now believe it is appropriate to codify the four principles. Codification will increase certainty regarding the Commission's approach to preserving the open Internet.

42. We propose to codify the four principles at their current level of generality. Doing so will help establish clear requirements while giving us the flexibility to consider particular circumstances case by case. In that way, we will be able to generate over time a body of law that develops as technology and the marketplace evolve. As one commenter observed, ''given the extraordinarily rapid and wholly unpredictable evolution of services and applications, we see the need for policymaking principles centered on supporting innovation and protecting consumer interests in an agile, rather than prescriptive, way.''

43. We also propose to codify the principles as obligations of broadband Internet access service providers, rather than as describing what ''consumers are entitled'' to do with their service, as the original Internet principles were phrased. We believe that codifying them as obligations of particular entities, rather than just as principles, would make clear precisely who must comply and in what way. Making these rules apply to particular entities will also provide certainty to all Internet participants as to what to expect and who bears responsibility for what types of actions.

44. Finally, we affirm that these principles apply to all providers of Internet access service (other than via dial-up), regardless of the technology over which such service is delivered. We recognize that in other contexts, the term ''broadband'' may be used differently. We believe, however, that

defining broadband here to encompass all non-dial-up Internet access will ensure that our open Internet rules benefit as many users as possible and have broad application to protect the open Internet, however accessed. We seek comment on this approach to defining ''broadband.'' We propose that these rules should not apply to dial-up Internet access service. Title II regulation applies to users' telephone connections to dial-up Internet access service providers, and the Commission's interpretation of those obligations appears to have resulted in a market for dial-up Internet access service providers that does not present the same concerns as the market for broadband Internet access. In addition, because of the lower speed of dial-up Internet access service, many of the Internet applications and services that may benefit from quality-of-service assurances and that raise the greatest concerns regarding discrimination are unavailable over dial-up Internet connections as a practical matter. We seek comment on our proposal. We note that our use of the term ''broadband Internet access service'' in the context of this NPRM does not prejudge how the Commission might define that term in other contexts.

45. Specifically, we propose that all providers of broadband Internet access service must comply with the following four rules:

1. Subject to reasonable network management, a provider of broadband Internet access service may not prevent any of its users from sending or receiving the lawful content of the user's choice over the Internet.

2. Subject to reasonable network management, a provider of broadband Internet access service may not prevent any of its users from running the lawful applications or using the lawful services of the user's choice.

3. Subject to reasonable network management, a provider of broadband Internet access service may not prevent any of its users from connecting to and using on its network the user's choice of lawful devices that do not harm the network.

4. Subject to reasonable network management, a provider of broadband Internet access service may not deprive any of its users of the user's entitlement to competition among network providers, application providers, service providers, and content providers.

46. We believe that applying these rules to all providers of broadband Internet access service would support the statutory and policy goals we articulated above. First, these rules would support our goals of protecting consumers and encouraging innovation and investment. Ensuring that users can send and receive content, run applications, and use services of their choice allows them to take advantage of the diverse results of past investment and innovation, which in turn encourages further innovation and investment, and research and development. Likewise, ensuring that users can connect the devices of their choice to the network would encourage investment and innovation in the device market, and permits customers to change Internet access service providers more easily, which in turn would encourage more innovation among providers to win their business.

47. Second, these rules would support our goals of promoting competition. They would promote competition in the upstream markets for content, applications, and services by ensuring that users can take advantage of any offerings, not just those that are approved or selected by their Internet access service provider. These rules would also support our goals of promoting consumer protection, user empowerment, speech, and democratic participation.

48. We now address each principle in turn. The first principle in the *Internet Policy Statement*, and the first rule we propose to codify here, ensures that users are in control of the content that they send and receive. Making sure that users can express themselves freely on the Internet and receive the content of their choice ensures that users are unconstrained by broadband Internet access service providers in their ability to participate in the marketplace of ideas. Indeed, to further this interest in encouraging freedom of expression, we propose that the first rule make explicit that users can both send the content of their choice and receive the content of their choice. While the *Internet Policy Statement* principle referred only to users' ''access'' to content, we believe that the ability of a user to produce or distribute content is just as important as the ability to receive it. Indeed, anyone who posts a comment on a blog is ''sending'' content.

49. The second principle in the original *Internet Policy Statement* protects the ability of consumers to run applications and use services of their choice, subject to the needs of law enforcement. As explained below, we propose that all the principles be subject to the needs of law enforcement, as well as public safety, and national and homeland security, by proposing separate draft rules on these topics. As explained in more detail below, we intend to leave sufficient flexibility in all our rules to allow broadband Internet access service providers to address law enforcement, public safety, and national and homeland security needs. Furthermore, we have no intention of protecting unlawful activities in these rules. Therefore, for additional precision, we add the word ''lawful'' to the proposed second rule to make clear that nothing here requires broadband Internet access service providers to allow users to engage in unlawful activities. The addition of the word ''lawful'' also harmonizes the second proposed rule with the first and third.

50. The third principle in the original *Internet Policy Statement* allows users to connect their choice of legal devices that do not harm the network. The proposed rule changes the word ''legal'' to ''lawful'' for harmony with the other proposed rules. We do not intend any difference in meaning by changing this particular word. In addition, the proposed rule would protect the ability of users to connect and use such devices. We add this clarification to avoid any overly narrow reading of the proposed rule, and as discussed below, seek comment on the application of this proposed rule to wireless networks.

51. The fourth principle in the original *Internet Policy Statement* protects competition among network providers, application and service providers, and content providers. Here, we change the proposed wording of the last three types of providers—application, service, and content—to be consistent with other proposed rules. Again, no substantive difference is intended by that change.

52. We propose not to adopt a specific definition of ''content, application, or service provider,'' because any user of the Internet can be such a provider. For example, anyone who creates a family Web site for sharing photographs could be reasonably classified as a ''content provider.'' We believe that this broad interpretation of the phrase would reinforce the other principles and the overall goals of this rulemaking.

53. As stated, we propose that all four principles would apply to all forms of broadband Internet access service, regardless over which technology platform they are provided. We explain below that all four principles would be subject to reasonable network management and the needs of law enforcement, public safety, and homeland and national security authorities. In addition, we seek comment on the implications of these principles for broadband Internet access over mobile wireless networks and how, and in what time frames or phases, and to what extent they can be fairly and appropriately implemented.

54. At least one commenter in this proceeding has suggested that we should read the *Internet Policy Statement* as embodying obligations binding on content, applications, and service providers in addition to broadband Internet access service providers. Although the question of Internet openness at the Commission has traditionally focused on providers of broadband Internet access service, we seek comment on the pros and cons of phrasing one or more of the Internet openness principles as obligations of other entities, in addition to providers of broadband Internet access service.

55. We also seek comment in general on our formulation of these proposed rules, including whether the fourth principle is appropriate for codification as a rule or whether the other rules we propose in this NPRM adequately achieve the fourth principle's purposes. We seek comment, including any applicable data and specific examples, on the likely costs and benefits of each of these proposed rules. We also seek comment on whether and how codifying these principles will promote free speech, civic participation, and democratic engagement. Will codifying these principles help preserve the Internet's status as ''a forum for a true diversity of political discourse'' and an open platform for publication of information?

D. Codifying a Principle of Nondiscrimination

56. As discussed above, the ability of network operators to discriminate in price or service quality among different types of traffic or different providers or users may impose significant social costs, particularly if the discrimination is motivated by anticompetitive purposes. At the same time, we recognize that traffic on the Internet is increasing rapidly and that broadband Internet access service providers must be able to manage their networks and experiment with new technologies and business models in ways that benefit consumers. The key issue we face is distinguishing socially beneficial discrimination from socially harmful discrimination in a workable manner.

57. Based on the record, we propose a general rule prohibiting a broadband Internet access service provider from discriminating against, or in favor of, any content, application, or service, subject to reasonable network management. More specifically we propose the following new rule:

5. Subject to reasonable network management, a provider of broadband Internet access service must treat lawful content, applications, and services in a nondiscriminatory manner.

58. We further propose that, as with the previous four rules, this rule should be subject to exceptions for the needs of law enforcement, public safety, national and homeland security authorities, as discussed at greater length below.

59. We understand the term ''nondiscriminatory'' to mean that a broadband Internet access service provider may not charge a content, application, or service provider for enhanced or prioritized access to the subscribers of the broadband Internet access service provider. We propose that this rule would not prevent a broadband Internet access service provider from charging subscribers different prices for different services. We seek comment on each of these proposals. We also seek comment on whether the specific language of this draft rule best serves the public interest.

60. In defining the scope of this proposed fifth rule, we propose to focus on that portion of the connection between a broadband Internet access service subscriber and the Internet for which the broadband Internet access service provider, as discussed above, may have the ability and the incentive to favor or disfavor traffic destined for its end-user customers. We seek comment on this proposal, and how best to define the portion of the network subject to the fifth rule.

61. We believe that the proposed nondiscrimination rule, subject to reasonable network management and understood in the context of our proposal for a separate category of ''managed'' or ''specialized'' services (described below), may offer an appropriately light and flexible policy to preserve the open Internet. Our intent is to provide industry and consumers with clearer expectations, while accommodating the changing needs of Internet-related technologies and business practices. Greater predictability in this area will enable broadband providers to better plan for the future, relying on clear guidelines for what practices are consistent with federal Internet policy. First, as explained in detail below, reasonable network management would provide broadband Internet access service providers substantial flexibility to take reasonable measures to manage their networks, including but not limited to measures to address and mitigate the effects of congestion on their networks or to address quality-of-service needs, and to provide a safe and secure Internet experience for their users. We also recognize that what is reasonable may be different for different providers depending on what technologies they use to provide broadband Internet access service (*e.g.*, fiber optic networks differ in many important respects from 3G and 4G wireless broadband networks). We intend reasonable network management to be meaningful and flexible. Second, as explained below, we recognize that some services, such as some services provided to enterprise customers, IP-enabled ''cable television'' delivery, facilities-based VoIP services, or a specialized telemedicine application, may be provided to end users over the same facilities as broadband Internet access service, but may not themselves be an Internet access service and instead may be classified as distinct managed or specialized services. These services may require enhanced quality of service to work well. As these may not be ''broadband Internet access services,'' none of the principles we propose would necessarily or automatically apply to these services. In this context, with a flexible approach to reasonable network management, and understanding that managed or specialized services, to which the principles do not apply in part or full, may be offered over the same facilities as those used to provide broadband Internet access service, we believe that the proposed approach to nondiscrimination will promote the goals of an open Internet.

62. We note that our proposed nondiscrimination and reasonable network management rule bears more resemblance to unqualified prohibitions on discrimination added to Title II in the 1996 Telecommunications Act than it does to the general prohibition on ''unjust or unreasonable discrimination'' by common carriers in section 202(a) of the Act. We seek comment on whether an ''unjust or unreasonable discrimination'' standard would be preferable to the approach we propose. As explained above, rather than extending that common carrier standard to broadband Internet access services, we propose a general nondiscrimination rule subject to reasonable network management and specifically enumerated exceptions (including separate treatment of managed or specialized services). We believe that a bright-line rule against discrimination, subject to reasonable network management and enumerated exceptions, may better fit the unique characteristics of the Internet, which differs from other communications networks in that it was not initially designed to support just one application (like telephone and cable television

networks), but rather to allow users at the edge of the network to decide toward which lawful uses to direct the network.

63. If we were to prohibit ''unjust or unreasonable'' discrimination by broadband providers, we anticipate that the types of discrimination that would be considered ''just'' and ''reasonable'' would likely be reasonable network management or fall within one of the exceptions described below. We base that belief on our four years of experience under the *Internet Policy Statement* and our familiarity with the debate over open Internet principles, which began well before 2005. As we note below, we believe that a case-by-case approach to providing more detailed rulings in this area is inevitable and valuable. At the same time, where we can identify and describe ex ante exceptions to the general nondiscrimination rule, we believe it is helpful to do so. As explained below, moreover, we propose that the nondiscrimination rule would be subject to reasonable network management, which we believe would be sufficient to address concerns that a general prohibition on discrimination lacks necessary flexibility. To be sure, the contours of our proposed exceptions would be subject to development in future adjudications. We would not, however, have to establish the exceptions themselves through that process.

64. We seek comment on these proposals. We seek comment generally on the costs and benefits of this proposed nondiscrimination rule, both in the near-term and long-term. In particular, would a rule prohibiting broadband Internet access service providers from charging content, application and service providers fees be likely to result in higher social welfare than would result in a market in which no constraints on such fees are imposed? What would the effects be on future innovation?

65. We seek comment on the effects that prohibiting charges to content, application, and service providers for enhanced or prioritized service would have on broadband Internet access service users. In discussing these issues, we encourage parties to be specific in describing whether, when, and how broadband Internet access service providers charge content, application, and service providers for prioritization of traffic today, and any consequences they believe would arise from prohibiting broadband Internet access service providers from charging for prioritization.

66. More generally, we seek comment on how the proposed nondiscrimination rule would affect broadband Internet access service providers' pricing and practices, including network deployment, and the current or planned offerings of particular Internet content, application, and service providers. Are there particular content, applications, or services whose quality and utility to end users depends on a broadband Internet access service provider's assuring a certain quality of service? For example, do services such as VoIP, video conferencing, IP video, or telemedicine applications depend on discrimination in how traffic is handled? To the extent that parties believe enhanced or guaranteed quality of service is required for certain content, applications, or services, they should identify specifically the content, applications, and services for which such practices are required and explain why it is required. What would the practical differences be between permitting operators to manage their networks to assure quality of service to particular types of traffic—*e.g.*, all VoIP traffic—and the offering of such management for a fee or other consideration? Would the proposed nondiscrimination rule discourage innovation in or development of certain types of content, applications, or services? Should these services be more properly understood as managed or specialized services rather than broadband Internet access services?

67. Have we correctly identified the costs and benefits of the alternative approaches? Does subjecting the nondiscrimination rule to reasonable network management ensure that network operators can reasonably manage their networks consistent with the intent of preserving the free and open Internet? Does the separate regulatory category of managed or specialized services allow beneficial discrimination to serve the public? Conversely, are there any socially beneficial forms of discrimination that would not fall within the category of reasonable network management or the exceptions discussed below? If so, should we instead adopt a rule prohibiting only unreasonable discrimination? Would a rule prohibiting unreasonable discrimination permit socially beneficial discrimination that would be prohibited under a nondiscrimination rule? Would such a rule be inconsistent with the Internet's traditional operation or otherwise undermine the manifold benefits the open Internet has provided? Would a prohibition on unreasonable discrimination, standing alone, be less certain, harder to enforce, or both? Would it create greater incentives for broadband Internet access service providers to engage in socially harmful discrimination?

68. More generally, we seek comment on the relationship between the proposed rules and the requirements of Title II of the Act. For example, should the standards for evaluating discrimination be based on the Commission's precedent under either section 202 or section 272 of the Act? Has ex post enforcement of similar prohibitions on discrimination and unreasonable discrimination proven adequate in other contexts?

69. We also seek comment on whether our proposed nondiscrimination rule will promote free speech, civic participation, and democratic engagement. Would discrimination by access providers interfere with those goals? Conversely, would our proposed rule impose any burdens on access providers' speech that would be cognizable for purposes of the First Amendment, and if so, how? Would any burden on access providers' speech be outweighed by the speech-enabling benefits of an open Internet that provides a non-discriminatory platform for the robust interchange of ideas?

70. Finally, we note that NTIA and RUS, in administering the BTOP and BIP broadband grant and loan programs, required applicants to agree, among other things, ''not [to] favor any lawful Internet applications and content over others.'' We seek comment on how BTOP and BIP applicants have proposed to comply with these requirements and how this might inform the Commission's definition of a nondiscrimination rule.

E. Codifying a Principle of Transparency

71. In this part, we propose to codify a sixth principle of transparency. In general, we believe that sunlight is the best disinfectant and that transparency discourages inefficient and socially harmful market behavior. As we noted in our recent Consumer Information and Disclosure Notice of Inquiry (NOI), access to accurate information plays a vital role in maintaining a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services. The Consumer Information and Disclosure NOI, however, focuses on a broad array of consumer issues that cut across all communications service offerings, while here we seek comment on the specific issue, not raised in that NOI, of how broadband Internet access service providers should disclose relevant network management practices to

consumers as well as to content, application, and service providers and to government. As previously noted, recipients of BTOP and BIP grants are required to disclose network management practices on their Web sites. We propose a transparency principle to protect and empower consumers and to maximize the efficient operation of relevant markets by ensuring that all interested parties have access to necessary information about the traffic management practices of networks. At the same time, recognizing the potential burdens of such rules, we seek to design a transparency rule that is minimally intrusive. We seek comment below on how to balance these goals and reiterate our desire for comments that include data and specific examples.

72. We believe that adopting a rule requiring transparency would benefit several constituencies. First, disclosure rules would enable broadband subscribers to understand and take advantage of the technical capabilities and limitations of the services they purchase. Second, disclosure would benefit content, application, and service providers and investors by increasing access to information needed to develop and market new Internet offerings. Third, disclosure would benefit policy makers and the Internet users who rely on them by providing an empirical foundation for evaluating the effectiveness and necessity of ongoing policies. As such, we propose codifying a sixth principle of transparency as follows:

6. Subject to reasonable network management, a provider of broadband Internet access service must disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in this part.

We propose that, as with the previous five rules, this rule should be subject to reasonable network management and the needs of law enforcement, public safety, and homeland and national security, as discussed at greater length below.

73. We seek comment on the specific wording of this proposed rule. In particular, we seek comment on how we should interpret what information is ''reasonably required'' and whether there are some standard practices that should be excluded from such mandatory disclosure. We also seek comment on alternative proposed formulations of the rule, including whether the rule should require disclosure of information directly to the Commission.

74. *Disclosure to Users.* In the Consumer Information and Disclosure NOI, we sought comment on a broad range of issues related to disclosure to consumers. In this NPRM, we seek comment more narrowly on the kind of required disclosures to users that would effectuate the Internet principles discussed herein. Specifically, we propose that broadband Internet access service providers should be required to disclose information to users concerning network management and other practices that may reasonably affect the ability of users to use the devices, send or receive the content, use the services, run the applications, and enjoy the competitive offerings of their choice.

75. Commenters to the National Broadband Plan NOI have generally agreed that disclosure of network management practices is important for users. A large number of commentators on open Internet principles in our Broadband Industry Practices proceeding—both those in favor of a nondiscrimination principle and those opposed—likewise believe that broadband Internet access service providers should be required to disclose more information about their network management practices than they currently disclose. Disclosure of this information would correct information asymmetries and allow users to make informed purchasing and usage decisions.

76. We have in the past found evidence of service providers concealing information that consumers would consider relevant in choosing a service provider or a particular service option. For example, in Madison River and Comcast, broadband Internet access service providers blocked specific applications desired by users without informing them. In a recent academic study, thousands of incidents were observed in which BitTorrent uploads were blocked in the United States during early 2008. Specifically, the study found that ''BitTorrent uploads are being blocked for a significant number of hosts, mostly from ISPs in the USA and in Singapore.'' At that time, the U.S. Internet service providers whose customers experienced the most blocking had not publicly disclosed their network and congestion management practices, nor had most other providers. Of major broadband providers, only a handful appear to publicly disclose their network and congestion management practices.

77. After the Commission issued the *Comcast Network Management Practices Order,* some providers voluntarily disclosed congestion management practices on their Web sites. Nevertheless, there may be other instances of unreported application blocking or other practices that limit consumers' ability to access content, applications, or services of their choice on the Internet. In the absence of disclosure rules, we have no way of knowing the full extent of these practices. Nor do users.

78. We seek comment on what consumers need to know about network management practices to make informed purchasing decisions and to make informed use of the services they purchase. We believe that many consumers need information concerning actual (as opposed to advertised) transmission rates, capacity, and any network management practices that affect their quality of service. Commenters should address what types of network management practices could interfere with or restrict service and what types of disclosure would be appropriate. Should broadband Internet access service providers be required to disclose, for example, the times of day users are most likely to be affected by network congestion, or the steps providers might take to control or alleviate congestion? Disclosure of service information is vital to consumer choice both before and after a consumer decides to purchase a service. Thus, we seek comment on the types of information broadband Internet access service providers should be required to disclose to consumers before and after purchase.

79. We also seek comment on how this information should be disclosed to users. Are there standard labeling formats that could be used to disclose network management practices to users? Are there technological tools available now, or current tools that could be easily adapted, to facilitate consumer comparisons of network management practices? We seek examples of disclosure, both within and outside the communications market, that are both useful for consumers and not unnecessarily burdensome. We note that some current disclosure practices appear too general to be useful to users. On the other hand, too much detail may be counter-productive if users ignore or find it difficult to understand those details. We seek comment on the appropriate balance. Similarly, we seek comment on how disclosure can be tailored not to unduly burden broadband Internet access service providers. We propose that providers should be able to publicly disclose their practices on their Web sites and promotional material. Are there other

consumer-friendly outlets for this information that broadband Internet access service providers can use without undue cost and effort?

80. *Disclosure to Content, Application, and Service Providers.* Content, application, and service providers should have adequate information about network management practices to enable them to innovate and provide their products and services effectively to users. By reducing uncertainty, transparency should increase the ability and incentives of these providers to invest and innovate and engage in research and development. We seek comment on what information is currently available, what additional information should be made available, and how this information should be made available to content, application, and service providers. Are there current examples of disclosure to upstream entities by broadband Internet access service providers that could serve as a useful model for any disclosure requirements? Would the comparably efficient interconnection (CEI) and open network architecture (ONA) rules the Commission adopted in *Computer III* provide a useful guide in developing disclosure requirements in this context? Should broadband Internet access service providers make such disclosures available on their Web sites? Are there particular formats that would make the disclosures more accessible and useful for content, application, and service providers? We also seek comment on how such required disclosures can be tailored not to unduly burden broadband Internet access service providers.

81. *Disclosure to Government.* The Commission should have access to the information it needs to enforce any rules adopted in this proceeding and to make informed policy decisions going forward. We seek comment on the frequency and content of any reports from broadband Internet access service providers that would make open Internet policies enforceable and/or provide a useful tool for policy making. Specifically, what should broadband Internet access service providers be required to disclose to the Commission, if anything? Network management practices disclosed to consumers both before and after they purchase broadband Internet access service? A list of the methods of disclosure? Should providers report the number and content of any consumer complaints about the adequacy of disclosure both pre- and post-sale? Should broadband Internet access service providers also report the same information for complaints filed by content, application, and service providers? How frequently should the Commission require such reports? Are there governmental agencies, other than this Commission, to which disclosures should be made, and if so, what information should be disclosed?

82. *General Issues.* We seek comment on what events should trigger disclosure obligations, how these disclosures should be made and in what format, how often they should be made, and whether the disclosures should be uniform or tailored to specific purposes and audiences. Should broadband Internet access service providers be required to disclose any changes to their network management practices before or within a certain period of time after implementing those changes? Would current or past disclosure practices serve as good models for disclosure to consumers; content, application, and service providers; and the Commission?

83. We do not anticipate that any disclosures required by the proposed transparency rule would implicate personally identifiable information or individuals' privacy interests or any proprietary network data. However, we seek comment on whether this assumption is correct. We further seek comment on any network security, online safety, and competition concerns that might be raised by the proposed transparency rule. If such concerns exist, how can we best address them in our rules? Should certain information be disclosed only to the Commission and not to the public, upon a showing of good cause that public disclosure would cause significant harms? We note that parties in other proceedings have raised public safety and competitive harm concerns about such reports. We also propose that any routine reports should not affect our ability or the ability of other government entities to gather any network management information necessary to comply with or enforce the law.

84. We also seek comment on general arguments against disclosure requirements. Specifically, is network management information genuinely of use to users and/or content, application, and service providers? Would disclosure slow innovation in the network or slow or deter research in efficient network design? We also seek comment on whether transparency will encourage or enable users and/or content, application, and service providers to circumvent legitimate network management tools designed, for example, to manage congestion.

85. Finally, we seek comment on legal limitations on the type of information broadband Internet access service providers may disclose. For example, we note there are several laws that prohibit disclosure by a broadband Internet access service provider to the end user of the provider's compliance with certain requests of law enforcement authorities. We seek comment on whether the proposed exception to the rules for the needs of law enforcement, discussed below, adequately addresses this issue.

F. Reasonable Network Management, Law Enforcement, Public Safety, and Homeland and National Security

86. As stated above, our goals in this proceeding are to encourage investment and innovation, promote competition, and protect the rights of users, including promoting speech and democratic participation. While the six rules proposed above are derived from and designed to support these goals, there may be times when strict application of those rules would be in tension with these goals. For example, the general usefulness of the Internet could suffer if spam floods the inboxes of users, if viruses affect their computers, or if network congestion impairs their access to the Internet. Other critical governmental interests such as law enforcement, national security, and public safety may require that Internet access service providers discriminate with regard to particular traffic. For example, a failure to prioritize certain types of traffic in the case of an emergency could impair the efforts of first responders. Consequently, we must ensure that our framework provides a way to balance potentially competing interests while helping to ensure an open, safe, and secure Internet. We propose that all six proposed rules should be subject to (1) reasonable network management, (2) the needs of law enforcement, and (3) the needs of public safety and homeland and national security. The original second Internet principle, rather than all four, was subject to the needs of law enforcement. We believe it would be preferable to make clear that all principles are subject to the needs of law enforcement, as well as those of public safety and homeland and national security, and seek comment on that proposal.

87. As with the six proposed rules, we propose to describe these concepts at a relatively general level and leave more detailed rulings to the adjudications of particular cases, as we did in the *Comcast Network Management Practices Order*. As in that order, the novelty of Internet access and traffic management questions, the complex

nature of the Internet, and a general policy of restraint in setting policy for Internet access service providers weigh in favor of a case-by-case approach. We contemplate that individual adjudications will principally involve resolution of complaints about broadband Internet access service providers' specific practices. Providers would not be required to seek a declaratory ruling from the Commission before a practice is actually deployed, but they or others would be free to do so. Accordingly, we propose to lay out a few examples of proper and improper application of the concepts here but to reserve definition of the precise contours of these concepts for future adjudications. This course should allow us to proceed cautiously with respect to these emerging issues and to do so with sensitivity to the fast-changing nature of the Internet and its continued growth. We discuss each of these concepts in turn.

1. Reasonable Network Management

88. Here we discuss the proposed definition of reasonable network management:

Reasonable network management consists of: (a) Reasonable practices employed by a provider of broadband Internet access service to (i) reduce or mitigate the effects of congestion on its network or to address quality-of-service concerns; (ii) address traffic that is unwanted by users or harmful; (iii) prevent the transfer of unlawful content; or (iv) prevent the unlawful transfer of content; and (b) other reasonable network management practices.

89. There appear to be several types of situations that could justify a broadband Internet access service provider's acting inconsistently with the six open Internet principles described above. First, if a broadband Internet access service provider's network is or appears likely to become congested to such a degree that an individual user's Internet access is noticeably affected, the broadband Internet access service provider may be justified in taking reasonable steps to reduce or mitigate the adverse effects of that congestion or to address quality-of-service concerns. Second, it may be reasonable for a provider to take measures to counter traffic that is harmful or unwanted by users. Third, if particular content or a particular transfer of content is prohibited by law, the provider may be justified in not carrying that traffic. Finally, there may be other situations in which network management practices do not fall into one of these categories but may nevertheless be reasonable. We address each of these categories in turn.

90. First, we propose that a broadband Internet access service provider may take reasonable steps to reduce or mitigate the adverse effects of congestion on its network or to address quality-of-service concerns. What constitutes congestion, and what measures are reasonable to address it, may vary depending on the technology platform for a particular broadband Internet access service. For example, if cable Internet subscribers in a particular neighborhood are experiencing congestion, it may be reasonable for an Internet service provider to temporarily limit the bandwidth available to individual users in that neighborhood who are using a substantially disproportionate amount of bandwidth until the period of congestion has passed. Alternatively, a broadband Internet service provider might seek to manage congestion by limiting usage or charging subscribers based on their usage rather than a flat monthly fee. Some have suggested it would be beneficial for a broadband provider to protect the quality of service for those applications for which quality of service is important by implementing a network management practice of prioritizing classes of latency-sensitive traffic over classes of latency-insensitive traffic (such as prioritizing all VoIP, gaming, and streaming media traffic). Others have suggested that such a practice would be difficult to implement in a competitively fair manner and could undermine the benefits of a nondiscrimination rule, including keeping barriers to innovation low. We seek comment on whether these and other potential approaches to addressing congestion would be reasonable. On the other hand, we believe that it would likely not be reasonable network management to block or degrade VoIP traffic but not other services that similarly affect bandwidth usage and have similar quality-of-service requirements. Nor would we consider the singling out of any particular content (*i.e.,* viewpoint) for blocking or deprioritization to be reasonable, in the absence of evidence that such traffic or content was harmful. We recognize that in a past adjudication, the Commission proposed that for a network management practice to be considered ''reasonable,'' it ''should further a critically important interest and be narrowly or carefully tailored to serve that interest.'' We believe that this standard is unnecessarily restrictive in the context of a rule that generally prohibits discrimination subject to a flexible category of reasonable network management. We seek comment on our proposal not to adopt the standard articulated in the *Comcast Network Management Practices Order* in this rulemaking.

91. Second, we propose that broadband Internet access service providers may address harmful traffic or traffic unwanted by users as a reasonable network management practice. For example, blocking spam appears to be a reasonable network management practice, as does blocking malware or malicious traffic originating from malware, as well as any traffic that a particular user has requested be blocked (*e.g.,* blocking pornography for a particular user who has asked the broadband Internet access service provider to do so).

92. Third, we propose that broadband Internet access service providers would not violate the principles in taking reasonable steps to address unlawful conduct on the Internet. Specifically, we propose that broadband Internet access service providers may reasonably prevent the transfer of content that is unlawful. For example, as the possession of child pornography is unlawful, consistent with applicable law, it appears reasonable for a broadband Internet access service provider to refuse to transmit child pornography. Moreover, it is important to emphasize that open Internet principles apply only to lawful transfers of content. They do not, for example, apply to activities such as the unlawful distribution of copyrighted works, which has adverse consequences on the economy and the overall broadband ecosystem. In order for network openness obligations and appropriate enforcement of copyright laws to co-exist, it appears reasonable for a broadband Internet access service provider to refuse to transmit copyrighted material if the transfer of that material would violate applicable laws. Such a rule would be consistent with the *Comcast Network Management Practices Order,* in which the Commission stated that ''providers, consistent with federal policy, may block * * * transmissions that violate copyright law.''

93. Finally, we propose that broadband Internet access service providers may take other reasonable steps to maintain the proper functioning of their networks. We include this catch-all for two reasons. First, we do not presume to know now everything that providers may need to do to provide robust, safe, and secure Internet access to their subscribers, much less everything they may need to do as technologies and usage patterns change in the future. Second, we believe that

additional flexibility to engage in reasonable network management provides network operators with an important tool to experiment and innovate as user needs change.

94. We seek comment on the specific wording of the proposed definition of reasonable network management. We seek comment on how to evaluate whether particular network management practices fall into one or more of these categories and on who should bear the burden of proof on that issue. We ask parties to identify other laws that would require or permit broadband Internet access service providers to act in a manner inconsistent with the six rules. We seek comment on whether certain network management techniques are considered best practices in the network engineering community or are consistent with industry standards and cooperative agreements. We note that in section IV.H we seek comment on how to consider reasonable network management practices in the context of broadband Internet access over mobile wireless networks. We also note that standards bodies such as the Internet Engineering Task Force (IETF) have played a significant role in developing network management protocols, and we seek comment on whether the IETF, other standards bodies, or other third parties could help define more precisely what practices are reasonable or, specifically in the context of copyright protection, how it could be determined whether the transfer of particular content is unlawful. We ask that parties support their comments with data and specific examples where possible.

2. Law Enforcement

95. Federal law has long recognized the importance of permitting law enforcement access to communications networks in certain circumstances. The Communications Assistance for Law Enforcement Act, for example, requires broadband Internet access service providers to assist law enforcement in intercepting, tracking, and identifying communications made over their networks. The Foreign Intelligence Surveillance Act authorizes law enforcement collecting foreign intelligence or working to thwart a threat to national security to wiretap communications over the Internet and prohibits an Internet access service provider from disclosing the existence of the wiretap to its subscriber. And the Electronic Communications Privacy Act creates a framework for law enforcement to work with Internet access service providers and others for the purpose of investigating and monitoring information stored on or transiting the Internet while balancing the privacy interests of affected parties. We believe that a broadband Internet access service provider may comply with these laws and otherwise meet the needs of law enforcement without violating the rules we propose today. For example, we do not believe that nondisclosure of a wiretap to a surveillance target would violate a carrier's transparency obligations as proposed here.

96. Accordingly, we propose the following new rule:

Nothing in this part supersedes any obligation a provider of broadband Internet access service may have—or limits its ability—to address the needs of law enforcement, consistent with applicable law.

97. We seek comment on our conclusions and on the specific wording of this proposed rule. We also seek comment on instances in which broadband Internet access service providers have or may in the future need to facilitate the needs of law enforcement, including in ways that, in the absence of the exception proposed in this section, might conflict with the rules we propose today. In particular, we seek specific examples and data regarding these issues.

3. Public Safety and Homeland and National Security

98. In connection with a local, regional, or national emergency, federal, state, tribal, and local public safety entities; homeland security personnel; and other appropriate governmental agencies may need guaranteed access to reliable communications over the Internet in order to coordinate disaster relief and other response efforts, or for other emergency communications. Guaranteeing quality of service for these purposes may be critically important to our national security and safety. For example, during a public health emergency, increased absenteeism and utilization of teleworking would likely increase the number of users seeking to access the Internet from numerous discrete points (*e.g.,* residences). The performance of essential functions could be impeded by unmanaged network congestion resulting from this change in usage patterns.

99. Accordingly, we propose the following new rule:

Nothing in this part supersedes any obligation a provider of broadband Internet access service may have—or limits its ability—to deliver emergency communications, or to address the needs of public safety or national or homeland security authorities, consistent with applicable law.

100. We seek comment on our conclusions and on the specific wording of this proposed rule. We also seek comment on instances in which broadband Internet access service providers have or may in the future need to facilitate the needs of public safety or national or homeland security, including in ways that, in the absence of the exception proposed in this section, might conflict with the rules we propose today. We reiterate our desire for specific examples and data regarding these issues.

G. Managed or Specialized Services

101. As rapid innovation in Internet-related services continues, we recognize that there are and will continue to be Internet-Protocol-based offerings (including voice and subscription video services, and certain business services provided to enterprise customers), often provided over the same networks used for broadband Internet access service, that have not been classified by the Commission. We use the term ''managed'' or ''specialized'' services to describe these types of offerings. The existence of these services may provide consumer benefits, including greater competition among voice and subscription video providers, and may lead to increased deployment of broadband networks.

102. We recognize that these managed or specialized services may differ from broadband Internet access services in ways that recommend a different policy approach, and it may be inappropriate to apply the rules proposed here to managed or specialized services. However, we are sensitive to any risk that the growth of managed or specialized services might supplant or otherwise negatively affect the open Internet. In this section, we seek comment on whether and, if so, how the Commission should address managed or specialized IP-based services in order to allow providers to develop new and innovative technologies and business models and to otherwise further the goals of innovation, investment, competition, and consumer choice, while safeguarding the open Internet.

103. We begin by seeking comment on what functions such managed or specialized services might fulfill. For example, AT&T offers its U-verse multi-channel, Internet-Protocol-based video service through the same network as its fiber-based broadband Internet access offering, and the record in our National Broadband Plan proceeding includes discussion of potential future offerings such as specialized telemedicine, smart grid, or eLearning applications that may require or benefit from enhanced quality

of service rather than traditional best-effort Internet delivery. What other managed or specialized services are currently being offered or may be offered in the near future? What specific content, applications, or services may require enhanced quality-of-service offerings, and why? What kinds of special or enhanced treatment are required? Are or will managed or specialized services be provided over the same network and to the same users who subscribe to broadband Internet access service? We encourage commenters to be as specific as possible about the current or likely future identity of such offerings; their technical characteristics, including whether they traverse more than one service provider's network; the technical characteristics of any enhanced quality of service offering that might be required for such content, application, or service; and sales and marketing arrangements for such content, application, or service, as well as for any enhanced quality of service offering (*e.g.,* are or would such offerings be sold or marketed as part of other services or as a distinct service, whether bundled or stand-alone?).

104. More generally, how should we define the category of managed or specialized services? How are managed or specialized services different from broadband Internet access service as defined in this NPRM, and what are their essential distinguishing characteristics? Is allocation of available bandwidth for managed or specialized services versus broadband Internet access services a critical factor in analyzing such issues?

105. In addition, we seek comment on what policies should apply to managed or specialized services, if any, in light of the Commission's statutory mandate and the goals of this rulemaking process. Should the Commission classify these services for policymaking purposes, and if so, how? If rules are appropriate in this area, what should those rules state? Should any of the rules proposed here for broadband Internet access service apply to managed or specialized services?

106. Finally, we seek comment on what impact managed or specialized services might have on the open Internet and the advancement of the goals of this rulemaking process, and how the Commission should address any such impacts. Will managed or specialized services increase or reduce investment in broadband network deployment and upgrades? Will network providers provide sufficient capacity for robust broadband Internet access service on shared networks used for managed or specialized services? Again, we encourage commenters to be as specific and fact-based as possible in addressing these issues.

H. Applicability of Principles to Different Broadband Technology Platforms

107. As our choices for accessing the Internet continue to increase, and as users connect to the Internet through different technologies, the principles we propose today seek to safeguard its openness for all users. We affirm that the six principles that we propose to codify today would apply to all platforms for broadband Internet access. Nevertheless, we acknowledge that technological, market structure, consumer usage, and historical regulatory differences between different Internet access platforms may justify differences in how we apply the Internet openness principles to advance the goals of innovation, investment, research and development, competition, and consumer choice. While there has been considerable discussion and factual development regarding openness issues in the wireline context, other Internet access platforms present additional important issues related to openness that merit focused attention. In this section, we seek comment on the application of the principles to different access platforms, including how, in what time frames or phases, and to what extent the principles should apply to non-wireline forms of Internet access, including, but not limited to, terrestrial mobile wireless, unlicensed wireless, licensed fixed wireless, and satellite.

108. Since the adoption of the *Internet Policy Statement* in 2005, alternative platforms for accessing the Internet have flourished, unleashing tremendous innovation and investment. In particular, wireless broadband Internet access has emerged as a technology that, from a consumer's perspective, now supports many of the same functions as DSL and cable modem service. For example, a consumer's laptop can be connected to the Internet through wireless or landline technologies. As noted above, the AT&T-BellSouth neutrality commitment extended to fixed WiMAX service. Wireless Internet access is provided through a variety of methods and technologies and is faster in most cases than dial up.

109. Because of the rapid growth and increasing use of mobile wireless as a platform for broadband Internet access, we will examine in greater detail in the following parts the application of the principles to mobile broadband Internet access. We note as a threshold matter that wireless providers may offer a range of services—including traditional voice, short message service (SMS), and media messaging service (MMS)—that are not broadband Internet access services and thus are not included in the scope of the draft rules discussed above.

110. The manner in which the principles apply to mobile Internet access raises challenging questions, particularly with respect to the attachment of devices to the network and discrimination with regard to access to content, applications, and services, subject to reasonable network management. The difficulty of the questions is in part due to the way in which devices, applications, and content are provided today in the mobile wireless context. Moreover, we note that mobile wireless networks are not as far along in the process of transitioning to IP-based traffic as wireline networks. We seek to analyze fully the implications of these principles for mobile network architectures and practices as well as how, in what time frames or phases, and to what extent they can be fairly and appropriately implemented. We undertake this analysis with a focus on promoting innovation, investment, research and development, competition, and consumer choice, in order to support a thriving Internet and robust mobile wireless broadband networks.

1. Emergence of Mobile Internet Access

111. Mobile wireless is now a key platform enabling consumers to access communications services. Since 2004, the number of mobile telephone subscribers has exceeded the number of landlines. More recently, mobile wireless has emerged as an important method of Internet access. The first 3G networks went into service in 2003, and today tens of millions of Americans access the Internet through mobile handheld devices or through personal computers or other devices equipped with wireless Internet capability. In the past four years, the number of mobile devices capable of high-speed Internet access grew from approximately 400,000 to more than 59 million by the end of June 2008. 3G networks have enabled speeds comparable to some fixed access networks, offering a robust Internet experience. And in the future, with new 3.5G and 4G networks, some consumers may use mobile wireless devices for all of their Internet access services. Simultaneously, new devices have emerged to take advantage of faster 3G network speeds. Many of today's smartphones (*e.g.,* Blackberry, iPhone, Palm Pre, and phones based on the Android or Windows Mobile platforms) are essentially handheld computers

with fully featured Web browsers and the ability to run thousands of applications, many of which utilize the Internet, and more and more Americans are using these devices. Similarly, wireless modems are increasingly allowing laptops, netbooks, and desktop computers to connect to the Internet.

112. In evaluating the highly dynamic landscape for mobile wireless broadband Internet access, we recognize that there are technological, structural, consumer usage, and historical differences between mobile wireless and wireline/cable networks. In order to facilitate connection and quality of communications over these radio links, wireless networks employ technical controls over factors such as the frequency, time, and power of the phones' signals. The customer device communicates with the network using a specified technical interface. Moreover, cellular wireless networks are shared networks (as are some types of wireline networks), with limited resources typically shared among multiple users. Wireless networks must deal with particularly dynamic changes in the communications path due to radio interference and propagation effects such as signal loss with increasing distance of the wireless phone from the base stations, fading, multipath, and shadowing.

113. The mobile wireless industry structure has evolved differently as well. As part of the effort to promote widespread use of mobile wireless, service providers package devices with services, often subsidizing these devices, and in the process, they may work directly with handset manufacturers to develop the design of their end-user devices. Mobile broadband customers generally purchase their devices directly from the wireless provider, often at a significant discount pursuant to a long-term service contract. Moreover, as mobile broadband service has developed, it has been integrated with end-user devices that are used to deliver traditional voice service.

2. Background of Wireless Open Platforms

114. In 2007, the Commission adopted a rule that required certain licensees to provide an open platform on their networks for devices and applications. Specifically, the open platform rule requires that Upper 700 MHz C-Block licensees must allow customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice, so long as they meet all applicable regulatory requirements and do not cause harm to the network. The Commission also prohibited all handset locking for Upper 700 MHz C-Block licensees.

115. In addition, some service and equipment providers have opened their networks to certain third-party devices and/or applications. For example, in 2008, T-Mobile with Google unveiled the G1, the first Android device using Android's free, open-source mobile operating system platform, and since that time, T-Mobile has offered additional Android devices. Verizon Wireless established its Open Development Program, to allow its customers to use the devices and applications of their choice on its network. Clearwire launched its CLEAR 4G WiMAX Innovation Network in Silicon Valley, a 4G WiMAX ''sandbox'' for application developers to use to develop wireless Internet applications. With the development of more advanced smartphone devices (such as the iPhone and the Palm Pre) over more robust wireless networks, many new and innovative applications have also been developed, which are typically offered to consumers through applications stores. These stores are often operated by wireless handset manufacturers and operating system developers, including Apple, Palm, and Research in Motion (for BlackBerry), and others are in development.

3. Application of the Internet Principles to Wireless

a. Connection to the Network and Device Attachment

116. In the wireless Internet context, different devices may interconnect to the network in different ways. Smartphones have built-in radio capability, and typically may connect to the network following a registration procedure (*e.g.,* entering an authorization code) or by inserting a preregistered chip (*e.g.,* a subscriber identity module (SIM) card). Some laptop and netbook computers now have pre-installed radios and attach to the network in a manner similar to smartphones. Many laptops and other devices do not have built-in radios, but have a slot or port whereby a modem can be easily connected. Wireless interconnection is complicated by the fact that different operators utilize different network standards, which require devices to have a compatible ''air interface'' in order to operate. Further, as explained above, consumers typically purchase their wireless devices directly from their wireless providers (or their agents), and providers often restrict consumers from attaching certain third-party devices to their networks.

117. In the residential landline context, broadband providers typically provide a modem that attaches to the network, but allow users freely to interconnect devices locally to the modem through an Ethernet or WiFi connection. An analogous practice in the wireless context is known as ''tethering,'' whereby a wireless handset or device can be used as a modem to connect with other devices such as a laptop computer by wire or radio (*e.g.,* WiFi or Bluetooth). Similarly, some providers have begun to introduce ''personal hotspot'' devices (*e.g.,* the MiFi) that combine a 3G modem with a WiFi hub that can serve multiple devices. Tethering is not universally permitted by providers.

118. Unlicensed wireless devices can generally attach to a local-area or personal-area network without requiring the network owner (typically a consumer) to test for whether the device is non-harmful, since this would be impractical. Typically this is accomplished by using industry standard interfaces such as a WiFi connection. We note that private sector certification programs have been established to ensure compatibility with the standards. For example, in order to advertise a product as WiFi compliant the device must undergo third-party testing in accordance with a program established by the WiFi Alliance.

119. In this context, we ask how, in what time frames or phases, and to what extent the ''any device'' rule should apply to mobile wireless broadband Internet access. In particular, we seek concrete data and specific examples that will inform our consideration of the issue. Should we require a mobile broadband Internet access service provider to allow users to attach any device with a compatible air interface directly to its network? If so, what procedures may providers use to prevent harm to the network? Who should ensure that devices are non-harmful: the providers themselves, third-party organizations, industry associations/laboratories, or the Commission? Should we allow providers to satisfy the device-attachment principle by providing wireless modems or SIM cards that could be easily inserted into end-user devices?

120. Should we require providers to allow ''tethering'' as a form of device interconnection? If we required wireless providers to permit tethering, what impact would that have on wireless network congestion, and what reasonable network management

measures should providers be allowed to take to ensure that their networks can support tethering? Alternatively, should a tethering requirement be sufficient to satisfy the ''any device'' requirement in the wireless context?

121. In the interest of ensuring that the application of the ''any device'' rule is fair and appropriate, we also seek comment on realistic and reasonable time frames or phases for applying this rule to mobile wireless broadband Internet access services.

122. We note that the ''any device'' rule proposed in this NPRM would differ from the rules that the Commission adopted for Upper 700 MHz C Block licensees in several respects. For example, the rule proposed in this NPRM would not necessarily prohibit the practice of ''handset locking'' (*i.e.,* preventing a subscriber from transferring a handset to another provider's network during the time the contract with the subscriber is in place), which was explicitly prohibited in the rules applicable to the Upper 700 MHz C Block licensees. Further, the ''any device'' rule proposed in this NPRM, as well as the ''any application'' rule proposed herein, would require a provider of broadband Internet access service to allow users to connect to the provider's network their choice of lawful devices that do not harm the network and to run the lawful applications of the users' choice. In contrast, the rules the Commission adopted for Upper 700 MHz C Block licensees, which have been in effect since 2007, require licensees offering any service on Upper 700 MHz C Block spectrum, without limitation to broadband internet access service, to allow use of the devices and applications of the user's choice on the licensee's C Block network.

123. In addition, we note that rural wireless carriers have raised an additional issue that relates to devices, asking the Commission to address exclusive handset arrangements between wireless service providers and device manufacturers. We do not view the open Internet rules proposed here as directly related to handset exclusivity, and we do not intend to address that issue in this proceeding, but rather will consider it separately.

b. Application of Nondiscrimination With Respect to Access to Content, Applications, and Services, Subject to Reasonable Network Management

124. Application of a nondiscrimination principle raises important questions in wireless, given the provision of voice, SMS/MMS, and Internet service through a single device, typically sold by the same network operator. We seek comment on how, in what time frames or phases, and to what extent the prohibition on discrimination, subject to reasonable network management, should be administered for wireless services, including specific examples and data regarding practices. Would it be desirable to treat different devices and networks differently? Should the principle apply in the same way to an iPhone connected to a 3G network and to a laptop connected to a modem that is connected to a wireless mesh network? How should this principle apply in the context of 4G networks capable of supporting voice, video, and data services on a converged platform architecture? We also seek comment on time frames or phases that would facilitate fair and appropriate application of the nondiscrimination principle to mobile wireless broadband Internet access services.

125. With respect to the identification of reasonable network management practices for mobile broadband, we note that each provider has a finite amount of spectrum available to it. The users in a cell share the spectrum at any given time and the demands on capacity can vary widely depending on such factors as the number of users within that cell at any given time and the applications they are using. Moreover, while all networks must be designed to deal with various factors that can affect performance, wireless networks must be designed to deal with wide variations in signal levels across the service area as well as interference from other devices. In order to maximize utility to all users in a given cell sector, certain basic technical ''rules of the road'' are critical. What implications do these technical characteristics have for practices that might be considered reasonable network management in the wireless context? Further, for a given application, wireless networks are more sensitive to user behavior than wireline networks, so capacity management is a constant concern of wireless engineers. Bandwidth-intensive Internet services already create challenges for wireless networks, and these challenges are likely to increase, although the effects may be ameliorated by new technology, investment, innovation in business models, and/or additional spectrum. On the other hand, for the most bandwidth-intensive service today—streaming video—many wireless users view video content on smaller screens, which requires less bandwidth than typical video services consumed over a wireline Internet connection.

126. In what way do these wireless characteristics affect what kinds of network management practices are or are not reasonable? Are there particular wireless network management practices that should be identified by the Commission as reasonable? For example, are there any circumstances in which it could be reasonable for a wireless network to block video applications because they consume too much capacity? What about third-party VoIP applications or peer-to-peer applications?

127. We further seek comment on what access to applications means in the mobile wireless context. Does the quality of a user's experience with an application vary depending on whether the application is downloaded onto the user's device or whether it is accessed in the cloud using the device's Web browser?

I. Enforcement

128. In this NPRM, we propose to codify six principles that will govern the conduct of broadband Internet access service providers, and to enforce those rules on a case-by-case basis through adjudication. The Commission has authority to enforce its rules. Section 503(b) of the Act authorizes the Commission to issue citations and impose forfeiture penalties for violations of the Commission's rules. The Commission may initiate an enforcement action on its own motion or in response to a complaint filed by an outside party. We note that in the Adelphia/Time Warner/Comcast Order, the Commission invited parties to file complaints if evidence arose that Comcast was willfully blocking or degrading access to Internet content. And in the *Comcast Network Management Practices Order,* we addressed a complaint concerning alleged blocking or degrading of Internet content.

129. We seek comment on whether the Commission should adopt procedural rules specifically governing complaints involving alleged violations of any Internet principles we codify in our regulations. Should the Commission adopt formal complaint procedures for alleged violations of its open Internet rules? If so, what process should govern such complaints? Would any of the Commission's existing rules, such as the rules governing formal complaints under section 208 of the Act or the rules governing complaints related to cable service, provide a suitable model in developing new procedural rules for open Internet complaints? Should the procedural rules differ depending on characteristics of the defendant (*e.g.,*

common carrier, cable provider)? Are there statutory limits on the scope of relief that the Commission may award in a formal complaint proceeding involving a violation of any open Internet rules? For example, may the Commission award damages to a complainant? If so, under what circumstances? What other issues concerning enforcement should the Commission consider? We invite comment.

J. Technical Advisory Process

130. We recognize that our decisions in this rulemaking must reflect a thorough understanding of current technology and future technological trends. To ensure that we have this understanding, the Chief of the Commission's Office of Engineering & Technology will create an inclusive, open, and transparent process for obtaining the best technical advice and information from a broad range of engineers.

Initial Regulatory Flexibility Analysis

1. 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 Notice of Proposed Rulemaking (NPRM). 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 NPRM provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register.**

A. Need for, and Objectives of, the Proposed Rules

2. Today's Internet is shaped by a legacy of openness and transparency that has been critical to its success as an engine for creativity, innovation, and economic growth. The NPRM seeks comment on a number of issues relating to preserving this openness and transparency. In the NPRM the Commission proposes draft language to codify the four principles the Commission articulated in the *Internet Policy Statement* that providers must allow consumers to:

*access the lawful Internet content of their choice[;] * * * run applications and use services of their choice, subject to the needs of law enforcement[;] * * * connect their choice of legal devices that do not harm the network[; and] * * * [benefit from] competition among network providers, application and service providers, and content providers.*

3. The Commission also proposes draft language to codify a fifth principle that would require a broadband Internet access service provider to treat lawful content, applications, and services in a nondiscriminatory manner and draft language to codify a sixth principle that would require a broadband Internet access service provider to disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in this rulemaking.

4. The NPRM proposes draft language to make clear that the principles would be subject to reasonable network management and would not supersede any obligation a broadband Internet access service provider may have—or limit its ability—to deliver emergency communications or to address the needs of law enforcement, public safety, or national or homeland security authorities, consistent with applicable law. The draft rules do not prohibit broadband Internet access service providers from taking reasonable action to prevent the transfer of unlawful content, such as the unlawful distribution of copyrighted works. Nor are the draft rules intended to prevent a provider of broadband Internet access service from complying with other laws.

5. The NPRM seeks comment on defining a category of managed or specialized services, how to define such services, and what principles or rules, if any, should apply to them. The NPRM also seeks comment on how, to what extent, and when the principles should apply to wireless broadband Internet access service, whether such access is obtained via terrestrial mobile wireless, unlicensed wireless, licensed fixed wireless, or satellite. Finally, the NPRM seeks comment on the enforcement procedures that the Commission should use to ensure compliance with the proposed principles.

B. Legal Basis

6. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i)–(j), 201(b), 230, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 230, 257, 303(r), 503, 1302.

C. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

7. 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).

1. Total Small Entities

8. Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

2. Internet Access Service Providers

9. The actions proposed in the NPRM would apply to broadband Internet access service providers. In 2007, the SBA recognized two new small businesses, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals and (2) All Other Information Services. However, census data do not yet exist that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use the prior definition of Internet Service

Providers (ISPs) in order to estimate numbers of potentially-affected small business entities.

10. The 2007 Economic Census places these providers, which includes voice over Internet protocol (VoIP) providers, in the category of All Other Telecommunications. The SBA small business size standard for such firms is: those having annual average receipts of $25 million or less. The most current Census Bureau data on such entities, however, are the 2002 data for the previous census category called Internet Service Providers. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of ISP firms are small entities that may be affected by our action.

11. The ISP industry has changed dramatically since 2002. The 2002 data cited above therefore may include entities that no longer provide Internet access service and may exclude entities that now provide broadband Internet access service. To ensure that this IRFA describes the universe of small entities that the proposals in the NPRM may affect, we discuss in turn several different types of entities that may be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Initial Regulatory Flexibility Analysis.

3. Wireline Providers

12. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. 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, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. 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 incumbent local exchange service are small businesses that may be affected by our proposed action.

13. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. 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, 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 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 have 1,500 or fewer 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 proposed action.

14. 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.

15. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. 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, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

16. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator 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, 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

4. Wireless Providers

17. The broadband Internet access service provider category covered by this NPRM may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access services, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

18. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded 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. For the category of Wireless Telecommunications Carriers (except Satellite), preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on the establishments broken down by number of employees, we note that the Census Bureau lists total employment for all

firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

19. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

20. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

21. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. Therefore, approximately half of these entities can be considered small.

22. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard 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 small business size standards, 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 claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

23. On January 26, 2001, the Commission completed the auction of 422 C- and F-Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. 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. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

24. *Specialized Mobile Radio Licenses.* The Commission awards ''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. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

25. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

26. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do 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. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

27. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business''

as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

28. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order. An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

29. *Upper 700 MHz Band Licenses.* In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

30. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

31. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

32. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

33. *3650–3700 MHz band.* In March 2005, the Commission released a Report and Order and Memorandum Opinion and Order that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of September 2009, more than 1,080 licenses have been granted and more than 4,870 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

34. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on the establishments broken down by number of employees, we note that the Census Bureau lists total employment for all firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of firms using microwave services are small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

35. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

36. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

5. Satellite Service Providers

37. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.

38. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

39. The second category of All Other Telecommunications comprises, inter alia, ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

6. Cable Service Providers

40. Because section 706 requires us to monitor the deployment of broadband

regardless of technology or transmission media employed, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

41. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

42. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

43. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

7. Electric Power Generators, Transmitters, and Distributors

44. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of ''establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

45. As indicated above, the Internet's legacy of openness and transparency has been critical to its success as an engine for creativity, innovation, and economic development. To help preserve this fundamental character of the Internet, the NPRM proposes a transparency principle that may impose a reporting, recordkeeping, or other compliance burden on some small entities. We do not attempt here to provide an estimate in terms of potential burden hours. Rather, we anticipate that commenters will provide the Commission with reliable information on any costs and burdens on small entities.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

46. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or 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 any part thereof, for small entities. While we have yet to describe any significant alternatives, we expect to consider all of these factors when we have received substantive comment from the public and potentially affected entities.

47. The open and transparent Internet has been a launching pad for innumerable creative and entrepreneurial ventures and enabled businesses small and large, wherever located, to reach customers around the globe. As discussed above, the NPRM seeks comment on a variety of issues relating to preserving this openness and transparency, including the codification of the four existing Internet principles, the codification of additional nondiscrimination and transparency principles, and how, to what extent, and when the principles should apply to wireless Internet access service providers. In issuing this NPRM, the Commission is attempting to preserve the historically open architecture that has enabled the Internet to become a platform for commerce and innovation that it equally accessible to the new

entrant and the more established enterprise, without imposing unnecessary burdens on ISPs, including those that are small entities. We anticipate that the record will suggest alternative ways in which the Commission could increase the overall benefits for, and lessen the overall burdens on, small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

48. None.

Procedural Matters

Ex Parte Presentations. The rulemaking this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Parties should send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–C140, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *cpdcopies@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–488–5300, or via e-mail to *fcc@bcpiweb.com*.

Paperwork Reduction Act

This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i)–(j), 201(b), 230, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 230, 257, 303(r), 503, 1302, this NPRM of Proposed Rulemaking *is adopted it is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 8

Cable television, Communications, Common carriers, Communications common carriers, Radio, Satellites, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons stated in the preamble, the Federal Communications Commission proposes to add Part 8 of Title 47 of the Code of Federal Regulations as set forth below:

PART 8—PRESERVING THE OPEN INTERNET

Sec.

8.1 Purpose and scope.
8.3 Definitions.
8.5 Content.
8.7 Applications and services.
8.9 Devices.
8.11 Competitive options.
8.13 Nondiscrimination.
8.15 Transparency.
8.17 Reasonable network management
8.19 Law enforcement.
8.21 Public safety and homeland and national security.
8.23 Other laws.

Authority: 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 230, 257, 303(r), 503, 1302.

§ 8.1 Purpose and scope.

The purpose of these rules is to preserve the open Internet. These rules apply to broadband Internet access service providers only to the extent they are providing broadband Internet access services.

§ 8.3 Definitions.

Internet. The system of interconnected networks that use the Internet Protocol for communication with resources or endpoints reachable, directly or through a proxy, via a globally unique Internet address assigned by the Internet Assigned Numbers Authority.

Broadband Internet access. Internet Protocol data transmission between an end user and the Internet. For purposes of this definition, dial-up access requiring an end user to initiate a call across the public switched telephone network to establish a connection shall not constitute broadband Internet access.

Broadband Internet access service. Any communication service by wire or radio that provides broadband Internet access directly to the public, or to such classes of users as to be effectively available directly to the public.

Reasonable network management. Reasonable network management consists of:

(1) Reasonable practices employed by a provider of broadband Internet access service to:

(i) Reduce or mitigate the effects of congestion on its network or to address quality-of-service concerns;

(ii) Address traffic that is unwanted by users or harmful;

(iii) Prevent the transfer of unlawful content; or

(iv) Prevent the unlawful transfer of content; and

(2) Other reasonable network management practices.

§ 8.5 Content.

Subject to reasonable network management, a provider of broadband Internet access service may not prevent any of its users from sending or receiving the lawful content of the user's choice over the Internet.

§ 8.7 Applications and services.

Subject to reasonable network management, a provider of broadband Internet access service may not prevent any of its users from running the lawful applications or using the lawful services of the user's choice.

§ 8.9 Devices.

Subject to reasonable network management, a provider of broadband Internet access service may not prevent any of its users from connecting to and using on its network the user's choice of lawful devices that do not harm the network.

§ 8.11 Competitive options.

Subject to reasonable network management, a provider of broadband Internet access service may not deprive any of its users of the user's entitlement to competition among network providers, application providers, service providers, and content providers.

§ 8.13 Nondiscrimination.

Subject to reasonable network management, a provider of broadband Internet access service must treat lawful content, applications, and services in a nondiscriminatory manner.

§ 8.15 Transparency.

Subject to reasonable network management, a provider of broadband Internet access service must disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in this part.

§ 8.19 Law enforcement.

Nothing in this part supersedes any obligation a provider of broadband Internet access service may have—or limits its ability—to address the needs of law enforcement, consistent with applicable law.

§ 8.21 Public safety and homeland and national security.

Nothing in this part supersedes any obligation a provider of broadband Internet access service may have—or limits its ability—to deliver emergency communications or to address the needs of public safety or national or homeland security authorities, consistent with applicable law.

§ 8.23 Other laws.

Nothing in this part is intended to prevent a provider of broadband Internet access service from complying with other laws.

[FR Doc. E9–28062 Filed 11–27–09; 8:45 am]

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Federal Register

Monday,
November 30, 2009

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 784, 816, et al.
Stream Buffer Zone and Related Rules; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 784, 816, and 817

[Docket ID OSM–2009–0009]

RIN: 1029–AC63

Stream Buffer Zone and Related Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Advance notice of proposed rulemaking; notice of intent to prepare a supplemental environmental impact statement (SEIS).

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are seeking comments on our intention to revise our regulations concerning the conduct of mining activities in or near streams. We have determined that revision of the stream buffer zone (SBZ) rule published on December 12, 2008, is necessary to implement the interagency action plan that the Administration has developed to significantly reduce the harmful environmental consequences of surface coal mining operations in Appalachia, while ensuring that future mining remains consistent with Federal law. In this notice, we describe and seek comment on the alternatives that we are considering for revision of the SBZ rule. In addition, we request your help in identifying significant issues, studies, and specific alternatives that we should consider in the SEIS for this rulemaking initiative.

The June 11, 2009, memorandum of understanding (MOU) implementing the interagency action plan also calls for us to consider whether revisions to other OSM regulations (including, at a minimum, approximate original contour requirements) are needed to better protect the environment and the public from the impacts of Appalachian surface coal mining. We have identified addition of a definition of ''material damage to the hydrologic balance'' as one such possibility. We invite comment on that option as well as whether there are other OSM regulations that could be revised to implement this provision of the MOU.

DATES: To ensure consideration, we must receive your comments on or before December 30, 2009.

ADDRESSES: You may submit comments by any of the following methods, although we request that you use the Federal e-rulemaking portal if possible:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* The document has been assigned Docket ID: OSM–2009–0009. Follow the online instructions for submitting comments.

• *Mail, hand-delivery, or courier to:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240. Please include the Docket ID (OSM–2009–0009) with your comment.

Comments that we receive after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above will not be considered or included in the docket.

Please submit all comments and related materials that you wish us to consider. We are not able to consider comments and materials that were previously submitted in connection with a different rulemaking.

For information on the public availability of comments, *see* Part VII of this preamble, which is entitled ''Will comments received in response to this notice be available for review?''

FOR FURTHER INFORMATION CONTACT: Dennis Rice, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW. MS 202–SIB, Washington, DC 20240; Telephone 202–208–2829.

SUPPLEMENTARY INFORMATION:

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I. Why Are We Publishing This Notice?

On December 12, 2008 (73 FR 75814–75885), we published a final rule modifying the circumstances under which mining activities may be conducted in or near perennial or intermittent streams. That rule, which this notice refers to as the 2008 rule, took effect January 12, 2009. A total of nine organizations challenged the validity of the rule in two complaints filed on December 22, 2008, and January 16, 2009: *Coal River Mountain Watch, et al.* v. *Salazar,* No. 08–2212 (D.D.C.) (''*Coal River''*) and *National Parks Conservation Ass'n* v. *Salazar,* No. 09–115 (D.D.C.) (''*NPCA''*).

In *NPCA,* the Government filed a motion on April 27, 2009, for voluntary remand and vacatur of the 2008 rule. The motion was based on Secretary of the Interior Ken Salazar's determination that OSM erred in failing to initiate consultation with the U.S. Fish and Wildlife Service under subsection 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), to evaluate possible effects of the 2008 rule on threatened and endangered species. Granting of the Government's motion likely would have had the effect of reinstating the 1983 version of the SBZ rule. In *Coal River,* the Government filed a motion on April 28, 2009, to dismiss the complaint as moot if the court granted the motion in *NPCA.*

On June 11, 2009, the Secretary of the Department of the Interior, the Administrator of the U.S. Environmental Protection Agency (EPA), and the Acting Assistant Secretary of the Army (Civil Works) entered into a memorandum of understanding (MOU)[1] implementing an interagency action plan designed to significantly reduce the harmful environmental consequences of surface coal mining operations in six Appalachian States,[2] while ensuring that future mining remains consistent with Federal law. Among other things, the MOU required that OSM develop guidance clarifying how the 1983 SBZ rule would be applied to reduce adverse impacts on streams if the court granted the Government's motion in *NPCA* for remand and vacatur of the 2008 SBZ rule.

However, on August 12, 2009, the court denied the Government's motion in *NPCA,* holding that, absent a ruling on the merits, significant new evidence, or consent of all the parties, a grant of vacatur would allow the government to improperly bypass the procedures set forth in the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* for repealing an agency rule. On the same date, the court denied the government's motion to dismiss in *Coal River.*

The Secretary of the Interior remains committed to reducing the adverse impacts of Appalachian surface coal mining operations on streams. Accomplishing that goal will involve revision or repeal of certain elements of the 2008 rule. The rulemaking process will adhere to the requirements of the Administrative Procedure Act, including any applicable notice and comment requirements, consistent with the court's decision in *NPCA.*

The notice that we are publishing today is the first step in the rulemaking

[1] The MOU can be viewed online at *http://www.osmre.gov/resources/ref/mou/ASCM061109.pdf.*

[2] Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

process. We are publishing this notice to seek public input into how the 2008 rule should be revised to better protect streams and implement the MOU. The MOU identifies the stream buffer zone rule and our regulations concerning approximate original contour as two rules that we will consider revising. In this notice, we describe options that we are considering for revision of the stream buffer zone rule. We invite you, the public, to comment on those options, to suggest other options, and to identify other provisions of our regulations that should be revised to better protect the environment and the public from the impacts of Appalachian surface coal mining. After considering the comments, we intend to move expeditiously to develop a proposed rule that will further clarify how streams must be protected within the framework established by SMCRA.

At the appropriate time, we also will initiate consultation with the U.S. Fish and Wildlife Service under subsection 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), to evaluate possible effects of a new rule on threatened and endangered species.

II. What Does SMCRA Say About Streams?

SMCRA contains three references to streams, two references to watercourses, and several provisions that indirectly refer to activities in or near streams:

- Section 507(b)(10) requires that permit applications include ''the name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged.''
- Section 515(b)(18) requires that surface coal mining and reclamation operations ''refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water.''
- Section 515(b)(22)(D) provides that sites selected for the disposal of excess spoil must ''not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented.'' The term ''natural water courses'' includes all types of streams—perennial, intermittent, and ephemeral.
- Section 515(c)(4)(D) provides that, in approving a permit application for a mountaintop removal operation [3], the regulatory authority must require that ''no damage will be done to natural watercourses.[4] '' Section 515(c)(4)(E) of the Act specifies that ''all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subsection (b)(22) of this section.''
- Section 516(c) requires the regulatory authority to suspend underground coal mining adjacent to permanent streams if an imminent danger to inhabitants of urbanized areas, cities, towns, or communities exists.

III. What Provisions of SMCRA Form the Basis for the SBZ Rule?

Paragraphs (b)(10)(B)(i) and (24) of section 515 of SMCRA served as the basis for all four versions (1977, 1979, 1983, and 2008) of the stream buffer zone rule with respect to surface mining activities. Section 515(b)(10)(B)(i) requires that surface coal mining operations be conducted so as to prevent the contribution of additional suspended solids to streamflow or runoff outside the permit area to the extent possible using the best technology currently available. Section 515(b)(24) requires that surface coal mining and reclamation operations be conducted to minimize disturbances to and adverse impacts on fish, wildlife, and related environmental values ''to the extent possible using the best technology currently available.''

In context, section 515(b)(10)(B)(i) provides that the performance standards adopted under SMCRA must require that surface coal mining and reclamation operations—

> (10) Minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by—
>
> (A) * * *
>
> (B)(i) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law.
>
> * * * * *

Section 515(b)(24) requires that surface coal mining and reclamation operations be conducted in a manner that—

> To the extent possible using the best technology currently available, minimize[s] disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve[s] enhancement of such resources where practicable.

Paragraphs (b)(9)(B) and (11) of section 516 of SMCRA form the basis for the stream buffer zone rule at 30 CFR 817.57, which applies to surface activities associated with underground mines. Those provisions of section 516 are substantively equivalent to paragraphs (b)(10)(B)(i) and (24) of section 515 of SMCRA, respectively, except that section 516(b)(9)(B) also includes the provisions found in section 515(b)(10)(E) regarding the avoidance of channel deepening or enlargement.

Commenters responding to this notice should explain how their suggestions concerning revision of the SBZ rule are consistent with these statutory provisions.

IV. What Is the History of the SBZ Rule?

We have had an SBZ rule in place since 1977, but the rule and its application did not receive widespread attention until the 1990s when concerns arose over the environmental impacts of large-scale surface coal mining operations in central Appalachia. Surface mining in this mountainous area of steep slopes and narrow valleys produces more spoil material than can be returned to the site of the excavation created by the mining operation. The excess spoil material is most commonly placed in the valleys adjacent to the mine excavation. These valleys often contain headwater streams. In Appalachia, intermittent streams begin in watersheds as small as 15 acres and perennial streams begin in watersheds as small as 41 acres, according to a study conducted by the U.S. Geological Survey.[5]

The 1983 version of the SBZ rule prohibited disturbance of land within 100 feet of an intermittent or perennial stream unless the regulatory authority found that the conduct of mining activities ''closer to, or through, such a stream'' would not cause or contribute to the violation of State or Federal water quality standards and would not adversely affect the water quantity or

[3] Under section 515(c)(2) of SMCRA, a mountaintop removal operation is a surface coal mine that will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting certain specified postmining land uses. This term is a subset of the various types of mining commonly referred to as mountaintop mining.

[4] The regulations implementing this provision interpret the prohibition as applying only to natural watercourses ''below the lowest coal seam mined.'' *See* 30 CFR 824.11(a)(9).

[5] Katherine S. Paybins, *Flow Origin, Drainage Area, and Hydrologic Characteristics for Headwater Streams in Mountaintop Coal-Mining Region of Southern West Virginia,* Water Resources Investigations Report 02–4300, U.S. Geological Survey, 2003, p. 1.

quality or other environmental resources of the stream. The 1983 rule has been the subject of litigation.[6] For a more detailed history of the SBZ rule, please refer to the discussion in the preamble to the 2008 rule (73 FR 75816–75818, December 12, 2008).

V. What Are the Major Provisions of the 2008 Rule?

The 2008 rule replaced the 1983 version of the SBZ rule at 30 CFR 816.57(a)(1) and 817.57(a)(1), which prohibited disturbance of land within 100 feet of a perennial or intermittent stream unless the regulatory authority authorized the proposed activities after finding that conducting those activities ''closer to, or through, such a stream'' would not cause or contribute to the violation of applicable State or Federal water quality standards and would not adversely affect the water quantity or quality or other environmental resources of the stream. The 2008 rule replaced that requirement with new provisions at 30 CFR 780.28(d) and (e) and 784.28(d) and (e).

Under the 2008 rule at 30 CFR 780.28(d) and 784.28(d), the conduct of activities within a perennial or intermittent stream (with the exception of activities conducted in connection with construction of a stream-channel diversion or in connection with a coal preparation plant located outside the permit area of a mine) is prohibited unless the regulatory authority finds that avoiding disturbance of the stream is not reasonably possible and that the plans submitted with the application meet all applicable requirements in paragraphs (b) and (c) of 30 CFR 816.57 or 817.57. Among other things, those paragraphs require that, to the extent possible, the operator use the best technology currently available to prevent the contribution of suspended solids to streamflow or runoff outside the permit area and to minimize disturbances and adverse impacts on fish, wildlife, and related environmental values. Under 30 CFR 780.28(d)(2) and 784.28(d)(2), every permit approving disturbance of a perennial or intermittent stream must include a permit condition requiring that the permittee demonstrate compliance with the Clean Water Act before conducting any activities that require authorization or certification under the Clean Water Act.

Under the 2008 rule at 30 CFR 780.28(e) and 784.28(e), activities on the surface of land within 100 feet of a perennial or intermittent stream are prohibited unless the permit applicant demonstrates, and the regulatory authority finds, either that it is not reasonably possible to avoid disturbance of the buffer zone or that avoidance of disturbance is not necessary to meet the fish and wildlife and hydrologic balance protection requirements of the regulatory program. The regulatory authority also must find that the plans submitted by the applicant demonstrate that the operation will, to the extent possible, use the best technology currently available to prevent the contribution of suspended solids to streamflow or runoff outside the permit area and to minimize disturbances and adverse impacts on fish, wildlife, and related environmental values.

Under the 2008 rule at 30 CFR 816.57(a)(1) and (b) and 817.57(a)(1) and (b), certain activities are exempt from the buffer zone requirements of 30 CFR 780.28(e) and 784.28(e) to the extent that the regulatory authority has approved filling the stream segment under 30 CFR 780.28(d) or 784.28(d) or diverting the stream segment under 30 CFR 816.43(b) or 817.43(b). In other words, if a stream segment will cease to exist in its original location as a result of mining activities, the rule provides that there is no need to protect the buffer zone for that stream segment. The activities to which this exemption applies include stream-channel diversions, construction of stream crossings, construction of sedimentation pond embankments, and construction of excess spoil fills and coal mine waste disposal facilities.

The 2008 rule provides that mining operations must return as much of the overburden as possible to the excavation created by the mine. *See* 30 CFR 780.35(a)(1) and 784.19(a)(1). The 2008 rule also requires that mine operators minimize the volume of excess spoil generated by mining operations and design and construct fills to be no larger than needed to accommodate the anticipated volume of excess spoil to be generated. *See* 30 CFR 780.35(a)(2) and 784.19(a)(2).

The 2008 rule further provides that the operator must avoid constructing excess spoil fills, refuse piles, or slurry impoundments in perennial and intermittent streams to the extent possible. When avoidance is not possible, the rule requires that the operator identify a range of reasonable alternatives for disposal and placement of the excess spoil or coal mine waste, evaluate the environmental impacts of each alternative, and select the alternative with the least overall adverse impact on fish, wildlife, and related environmental values. *See* 30 CFR 780.25(d)(1), 780.35(a)(3), 784.16(d)(1), and 784.19(a)(3).

The 2008 rule states that issuance of a SMCRA permit is not a substitute for the reviews, authorizations, and certifications required under the Clean Water Act, and does not authorize initiation of surface coal mining operations for which the applicant has not obtained all necessary authorizations, certifications, and permits under the Clean Water Act. *See* 30 CFR 780.28(f)(2), 784.28(f)(2), 816.57(a)(2), and 817.57(a)(2). In particular, the rule requires that the SMCRA permit include a condition prohibiting any disturbance of a perennial or intermittent stream before obtaining all necessary Clean Water Act authorizations. *See* 30 CFR 780.28(d)(2) and 784.28(d)(2).

VI. How Do We Plan To Revise Our Regulations?

We intend to revise our regulations in a manner consistent with the provisions of SMCRA and the MOU. Part III.A. of the MOU provides that we will review our ''existing regulatory authorities and procedures to determine whether regulatory modifications should be proposed to better protect the environment and public health from the impacts of Appalachian surface coal mining.'' It further provides that, at a minimum, we will consider revisions to the stream buffer zone rule and our requirements concerning approximate original contour. This notice focuses on revisions to the stream buffer zone rule, but we invite commenters to suggest other provisions of our regulations that could or should be revised to accomplish the objectives of the MOU.

To comply with the National Environmental Policy Act, we intend to prepare a supplement to the final environmental impact statement (FEIS) for the 2008 rule (OSM–EIS–34).[7] The

[6] In 1999, the U. S. District Court for the Southern District of West Virginia held that the West Virginia version of the SBZ rule prohibited the creation of fills that bury streambeds because (1) nothing in the State or Federal rules supports an interpretation that would exempt the regulatory authority from its obligation to make the buffer zone findings for the segment of the stream that lies within the footprint of the fill, and (2) burying a stream segment would impermissibly destroy that segment. *Bragg* v. *Robertson,* 72 F. Supp. 2d 642 (S.D. W. Va. 1999). That decision was overturned on appeal on other grounds (lack of jurisdiction under the Eleventh Amendment to the U. S. Constitution). *Bragg* v. *West Virginia Coal Ass'n,* 248 F.3d 275 (4th Cir. 2001), *cert. denied,* 534 U.S. 1113 (2002). In a second case, the appellate court stated in its opinion that it is beyond dispute that SMCRA recognizes the possibility of placing excess spoil material in waters of the United States. *Kentuckians for the Commonwealth, Inc.* v. *Rivenburgh,* 317 F.3d 425, 442–443 (4th Cir. 2003).

[7] OSM–EIS–34, ''Proposed Revisions to the Permanent Program Regulations Implementing the

supplement (SEIS) will include and discuss additional information on the impacts of mining on streams and related resources. It also will evaluate additional action alternatives in detail, while incorporating by reference the programmatic analyses in the FEIS, to the extent appropriate. This approach will enable us to meet our National Environmental Policy Act obligations in a cost-effective and timely manner. As provided in 40 CFR 1502.9(c)(4), we will prepare and process the SEIS in the same fashion as a standard environmental impact statement, exclusive of scoping. In other words, we will prepare both a draft SEIS, which will be subject to public comment, and a final SEIS.

Any proposed revisions of our rules must be consistent with the provisions of SMCRA, as discussed in Parts II and III of this notice. We also note that section 102(f) of SMCRA provides that one of the purposes of SMCRA is to ''strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.''

Comments that you provide in response to this advance notice will help us determine which alternatives will be developed in the SEIS and the proposed rule. We encourage commenters to be as detailed as possible and to explain how any suggested regulatory changes are consistent with SMCRA and the rulemaking authority that we have under SMCRA.

The alternatives described below are not necessarily mutually exclusive. After evaluating the comments received, we may decide not to propose some of the alternatives listed here. We also may decide to propose some combination of the listed alternatives, variations of those alternatives, new alternatives suggested by commenters, or new alternatives that we develop. The public will have another opportunity to comment when the proposed rule is published.

We are considering the following alternatives for revising the stream buffer zone rule and related rules:

1. Proposing to repeal the existing SBZ rules (30 CFR 780.28, 784.28, 816.57, and 817.57) and replace them with the 1983 version of the SBZ rule at 30 CFR 816.57 and 817.57, with conforming revisions to the signs and markers requirements of 30 CFR 816.11 and 817.11. This alternative also would include a proposal to either repeal or make conforming revisions to 30 CFR 780.25(d)(1), 780.35(a)(3), 784.16(d)(1), and 784.19(a)(3), because those provisions contain permitting requirements specific to applications that propose to construct coal mine waste impoundments, refuse piles, or excess spoil fills in or within 100 feet of perennial or intermittent streams. In addition, this alternative could include a proposal to replace the 2008 version of the stream-channel diversion requirements of 30 CFR 816.43 and 817.43 with the 1983 version of those requirements, which includes a reference to the SBZ rule.

We request comment on whether reinstatement of the language in the 1983 SBZ rule would be appropriate, and, if so, how that language should be interpreted to promote stream protection in a way that is fully consistent with SMCRA.

2. Proposing to apply the prohibitions and restrictions of the stream buffer zone rule to all segments of all perennial and intermittent streams and to the surface of all lands within 100 feet of those streams. One variation of this alternative could be to establish a rebuttable presumption that the placement of excess spoil or coal mine waste in an intermittent or perennial stream is prohibited because it would result in an unacceptable level of environmental damage. Another variation could be to prohibit placement of excess spoil or coal mine waste in perennial and intermittent streams and restrict placement in ephemeral streams.

3. Proposing to revise 30 CFR 816.57 and 817.57 to provide that the SMCRA regulatory authority may authorize mining activities in a perennial or intermittent stream, or on the surface of land within 100 feet of such a stream, only if those activities (1) would not violate Sections 401 and 402 of the Clean Water Act; (2) would not violate Section 404 of the Clean Water Act; (3) would not significantly degrade the water quantity or quality or other environmental resources of the stream; and (4) would minimize disturbances and adverse impacts on fish, wildlife, and other related environmental values of the stream to the extent possible using the best technology currently available. A variation on this option would revise criterion (3) to prohibit significant degradation of the water quantity or quality or other environmental resources of the stream ''outside the permit area.''

4. Proposing numerical limits on fill size, the percentage of a watershed disturbed by mining operations at any one time, or total stream miles covered by fills in each watershed. The 2005 final programmatic environmental impact statement on mountaintop mining and valley fills found that existing studies provided an insufficient basis to determine a bright-line threshold of the nature described in this alternative.[8]

We invite comment on whether scientific information is now available that might provide a sufficient basis for establishing numerical limits of the nature described in this alternative. We encourage commenters to suggest specific thresholds, together with the rationale for those thresholds.

5. Proposing a quantitative or qualitative threshold beyond which further damage to water quality or aquatic life in a particular watershed would be prohibited. We encourage commenters to identify potential thresholds and explain why those thresholds should be established. We also encourage commenters to discuss how thresholds could be harmonized with Clean Water Act requirements and the Clean Water Act permitting process.

6. Proposing to adopt by regulation the watershed approach described in the following language from the preamble to the 2008 rule[9]:

> A watershed approach expands the informational and analytic basis of site selection decisions to ensure impacts are considered on a watershed scale rather than only project by project. The idea being locational factors (*e.g.,* hydrology, surrounding land use) are important to evaluating the indirect and cumulative impacts of the project. Watershed planning efforts can identify and prioritize where preservation of existing aquatic resources are important for maintaining or improving the quality (and functioning) of downstream resources. The objective of this evaluation is to maintain and improve the quantity and quality of the watershed's aquatic resources and to ensure water quality standards (numeric and narrative criteria, anti-degradation, and designated uses) are met in downstream waters.

We invite comment on how we could best incorporate this approach into our regulations in a manner that is consistent with SMCRA.

7. Proposing a definition of the term ''material damage to the hydrologic balance.'' Section 510(b)(3) of SMCRA, 30 U.S.C. 1260(b)(3), prohibits the

Surface Mining Control and Reclamation Act of 1977 Concerning the Creation and Disposal of Excess Spoil and Coal Mine Waste and Stream Buffer Zones,'' is available on the Internet at *http://www.regulations.gov.* The Document ID number is OSM–2007–0008–0553. A copy of the FEIS is also available for inspection in the South Interior Building, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240.

[8] ''Mountaintop Mining/Valley Fills in Appalachia Final Programmatic Environmental Impact Statement,'' (EPA 9–03–R–05002, EPA Region 3, October 2005), pp. 27–28; available at *http://www.epa.gov/region03/mtntop/eis2005.htm.*

[9] 73 FR 75849, December 12, 2008.

regulatory authority from approving any permit application unless the regulatory authority first prepares an ''assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance,'' which is known as the cumulative hydrologic impact assessment (CHIA). That section of SMCRA also provides that, after preparing the CHIA, the regulatory authority must make a finding as to whether the proposed operation ''has been designed to prevent material damage to the hydrologic balance outside the permit area.''

When we adopted our hydrologic information regulations at 30 CFR 780.21 and 784.14, which implement section 510(b)(3) in part, we did not include a definition of ''material damage to the hydrologic balance'' or establish fixed criteria for that term ''because the gauges for measuring damage may vary from area to area and from operation to operation.'' [10] We seek comment on whether understanding of the relevant hydrology and the associated technology have advanced since 1983 to the degree that there is now support for a definition that would include specific criteria and consistent measures for material damage to the hydrologic balance, and, if so, what that definition might be.

We also seek comment on how we could, or whether we should, propose to revise the definition of cumulative impact area at 30 CFR 701.5,[11] the CHIA regulations at 30 CFR 780.21(g) and 784.14(f), and the regulations at 30 CFR 780.21(f) and 784.14(e), which concern the determination of the probable hydrologic consequences of mining, to incorporate elements that are consistent with the manner and standards by which the Corps of Engineers determines potential cumulative adverse impacts on waters of the United States when evaluating a permit application for the discharge of fill material under section 404 of the Clean Water Act.

8. Proposing to require that a SMCRA permit applicant concurrently submit the SMCRA permit application to the SMCRA regulatory authority, the National Pollutant Discharge Elimination System permitting entity (EPA or a delegated State agency), the U.S. Army Corps of Engineers, EPA, and the State agency responsible for certification under section 401 of the Clean Water Act. This alternative would facilitate coordinated permitting under SMCRA and the Clean Water Act for projects proposing mining or related activities in waters of the United States.

9. Proposing more detailed permit application requirements and performance standards for stream-channel diversions and restoration of streams. We also are considering proposing specific requirements for premining stream condition surveys and monitoring or bond release requirements apart from compliance with stream-channel construction criteria and revegetation requirements. We invite comment on whether we should propose additional requirements of this nature and, if so, what those requirements should include.

10. Proposing provisions that would apply only to mountaintop removal operations and operations on steep slopes. This approach would largely limit the impact of the rulemaking to portions of Kentucky, Virginia, and West Virginia, the three States in which the vast majority of fills are constructed. States that do not have steep slopes or that do not allow mining on steep slopes would not be affected. In addition, we could propose to modify 30 CFR 824.11(a)(9), which applies to mountaintop removal operations, to apply the prohibition in section 515(c)(4)(D) of SMCRA on damaging natural watercourses to all natural watercourses, not just to natural watercourses ''below the lowest seam mined.''

Finally, we invite you to identify other provisions of our regulations, such as the provisions concerning approximate original contour, that you believe we should consider revising in order to better protect the environment and the public from the impacts of Appalachian surface coal mining, consistent with Part III.A. of the MOU.

Consistent with the requirements of the Administrative Procedure Act, we will publish in the **Federal Register** any regulations that we may subsequently propose. That notice will provide the public with an opportunity to review and comment on the proposed regulations.

VII. Will Comments Received in Response to This Notice Be Available for Review?

Yes. All comments that we receive prior to the close of the comment period (*see* **DATES**) will be available for review 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. You may request in your comment that we withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so.

Dated: November 20, 2009.

Wilma A. Lewis,

Assistant Secretary, Land and Minerals Management.

[FR Doc. E9–28513 Filed 11–24–09; 4:15 pm]

BILLING CODE 4310–05–P

[10] 48 FR 43973, September 26, 1983.

[11] ''*Cumulative impact area* means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of: (a) The proposed operation, (b) all existing operations, (c) any operations for which a permit application has been submitted to the regulatory authority, and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.''

Federal Register

Monday,
November 30, 2009

Part IV

The President

Executive Order 13521—Establishing the Presidential Commission for the Study of Bioethical Issues

Federal Register
Vol. 74, No. 228
Monday, November 30, 2009

Presidential Documents

Title 3—

The President

Executive Order 13521 of November 24, 2009

Establishing the Presidential Commission for the Study of Bioethical Issues

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* There is established within the Department of Health and Human Services the Presidential Commission for the Study of Bioethical Issues (Commission).

Sec. 2. *Mission.*

(a) The Commission shall advise the President on bioethical issues that may emerge as a consequence of advances in biomedicine and related areas of science and technology. The Commission shall pursue its work with the goal of identifying and promoting policies and practices that ensure scientific research, healthcare delivery, and technological innovation are conducted in an ethically responsible manner. To achieve this goal, the Commission shall:

(i) identify and examine specific bioethical, legal, and social issues related to the potential impacts of advances in biomedical and behavioral research, healthcare delivery, or other areas of science and technology;

(ii) recommend any legal, regulatory, or policy actions it deems appropriate to address these issues; and

(iii) critically examine diverse perspectives and explore possibilities for useful international collaboration on these issues.

(b) In support of its mission, the Commission may examine issues linked to specific technologies, including but not limited to the creation of stem cells by novel means; intellectual property issues involving genetic sequencing, biomarkers, and other screening tests used for risk assessment; and the application of neuro- and robotic sciences. It may also examine broader issues not linked to specific technologies, including but not limited to the protection of human research participants; scientific integrity and conflicts of interest in research; and the intersection of science and human rights.

(c) The Commission shall not be responsible for the review and approval of specific projects.

(d) The Commission may accept suggestions of issues for consideration from executive departments and agencies and the public as it deems appropriate in support of its mission.

(e) In establishing priorities for its activities, the Commission shall consider, among other things, the significance of particular issues; the need for legal, regulatory, and policy guidance with respect to such issues; the connection of the issues to the goal of Federal advancement of science and technology; and the availability of other appropriate entities or fora for deliberating on the issues.

(f) The Commission is authorized to conduct original empirical and conceptual research, commission papers and studies, hold hearings, and establish committees and subcommittees, as necessary. The Commission is authorized to develop reports or other materials.

Sec. 3. *Membership.*

(a) The Commission shall be an expert panel composed of not more than 13 members appointed by the President, drawn from the fields of bioethics, science, medicine, technology, engineering, law, philosophy, theology, or other areas of the humanities or social sciences, at least one and not more than three of whom may be bioethicists or scientists drawn from the executive branch, as designated by the President.

(b) The President shall designate a Chair and Vice Chair from among the members of the Commission. The Chair shall convene and preside at meetings of the Commission, determine its agenda, and direct its work. The Vice Chair shall perform the duties of the Chair in the absence or disability of the Chair and shall perform such other functions as the Chair may from time to time assign.

(c) Members shall serve for a term of 2 years and shall be eligible for reappointment. Members may continue to serve after the expiration of their terms until the appointment of a successor.

Sec. 4. *Administration.*

(a) The Department of Health and Human Services shall provide funding and administrative support for the Commission to the extent permitted by law and within existing appropriations.

(b) All executive departments and agencies and all entities within the Executive Office of the President shall provide information and assistance to the Commission as the Chair may request for purposes of carrying out the Commission's functions, to the extent permitted by law.

(c) The Commission shall have a staff headed by an Executive Director, who shall be appointed by the Secretary of Health and Human Services in consultation with the Chair and Vice Chair.

(d) Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

Sec. 5. *Termination.* The Commission shall terminate 2 years after the date of this order unless extended by the President.

Sec. 6. *General Provisions.*

(a) This order supersedes Executive Order 13237 of November 28, 2001.

(b) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Commission, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Secretary of Health and Human Services in accordance with the guidelines that have been issued by the Administrator of General Services.

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

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

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

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

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
November 24, 2009.

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S. 475/P.L. 111–97
Military Spouses Residency Relief Act (Nov. 11, 2009; 123 Stat. 3007)

S. 509/P.L. 111–98
To authorize a major medical facility project at the Department of Veterans Affairs Medical Center, Walla Walla, Washington, and for other purposes. (Nov. 11, 2009; 123 Stat. 3010)

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