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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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1125; Directorate Identifier 2009–SW–50–AD; Amendment 39–16129; AD 2009–19–51]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Agusta) Model AB139 and AW139 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2009–19–51, which was sent previously to all known U.S. owners and operators of the Agusta Model AB139 and AW139 helicopters by individual letters. This AD requires inspecting the tail panels for debonding and, if the debonding area exceeds a certain limit, repairing the tailboom. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that while taxiing, the tailboom of a Model AW139 helicopter bent and collapsed. Also, EASA had received previous reports of evidence of debonding on some tailboom panels of the specified Agusta model helicopters. This condition, if not corrected, could result in failure of a tailboom and subsequent loss of control of the helicopter.

DATES: Effective on February 8, 2010, to all persons except those persons to whom it was made immediately effective by Emergency AD 2009–19–51, issued on September 16, 2009, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 23, 2010.

ADDRESSES: Use one of the following addresses to submit comments 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.

You may get the service information identified in this AD from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php*.

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Sharon Miles, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 16, 2009, we issued Emergency AD 2009–19–51 to all known U.S. owners and operators of the Agusta Model AB139 and AW139 helicopters by individual letters. The AD requires inspecting the tail panels for debonding and, if the debonding area exceeds a certain limit repairing the tailboom. That action was prompted by the tailboom of a Model AW139 helicopter bending and collapsing during taxiing. That condition, if not corrected, could result in failure of a tailboom and subsequent loss of control of the helicopter.

The FAA has reviewed Agusta Alert Bollettino Tecnico (ABT) Nos. 139–193 and 139–194, both dated September 3, 2009. These ABTs refer to the aircraft maintenance publications for inspecting the affected tail panels for signs of debonding. If you find evidence of debonding, the ABTs also advise you to contact the manufacturer for repair instructions.

EASA has issued AD No. 2009–0198–E, dated September 4, 2009, which supersedes EASA AD No. 2008–0157, dated August 13, 2008, to correct an unsafe condition for the specified model helicopters. The latest EASA AD requires repetitive inspections of the tailboom panels at closer intervals. In case of debonding, the EASA AD requires you to mark the debonded areas for identification, contact the manufacturer for instructions, and follow their corrective actions.

These helicopter models have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, their technical agent, has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Since the unsafe condition described is likely to exist or develop on other Agusta Model AB139 and AW139 helicopters of these same type designs, the FAA issued Emergency AD 2009–19–51 to prevent failure of a tailboom and subsequent loss of control of a helicopter. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and the controllability of the helicopter. Therefore, inspecting the tail panels for debonding within 50 hours time-in-service (TIS) for certain serial-numbered

helicopters and within 25 hours TIS or 30 days, whichever occurs first, for certain other serial-numbered helicopters and removing the strake if you find bond separation are required before further flight. Also, this AD requires measuring the debonded area and repairing the tailboom, before further flight, if the debonded area exceeds the required measurement before further flight. Therefore, this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 16, 2009, to all known U.S. owners and operators of Agusta Model AB139 and AW139 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons with two minor changes. The Emergency AD contained two paragraph (e)'s; therefore, we have changed the Joint Aircraft System/Component (JASC) Code paragraph to paragraph (f) of this AD. Also, the aluminum hammer part number (P/N) was incorrectly stated as P/N 109–3101–58–1 in the Emergency AD and should be P/N 109–3101–58–2. Hammer, P/N 109–3101–58–1, is a steel hammer. We have made that correction in this AD. However, for purposes of this AD, the use of either the steel hammer or the aluminum hammer is acceptable. We have also changed Note 1 of the AD to clarify that the ABTs are guidance for accomplishing the AD requirements. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

This AD differs from the MCAI AD in that we refer to flight hours as hours TIS. Also, we do not require you to contact the manufacturer nor do we reference their ABT, which references the maintenance manual. We have also inserted the inspection requirements and the debonding limits in this AD which are consistent with those in the maintenance manual.

We estimate that this AD will affect about 7 helicopters. We also estimate that it will take about 2 work-hours per helicopter to inspect the tail panels for debonding. The average labor rate is $80 per work-hour. The parts cost is minimal. Based on these figures, we estimate that the cost of this AD on U.S. operators will be $1,120, assuming no tailboom needs repair.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2009–1125; Directorate Identifier 2009–SW–50–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 with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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.

Therefore, I certify this AD:

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

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

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

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

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 product(s) identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2009–19–51 Agusta S.p.A.: Amendment 39–16129; Docket No. FAA–2009–1125; Directorate Identifier 2009–SW–50–AD.

Applicability

This AD applies to Model AB139 and AW139 helicopters, certificated in any category.

Compliance

Required as indicated.

To prevent failure of a tailboom and subsequent loss of control of the helicopter, do the following:

(a) Using the large end of the head of an aluminum hammer, part number 109–3101–58–2 (GF–06–00), tap inspect the full skin surface of the tailboom between Stations 8700 and 11019.5 for a hollow or dull sound, which will indicate a bond separation or debond area. Do the inspections at the following intervals:

(1) For helicopters, serial number (S/N) 31006, 31020, 31022, 31042, 31136, 31157, and 31248, within 5-hours time-in-service (TIS), unless done previously, and thereafter at intervals not to exceed 50-hours TIS.

Note 1: Agusta Alert Bollettino Tecnico Nos. 139–193, and 139–194, both dated September 3, 2009 (ABTs), contain guidance on accomplishing the required actions of this AD. Following the Compliance Instructions in the ABTs accomplishes the requirements of this AD.

(2) For all helicopters, except S/N 31006, 31020, 31022, 31042, 31136, 31157, and

31248, within 25-hours TIS or 30 days, whichever occurs first, unless done previously, and thereafter at intervals not to exceed 50-hours TIS.

(b) If you find any bond separation, use the small end of the head of the hammer to identify the edges of the debonded area. If the debonded area goes beyond the strake, remove the strake. Using a marking pen or chalk, mark the edge of the debonded area.

(1) Measure the surface area of each debonded area, the distance between the edges of the debonded areas, and the distance of the edge of each debonded area from the edge of the bond joint.

(2) Before further flight, repair the tailboom using FAA-approved data and procedures if:

(i) The debonded area exceeds 320 mm^2 (0.5 in^2),

(ii) The distance between the edges of any two debonded areas is less than or equal to three times the largest debond dimension of the two debonded areas measured on a line between the centers of the two debonded areas, or

(iii) The edge of any debonded area is less than 3 mm (0.118 in) from the edge of the panel bond joint.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, Sharon Miles, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

(e) Copies of the applicable service information may be obtained from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.*

(f) The JASC Code for this part is Code 5302: Rotorcraft Tailboom.

Note 2: The subject of this AD is addressed in European Aviation Safety Agency AD No. 2009–0198–E, dated September 4, 2009.

(g) This amendment becomes effective on February 8, 2010, to all persons except those persons to whom it was made immediately effective by Emergency AD 2009–19–51, issued September 16, 2009, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 11, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–1159 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R02–OAR–2009–0680; FRL–9103–3]

Outer Continental Shelf Air Regulations Update To Include New Jersey State Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on October 2, 2009. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be promulgated and updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of New Jersey. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: *Effective Date:* This rule is effective on February 22, 2010.

This incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of February 22, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2009–0680. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007; telephone number: (212) 637–4074; e-mail address: *riva.steven@epa.gov.*

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I. Background Information

Throughout this document, the terms "we," "us," and "our" refer to the EPA.

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards (AAQS) and to comply with the provisions of Part C of title I of the CAA. 40 CFR part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude.

On October 2, 2009 (74 FR 50939), EPA proposed to approve requirements into the OCS Air Regulations pertaining to the State of New Jersey. EPA has evaluated the proposed regulations to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable rules in effect for onshore sources into 40 CFR part 55. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive

[1] The reader may refer to the Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

In preparing the Final rule, the following corrections were made to the list of requirements published on October 2, 2009, and are incorporated into this final publication:

1. A section titled "N.J.A.C. 7:27–21.6. Methods to be used for quantifying actual emissions" is inserted at Subchapter 21of Chapter 27. This insertion rectifies the unintended omission from that proposed rule. Subsequently, Subchapters 21.6, 21.7, 21.8, 21.9, and 21.10 now read 21.7, 21.8, 21.9, 21.10, and 21.11, respectively.

2. The title to Subchapter 31.6 has been edited to now read "Use of allowances by former users of DER credits".

3. The word "reserve" has been removed from the title of N.J.A.C. 7:27–31.8 which should read "Claims for incentive allowances".

4. A section titled "N.J.A.C. 7:27B–2.3. Observation principle" is inserted at Subchapter 2 of Chapter 27B. This insertion rectifies the unintended omission from the proposed rule. Subsequently, Subchapters 2.3, 2.4, and 2.5 now read 2.4, 2.5, and 2.6, respectively.

II. Public Comment and EPA Response

EPA's proposed action provided a 30-day public comment period which closed on November 2, 2009. During this period EPA received no comments on the proposed action.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. EPA is approving the proposed actions under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

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

This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the CAA, this action simply incorporates the existing rules in the COA. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

EPA has determined that today's final rule contains no Federal mandates that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Coordination With Indian Tribal Governments

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

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

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

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective February 22, 2010.

K. Petition for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 2010. Filing a petition for reconsideration by the Administrator of this final action 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 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 30, 2009.

Judith A. Enck,

Regional Administrator, Region 2.

■ Title 40, chapter I of the Code of Federal Regulations, is to be amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for 40 CFR part 55 continues to read as follows:

Authority: Section 328 of the CAA (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising the sixth sentence in paragraph (e) introductory text and paragraph (e)(15)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * * Copies of rules pertaining to particular states or local areas may be inspected or obtained from the EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004 or the appropriate EPA regional offices: U.S. EPA, Region 1 (Massachusetts) One Congress Street, Boston, MA 02114–2023; U.S. EPA, Region 2 (New Jersey and New York), 290 Broadway, New York, NY 10007–1866; U.S. EPA, Region III (Delaware), 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5000; U.S. EPA, Region 4 (Florida and North Carolina), 61 Forsyth Street, Atlanta, GA 30303; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Francisco, CA 94105; and U.S. EPA, Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101. * * *

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(15) * * *

(i) * * *

(A) State of New Jersey Requirements Applicable to OCS Sources, August 13, 2009.

* * * * *

■ 3. Appendix A to Part 55 is amended by revising paragraph (a)(1) under the heading "New Jersey" to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

New Jersey

(a) * * *

(1) The following State of New Jersey requirements are applicable to OCS Sources, as of August 13, 2009. New Jersey State Department of Environmental Protection—New Jersey Administrative Code. The following sections of Title 7:

Chapter 27 Subchapter 2—Control and Prohibition of Open Burning (Effective 6/20/94)

N.J.A.C. 7:27–2.1. Definitions
N.J.A.C. 7:27–2.2. Open burning for salvage operations
N.J.A.C. 7:27–2.3. Open burning of refuse
N.J.A.C. 7:27–2.4. General provisions
N.J.A.C. 7:27–2.6. Prescribed burning
N.J.A.C. 7:27–2.7. Emergencies
N.J.A.C. 7:27–2.8. Dangerous material
N.J.A.C. 7:27–2.12. Special permit
N.J.A.C. 7:27–2.13. Fees

Chapter 27 Subchapter 3—Control and Prohibition of Smoke From Combustion of Fuel (Effective 2/4/02)

N.J.A.C. 7:27–3.1. Definitions
N.J.A.C. 7:27–3.2. Smoke emissions from stationary indirect heat exchangers
N.J.A.C. 7:27–3.3. Smoke emissions from marine installations
N.J.A.C. 7:27–3.4. Smoke emissions from the combustion of fuel in mobile sources
N.J.A.C. 7:27–3.5. Smoke emissions from stationary internal combustion engines and stationary turbine engines
N.J.A.C. 7:27–3.6. Stack test
N.J.A.C. 7:27–3.7. Exceptions

Chapter 27 Subchapter 4—Control and Prohibition of Particles From Combustion of Fuel (Effective 4/20/09)

N.J.A.C. 7:27–4.1. Definitions
N.J.A.C. 7:27–4.2. Standards for the emission of particles
N.J.A.C. 7:27–4.3. Performance test principle
N.J.A.C. 7:27–4.4. Emissions tests
N.J.A.C. 7:27–4.6. Exceptions

Chapter 27 Subchapter 5—Prohibition of Air Pollution (Effective 10/12/77)

N.J.A.C. 7:27–5.1. Definitions
N.J.A.C. 7:27–5.2. General provisions

Chapter 27 Subchapter 6—Control and Prohibition of Particles From Manufacturing Processes (Effective 6/12/98)

N.J.A.C. 7:27–6.1. Definitions
N.J.A.C. 7:27–6.2. Standards for the emission of particles
N.J.A.C. 7:27–6.3. Performance test principles
N.J.A.C. 7:27–6.4. Emissions tests
N.J.A.C. 7:27–6.5. Variances
N.J.A.C. 7:27–6.7. Exceptions

Chapter 27 Subchapter 7—Sulfur (Effective 3/1/67)

N.J.A.C. 7:27–7.1. Definitions
N.J.A.C. 7:27–7.2. Control and prohibition of air pollution from sulfur compounds

Chapter 27 Subchapter 8—Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit) (Effective 4/20/09)

N.J.A.C. 7:27–8.1. Definitions
N.J.A.C. 7:27–8.2. Applicability
N.J.A.C. 7:27–8.3. General provisions
N.J.A.C. 7:27–8.4. How to apply, register, submit a notice, or renew
N.J.A.C. 7:27–8.5. Air quality impact analysis
N.J.A.C. 7:27–8.6. Service fees
N.J.A.C. 7:27–8.7. Operating certificates
N.J.A.C. 7:27–8.8. General permits
N.J.A.C. 7:27–8.9. Environmental improvement pilot tests
N.J.A.C. 7:27–8.11. Standards for issuing a permit
N.J.A.C. 7:27–8.12. State of the art
N.J.A.C. 7:27–8.13. Conditions of approval
N.J.A.C. 7:27–8.14. Denials
N.J.A.C. 7:27–8.15. Reporting requirements
N.J.A.C. 7:27–8.16. Revocation
N.J.A.C. 7:27–8.17. Changes to existing permits and certificates
N.J.A.C. 7:27–8.18. Permit revisions
N.J.A.C. 7:27–8.19. Compliance plan changes
N.J.A.C. 7:27–8.20. Seven-day notice changes
N.J.A.C. 7:27–8.21. Amendments
N.J.A.C. 7:27–8.22. Changes to sources permitted under batch plant, pilot plant, dual plant, or laboratory operating permitting procedures
N.J.A.C. 7:27–8.23. Reconstruction
N.J.A.C. 7:27–8.24. Special provisions for construction but not operation
N.J.A.C. 7:27–8.25. Special provisions for pollution control equipment or pollution prevention process modifications
N.J.A.C. 7:27–8.26. Civil or criminal penalties for failure to comply
N.J.A.C. 7:27–8.27. Special facility-wide permit provisions
N.J.A.C. 7:27–8.28. Delay of testing
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Chapter 27 Subchapter 9—Sulfur in Fuels (Effective 4/19/00)

N.J.A.C. 7:27–9.1. Definitions
N.J.A.C. 7:27–9.2. Sulfur content standards
N.J.A.C. 7:27–9.3. Exemptions
N.J.A.C. 7:27–9.4. Waiver of air quality modeling
N.J.A.C. 7:27–9.5. Incentive for conversion to coal or other solid fuel

Chapter 27 Subchapter 10—Sulfur in Solid Fuels (Effective 04/20/09)

N.J.A.C. 7:27–10.1. Definitions
N.J.A.C. 7:27–10.2. Sulfur contents standards
N.J.A.C. 7:27–10.3. Expansion, reconstruction or construction of solid fuel burning units
N.J.A.C. 7:27–10.4. Exemptions
N.J.A.C. 7:27–10.5. SO_2 emission rate determinations

Chapter 27 Subchapter 11—Incinerators (Effective 5/4/98)

N.J.A.C. 7:27–11.1. Definitions
N.J.A.C. 7:27–11.2. Construction standards
N.J.A.C. 7:27–11.3. Emission standards
N.J.A.C. 7:27–11.4. Permit to construct; certificate to operate
N.J.A.C. 7:27–11.5. Operation
N.J.A.C. 7:27–11.6. Exceptions

Chapter 27 Subchapter 12—Prevention and Control of Air Pollution Emergencies (Effective 3/19/74)

N.J.A.C. 7:27–12.1. Definitions
N.J.A.C. 7:27–12.2. Emergency criteria
N.J.A.C. 7:27–12.3. Criteria for emergency termination
N.J.A.C. 7:27–12.4. Standby plans
N.J.A.C. 7:27–12.5. Standby orders
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Chapter 27 Subchapter 16—Control and Prohibition of Air Pollution by Volatile Organic Compounds (Effective 04/20/09)

N.J.A.C. 7:27–16.1. Definitions
N.J.A.C. 7:27–16.1A. Purpose, scope, applicability, and severability
N.J.A.C. 7:27–16.2. VOC stationary storage tanks
N.J.A.C. 7:27–16.3. Gasoline transfer operations
N.J.A.C. 7:27–16.4. VOC transfer operations, other than gasoline
N.J.A.C. 7:27–16.5. Marine tank vessel loading and ballasting operations
N.J.A.C. 7:27–16.6. Open top tanks and solvent cleaning operations
N.J.A.C. 7:27–16.7. Surface coating and graphic arts operations
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N.J.A.C. 7:27–16.12. Surface coating operations at mobile equipment repair and refinishing facilities
N.J.A.C. 7:27–16.13. Flares
N.J.A.C. 7:27–16.16. Other source operations
N.J.A.C. 7:27–16.17. Alternative and facility-specific VOC control requirements
N.J.A.C. 7:27–16.18. Leak detection and repair
N.J.A.C. 7:27–16.19. Application of cutback and emulsified asphalts
N.J.A.C. 7:27–16.21. Natural gas pipelines
N.J.A.C. 7:27–16.22. Emission information, recordkeeping and testing
N.J.A.C. 7:27–16.23. Procedures for demonstrating compliance
N.J.A.C. 7:27–16.26. Variances
N.J.A.C. 7:27–16.27. Exceptions
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Chapter 27 Subchapter 18—Control and Prohibition of Air Pollution From New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules) (Effective 12/1/08)

N.J.A.C. 7:27–18.1. Definitions
N.J.A.C. 7:27–18.2. Facilities subject to this subchapter
N.J.A.C. 7:27–18.3. Standards for issuance of permits
N.J.A.C. 7:27–18.4. Air quality impact analysis
N.J.A.C. 7:27–18.5. Standards for use of emission reductions as emission offsets
N.J.A.C. 7:27–18.6. Emission offset postponement
N.J.A.C. 7:27–18.7. Determination of a net emission increase or a significant net emission increase
N.J.A.C. 7:27–18.8. Banking of emission reductions
N.J.A.C. 7:27–18.9. Secondary emissions
N.J.A.C. 7:27–18.10. Exemptions
N.J.A.C. 7:27–18.12. Civil or criminal penalties for failure to comply

Chapter 27 Subchapter 19—Control and Prohibition of Air Pollution From Oxides of Nitrogen (Effective 04/20/09)

N.J.A.C. 7:27–19.1. Definitions
N.J.A.C. 7:27–19.2. Purpose, scope and applicability
N.J.A.C. 7:27–19.3. General provisions
N.J.A.C. 7:27–19.4. Boilers serving electric generating units
N.J.A.C. 7:27–19.5. Stationary combustion turbines

N.J.A.C. 7:27–19.6. Emissions averaging
N.J.A.C. 7:27–19.7. Industrial/commercial/institutional boilers and other indirect heat exchangers
N.J.A.C. 7:27–19.8. Stationary reciprocating engines
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, and 74

[WT Docket Nos. 08–166, 08–167, and ET Docket No. 10–24; FCC 10–16]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order, the Commission establishes a deadline for wireless microphones and other low power auxiliary stations to cease operation in the 700 MHz Band. The Commission also adopts an early clearing mechanism by which 700 MHz public safety and commercial licensees can provide notice that they are initiating operations in the 700 MHz Band. In addition, the Commission prohibits the manufacture, import, sale, lease, offer for sale or lease, or shipment of wireless microphones and other low power auxiliary stations intended for use in the 700 MHz Band. With regard to users who are not eligible for, or who do not hold part 74, Subpart H license authorizations, the Commission waive its part 15 rules for a limited period. Finally, the Commission adopts certain disclosure requirements under which manufacturers, dealers, distributors, and other entities that sell or lease these devices must display a consumer disclosure at the point of sale or lease.

DATES: Effective January 22, 2010, except for §§ 15.216, 74.802(e)(2), and 74.851(h) and (i), which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: You may submit comments, identified by WT Docket No. 08–166, 08–167 and ET Docket No. 10–24, 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.
- *Mail:* 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 the Commission continues 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.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul D'Ari, Wireless Telecommunications Bureau, (202) 418–1550, e-mail *Paul.Dari@fcc.gov,* or Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's rules noted in the Report and Order and Further Notice of Proposed Rulemaking in WT Docket Nos. 08–166 and 08–167, ET Docket No. 10–24 and FCC 10–16, adopted January 14, 2010, and released on January 15, 2010. This summary should be read with its companion document, the Further Notice of Proposed Rulemaking (FNPRM) summary published elsewhere in this issue of the **Federal Register.** The full text of the Report and Order and FNPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket numbers, WT Docket No. 08–166, WT Docket No. 08–167, and ET Docket No. 10–24. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Report and Order Section of the Report and Order and Notice of Proposed Rulemaking

I. Introduction

1. In this Report and Order and FNPRM, the Commission takes action to ensure that public safety and commercial licensees can operate in the 700 MHz Band without interference, while providing entities currently operating wireless microphones in the band with an opportunity to relocate to other bands. In particular, the Commission ensures that these devices are cleared from the 700 MHz Band no later than June 12, 2010, consistent with the Commission's long-standing goal of making this spectrum fully available for use by public safety and commercial licensees, and the customers that they serve in the band. The Commission also authorizes, for the first time, the use of wireless microphones, on an unlicensed basis, by entities not currently eligible to obtain licenses. The Commission does this by waiver based on its longstanding unlicensed device rules, which have proved highly successful in permitting the use of low-power wireless devices. In addition, the Commission adopts a number of safeguards designed to ensure both that consumers understand their rights and obligations in operating wireless microphones and that wireless microphones are operated in compliance with our rules and policies. Finally, in the FNPRM the Commission seeks to refine and update its rules governing the use of wireless microphones, seeking comment on a range of issues concerning the operation of these devices in the core TV bands.

2. More specifically, in this Report and Order, the Commission adopt the following requirements:

- The Commission prohibits the manufacture, import, sale, lease, offer for sale or lease, or shipment of wireless microphones and other low power auxiliary stations intended for use in the 700 MHz Band in the United States, effective upon the publication of the rules in the **Federal Register,** and adopt related marketing and other requirements.
- The Commission requires that all low power auxiliary stations, including wireless microphones, cease operations in the 700 MHz Band no later than June 12, 2010, one year from the end of the DTV transition.
- The Commission provides for an early clearing mechanism that, to the extent that a public safety or commercial licensee will be initiating operations in the 700 MHz Band on specified frequencies and particular markets before June 12, 2010, permits a licensee to require users of low power auxiliary stations, including wireless microphones to cease operations 60 days after notice.
- The Commission stresses that the operations of low power auxiliary stations, including wireless microphones, in the 700 MHz Band must cease immediately if at any time users of these devices cause harmful interference to a 700 MHz public safety or commercial licensee.
- With respect to unauthorized operations of wireless microphones and other low power auxiliary stations, the Commission waives its part 15 rules for a limited period to permit unauthorized users of wireless microphones and other low power auxiliary stations to operate on an unlicensed basis under part 15 pursuant to certain specified technical requirements—in the 700 MHz Band until June 12, 2010, and in the core "TV bands" until the effective date of the Commission's actions in response to the FNPRM.

3. In addition, in this Report and Order the Commission takes various actions to ensure that consumers are better informed about its rules and policies concerning wireless microphones, which should facilitate compliance with those rules:

- The Commission establishes disclosure requirements to make certain that buyers of wireless microphone equipment understand the limitations on their use of such equipment. For instance, manufacturers, dealers, distributors, and other entities that sell or lease these devices will have to display a consumer disclosure at the point of sale or lease informing consumers of the conditions that apply to the operation of wireless microphones in the core TV bands.
- As part of the Commissions consumer outreach plan, the Commission will release consumer publications, including a Consumer Fact Sheet, that inform the public of its decisions in this Report and Order and of the need to clear the 700 MHz Band so that the spectrum can be used for the provision of new public safety and commercial services.
- The Commission will work with organizations whose memberships include wireless microphone users so that they help the Commission inform all affected users of its decisions in this Report and Order, particularly the need to clear the 700 MHz Band.
- The Commission will assist consumers, including those who have previously purchased wireless microphones that operate in the 700 MHz Band, by posting information on its Web site and by making information available from the Commission's consumer service representatives through a toll-free number at the Commission's call center.
- The Commission will make available via its Web site and its call center information regarding which wireless microphones are 700 MHz wireless microphones, what options may be available if consumers do have 700 MHz microphones, and how to contact wireless microphone manufacturers to obtain additional information. Information concerning the Commissions decision today will be posted on its Web site at *www.fcc.gov/cgb/wirelessmicrophones.*

4. Finally, in the FNPRM, the Commission take the following actions:

- The Commission proposes to revise its rules to provide that low power wireless audio devices, including wireless microphones, may be operated as unlicensed devices under part 15 of the rules in the core TV bands.
- The Commission proposes technical rules to apply to low power wireless audio devices, including wireless microphones, operating in the core TV bands on an unlicensed basis under part 15 of the rules.
- The Commission seeks comment on whether, and to what extent, eligibility for obtaining licenses to operate low power auxiliary stations, including wireless microphones, under part 74 should be expanded, and on whether the Commission should revise part 90 to facilitate wireless microphone use.

The Commission seeks comment on possible longer-term approaches for the operation of wireless microphones. Consistent with the Commissions broader efforts to manage this country's spectrum resources as effectively and efficiently as possible, the Commission here seek comment on possible long-term reform, based in part on technological innovation such as digital technology, that would enable wireless microphones to operate more efficiently and with improved immunity to harmful interference, thereby increasing the availability of spectrum for wireless microphone and other uses.

II. Report and Order

5. In this Report and Order, the Commission establishes a firm deadline of June 12, 2010 (one year from the end of the DTV transition) for wireless microphones and other low power auxiliary stations to cease operation in the 700 MHz Band. The Commission also adopts an early clearing mechanism by which 700 MHz public safety and commercial licensees can provide notice that they are initiating operations in the

700 MHz Band. The operators of wireless microphones and other low power auxiliary stations must clear the band within 60 days after such notice. In addition, the Commission prohibits the manufacture, import, sale, lease, offer for sale or lease, or shipment of wireless microphones and other low power auxiliary stations intended for use in the 700 MHz Band.

6. With regard to users who are not eligible for, or who do not hold part 74, Subpart H license authorizations, the Commission waive its part 15 rules for a limited period to permit all such users to operate on an unlicensed basis subject to a number of conditions in the 700 MHz Band until June 12, 2010 and in the core TV bands while the Commission consider issues raised in the FNPRM. In addition, the Commission adopts certain disclosure requirements under which manufacturers, dealers, distributors, and other entities that sell or lease these devices must display a consumer disclosure at the point of sale or lease informing consumers of the conditions that apply to the operation of wireless microphones and other low power auxiliary stations.

A. Low Power Auxiliary Station Operations in the 700 MHz Band After the End of the DTV Transition

7. In order to make the 700 MHz Band fully available to public safety and commercial licensees, the Commission is revising our rules to clarify that low power auxiliary stations, including wireless microphones, will no longer be allowed to operate in the 700 MHz Band except under the specified conditions, and for the limited time period, as adopted herein. Specifically, the Commission establishes a "hard" date of June 12, 2010—one year from the date of the DTV transition—by which all operations of such devices by all users (including unauthorized users) must have ceased in the band. In addition, the Commission will require that operations of these devices cease earlier than that date, pursuant to certain notification procedures, in those areas where 700 MHz public safety or commercial licensees are or will be entering and operating in the band prior to June 12, 2010. Finally, the Commission underscores that, if at any time users of low power auxiliary stations cause harmful interference to a 700 MHz public safety or commercial licensee, those users must cease operations in the band immediately. The Commission finds that this approach best balances the interests of public safety and commercial licensees to operate without interference while providing entities currently operating low power auxiliary stations in the 700 MHz Band with a reasonable amount of time to remove their operations from the band and relocate them to other bands. In addition, the Commission outlines below our consumer outreach plan to provide users with information concerning their use of low power auxiliary station devices as they transition from the 700 MHz Band.

8. *Need To Clear the Band.* Based on the record, the Commission finds that the Commission needs to be expeditious in establishing time frames and procedures for clearing wireless microphones from the 700 MHz band on our path to providing an interference-free environment for new services in the 700 MHz Band, especially public safety services that are used to protect safety of life, health, or property. The Commission finds that low power auxiliary stations could interfere with public safety and commercial base and mobile receivers. Such interference raises the potential for a disruption of vital public safety services and commercial services. As V–COMM comments, low power auxiliary stations can operate at similar power levels, and are authorized at even higher power levels (250 milliwatts), compared with the power levels at which public safety devices are expected to operate (200 milliwatts). These power levels employed by the respective devices pose a significant risk of co-channel interference and would be strong enough to disrupt the operations of both public safety and commercial mobiles and base station receivers in the 700 MHz Band. The risk of interference also is present to commercial and public safety systems when the wireless microphones and other low power auxiliary stations are operated at lower power levels, including as low as 10 milliwatts. This risk of interference supports the Commission's determination to prohibit operation of low power auxiliary stations in the 700 MHz Band. In addition, interference from low power auxiliary stations would lead to relatively large "dead zones" around such devices, resulting in effective loss of coverage to commercial and public safety mobiles and portable devices. The Commission finds the potential for such a result raises a significant threat of interference, which is particularly disturbing when considering that this could occur in public safety spectrum while being used to protect the safety of life, health, or property. In addition, the Commission notes the potential for interference to wireless microphone and other low power auxiliary station operations by commercial and public safety operations.

9. In addition to co-channel interference, the record indicates that low power auxiliary stations have the potential to cause additional interference, such as adjacent band interference, due to out-of-band emissions (OOBE) and intermodulation interference caused by emissions from multiple devices. These emissions and intermodulation products may potentially be strong enough to cause interference to commercial and public safety base stations and mobile devices. Intermodulation interference can occur when multiple low power auxiliary station transmitters are combined or used in close proximity with each other. Thus, commercial or public safety operations can receive interference at venues where multiple low power auxiliary station transmitters are used, such as at concerts or sporting events. V–COMM, for example, indicates that interference can occur in a wide variety of settings, and also discusses its own experience with co-channel interference in the 700 MHz Band caused by low power auxiliary stations. This potential for interference further supports prohibiting the operation of such devices, including wireless microphones, in the 700 MHz Band.

10. Clearing the 700 MHz Band is consistent with the Commission's previous findings relating to use of the 700 MHz Band in connection with the DTV transition. When the Commission in 2001 adopted rules for commercial services in a portion of the 700 MHz Band, it declined to grant a request filed by SBE that the Commission "afford continued secondary status to part 74 low power broadcast auxiliary devices (such as wireless microphones) operating in the Lower 700 MHz Band, and to establish a new service in part 95 of our Rules to accommodate their use." The Commission observed that insofar that the "Lower 700 MHz Band will host extensive broadcast use throughout the DTV transition, it is unlikely that new licensees will rapidly occupy the band to the extent that users of the low power broadcast auxiliary devices of the type SBE discusses will have to immediately cease all operation." Thus, it contemplated that low power broadcast auxiliary devices would be losing their secondary status and would have to vacate the band upon completion of the DTV transition in a particular local market.

11. In addition, the Commission in 2002 expressly excluded from the 700 MHz Band wireless video assist devices, which are another type of part 74,

Subpart H low power auxiliary station device, because of the reallocation of TV Channels 52–69 to wireless services, including public safety services. The Commission stated that "[wireless video assist devices] will not be allowed to use * * * [Channels 52–69] in the UHF–TV band due to a recent spectrum reallocation of those channels to uses other than broadcasting." Also, in 2006 the Commission determined in the TV White Spaces proceeding that the new low power, unlicensed devices under consideration there will not be permitted to operate on TV Channels 52–69. The Commission stated that the spectrum "ha[s] been reallocated for services other than broadcast television and will no longer be part of the TV bands after the transition."

12. The Commission concludes that parties have had time to know, and reason to believe, that authorized low power auxiliary stations would not be allowed to operate in the 700 MHz Band at the end of the DTV transition. The DTV Act was enacted over three years ago, and the Commission, as noted above, has on various occasions indicated that the 700 MHz Band would not be a permanent home for low power auxiliary stations, including wireless microphones. Further, a number of manufacturers warned their customers on their Web sites that, after the end of the DTV transition, frequencies in the 700 MHz Band will no longer be available for wireless microphone use under the Commission's rules. There has been adequate lead time for low power auxiliary station users, including wireless microphone users, and equipment manufacturers to anticipate and take measures to prepare for the reasonably anticipated consequences resulting from the end of the DTV transition, including the availability of the spectrum for public safety and other uses and the need for entities operating low power auxiliary stations to vacate the 700 MHz Band. Moreover, the need to ensure interference-free operations in the 700 MHz Band as soon as is practicable, particularly for public safety operations, compels the Commission to act to prohibit further use of the band for these wireless microphone and other low power auxiliary station users. Nevertheless, as the Commission discuss below, a short transition period may prevent unnecessary disruption of wireless microphone operations and allow an orderly transition to other spectrum. The Commission's determination in this Report and Order balances the requirements of those using low power auxiliary stations in the 700 MHz Band with the needs of new 700 MHz licensees to access the spectrum in a timely fashion.

13. *Transition Date.* In order to provide current low power auxiliary station users a reasonable opportunity to remove their systems from the 700 MHz band, the Commission find that allowing them to continue to operate in the 700 MHz Band for a limited period of time under certain conditions serves the public interest. The Commission finds that all entities currently operating low power auxiliary stations in the 700 MHz Band must vacate the band by June 12, 2010. This deadline of June 12, 2010, coupled with the obligation to cease operations earlier pursuant to notice, as described below, strikes the best balance between the needs of public safety and commercial licensees to operate without interference in the 700 MHz Band with the concern that entities currently operating low power auxiliary station devices in the 700 MHz Band have sufficient time to remove their operations from the band and relocate them to other bands.

14. With respect to the timing for requiring that users of low power auxiliary stations cease operating in the 700 MHz Band, the revised rules provide that entities operating low power auxiliary stations may continue those operations in the 700 MHz Band as late as June 12, 2010, subject to the conditions set forth in this Report and Order. In setting June 12, 2010, as the latest possible date for these entities to transition from the 700 MHz Band under the conditions adopted in this Report and Order, the Commission recognizes that low power auxiliary station users should have a short period to transition their operations not already transitioned out of the 700 MHz Band, which should prevent unnecessary disruption of wireless microphone operations. The record supports a transition period for users of low power auxiliary stations to remove their operations out of the 700 MHz Band, but commenters differ on the length of this period.

15. The Commission finds that the transition period and process that the Commission adopts, which terminates on June 12, 2010, is a reasonable period for those parties that may need to continue to operate in the band and will ensure that this spectrum is cleared on a timely and orderly basis for use by public safety and commercial wireless services. The Commission also finds that these requirements, coupled with the notice procedures described herein, will adequately address any concerns that the operation of low power auxiliary stations in the 700 MHz Band will cause interference to public safety and commercial 700 MHz Band licensees with the end of the DTV transition. Although entities operating low power auxiliary stations will have until June 12, 2010 to complete their exit from the band and their migration to other bands where they would be authorized to operate, subject to the conditions the Commission adopts herein, the Commission nevertheless encourage such users to cease operations in the 700 MHz Band as soon as possible. In addition, the Commission finds that the public interest is served by applying the transition procedures that the Commission adopts in this Report and Order to users of low power auxiliary stations that do not hold a license. This finding is based upon the Commission's determination that the public interest will be served by allowing this use in this limited context for the limited duration discussed herein.

16. While the Commission agrees with MSTV/NAB that low power auxiliary station licensees authorized to operate in the 700 MHz should be afforded some opportunity to migrate out of the band, the Commission cannot agree with the time frame they suggest, given the potential for interference with public safety and commercial broadband licensees and the clear determination in Congress's enactment of the DTV Act of 2005 that the 700 MHz band would no longer be a broadcast band in the near term. In addition, the Commission is not persuaded that low power auxiliary station licensees, many of which are associated with high-power broadcast stations that have had significant notice of the need to vacate the 700 MHz band on a timely basis, should have a different and longer timeframe to vacate the 700 MHz Band than other users in the band, as proposed by MSTV. In addition to the need to clear the band because of the potential for interference, the Commission is concerned that adding another layer of complexity—establishing a different set of band clearing rules for a particular subset of users—is likely to add significantly to consumer confusion as well as to undermine the Commissions efforts to clear the 700 MHz Band. On this issue, the Commission's judgment is that keeping a single, uniform nationwide date, rather than adopting two separate transition dates, is essential to clearing the 700 MHz Band in a timely, orderly, and effective fashion in a manner that is equitable to all the affected parties. The Commission also is not persuaded of the need for a shorter timeframe, such as a February 18, 2010, hard date as

suggested by CTIA, Verizon Wireless, and several public safety groups. As discussed above, the Commission is placing operating limitations on low power auxiliary station users and adopting notification procedures that enable new 700 MHz licensees to clear the band of low power auxiliary station users in markets in which they will be operating. Further, the Commission notes that, based on the record and publicly available information, it is anticipated that there will be only limited rollout of new commercial services in the 700 MHz Band prior to mid-year 2010. To the extent that spectrum in the 700 MHz Band needs to be clear of low power auxiliary station use for the initiation of new operations, which includes system testing or trials, the Commission is adopting a clearing mechanism that provides for a 60-day notification process. Accordingly, the Commission finds the additional one-year period after the end of the DTV transition during which these low power auxiliary station users may continue to operate in the 700 MHz Band provides a reasonable amount of time for those entities to migrate from the band, yet also allows for the new 700 MHz licensees to access the spectrum in order to provide new services to the public.

17. *Early Clearing.* In addition to setting June 12, 2010, for the clearing of the 700 MHz Band by wireless microphones, the Commission also provides procedures for clearing low power auxiliary station operations in the 700 MHz Band prior to that time to the extent that a public safety or commercial licensee has initiated, or will be initiating, operations in the 700 MHz Band in particular market(s) before that date. Wireless microphones will be required to cease operations before June 12, 2010, only after they have been provided 60 days' advance notification, as set forth below.

18. The notification process will work as follows. During the transition period, which will end on June 12, 2010, a 700 MHz commercial or public safety licensee may notify the Commission that it will be initiating operations on specified frequencies in particular market(s). The wireless operations initiated by the public safety or 700 MHz commercial licensees can include system testing or trials. Upon such notification, the Wireless Telecommunications Bureau or the Public Safety and Homeland Security Bureau will issue a public notice that will be available on the Commission's Web site and that identifies the affected market area(s). Users of low power auxiliary stations, including wireless microphone users, in those areas must cease operation within 60 days of the release of the notice. The Commission's Web site will provide a central location for the low power auxiliary station users to find information on markets in which 700 MHz licensees are beginning operations prior to June 12, 2010. In addition, any 700 MHz commercial or public safety licensee may, at its option, notify any entity operating low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the low power auxiliary station user in the affected market area must cease operation within 60 days. For entities that have already initiated such operations, these entities may, upon the effective date of this order, follow the same notifications procedures, triggering the same 60-day cessation obligation for users of low power auxiliary stations.

19. In the event that both of these notice provisions are used to provide notice to a particular user of a low power auxiliary station(s), the user will be required to cease operations in the market(s) in accordance with whichever notice provides for earlier termination of such operations. This process should place only a limited burden on public safety and commercial licensees, which have the primary rights to use 700 MHz Band spectrum. Further, as noted above, notwithstanding any early clearing mechanisms adopted herein, low power auxiliary station users that cause harmful interference to a 700 MHz commercial or public safety licensee must cease operations immediately consistent with the Commission's rules for secondary use. The Commission also intends to be in continuous communication with the public safety community to ascertain the extent of public safety use of the 700 MHz Band to help ensure that public safety agencies are able to operate free from harmful interference.

20. *Other Arguments.* The Commission is not persuaded by certain commenters that the Commission should delay the transitioning of low power auxiliary stations and discontinue our efforts to clear the 700 MHz Band of wireless microphones for public safety and commercial use because some LPTV stations, TV translators, and Class A stations are continuing to operate in the 700 MHz Band after the transition. The Commission need to establish expeditious time frames and procedures for clearing wireless microphones from the 700 MHz band on the Commission's path to providing an interference-free environment for new services in the 700 MHz Band, especially public safety services that are used to protect safety of life, health, or property. Considerations affecting broadcast services other than full-power television broadcast operations should not delay the clearing of wireless microphones.

21. The Commission also declines to adopt Nady's proposal that our transition plan should provide for the negotiation of relocation. As stated above, entities currently operating low power auxiliary stations, including wireless microphones, may continue to operate in the 700 MHz Band until June 12, 2010, subject to the conditions set forth in this Report and Order. Accordingly, the Commission is allowing them to operate in the 700 MHz Band for some time during the transition period. These operators, however, must accept interference from other licensees in the band and must not cause interference to 700 MHz licensees during this transition period, and also are subject to the other conditions the Commission adopt herein, including the requirement to cease operations under the early clearing notification procedures.

22. The Commission denies as well the requests by WCA and PISC that the Commission not provide a transition but adopt a waiver procedure for licensed wireless microphone operations in the 700 MHz Band after the end of the DTV transition. The Commission finds that the waiver procedures requested by these parties are not necessary. First, parties may always request a waiver under the general waiver provisions in our rules. Second, the Commission does not find that a separate waiver provision is warranted because of our determination to allow a limited transition period during which users may operate low power auxiliary stations. The Commission is making clear in its rules that entities operating low power auxiliary stations, including wireless microphones, in the 700 MHz Band may continue to operate on those frequencies until June 12, 2010, subject to the conditions adopted herein. Some operations by low power auxiliary station users in the band may be required to end prior to that time under the 60-day notice procedure that the Commission is adopting. The Commission therefore denies their requests that the Commission adopt a waiver procedure for authorized wireless microphones and other low power auxiliary stations operating in the 700 MHz Band.

23. Furthermore, the Commission finds that the steps the Commission is

taking in this order sufficiently address arguments raised by some parties that there is insufficient spectrum for wireless microphone users outside of the 700 MHz Band, or that replacement spectrum should be made available for wireless microphone operations. As explained elsewhere in this Report and Order, the Commission is adopting an approach that will permit wireless microphone operations to continue on a temporary basis in the 700 MHz Band and in the core TV bands while the Commission considers final rules on the issues addressed in the FNPRM. Under the first step for moving ahead under this approach, the Commission is waiving its part 15 rules to permit unauthorized wireless microphone users to operate in the 700 MHz Band on an unlicensed basis until June 12, 2010, and to permit operation of wireless microphones in the core TV bands on the same unlicensed basis until the effective date of the rules that will be adopted in response to the FNPRM. Under the next step, the Commission proposes and seeks comment in the FNPRM on specific rules for operation of wireless microphones under part 15 of the rules in the TV bands, and the Commission seeks comment on some expansion of the licensee eligibility for part 74 low power auxiliary stations. The Commission also seeks comment on possible revisions to its part 90 rules for licensed operation of wireless microphones. The FNPRM will allow the Commission to consider the use of certain spectrum outside of the 700 MHz Band by wireless microphones, and provides a reasonable and efficient path forward to examine the future of wireless microphone operations.

24. Finally, the Commission concludes that the steps the Commission has taken in this Report and Order are sufficient to address concerns that the presence of low power auxiliary station users operating in the 700 MHz Band would impede the ability of 700 MHz commercial licensees to comply with their build-out requirements such that they should be granted additional time to meet these requirements. Given that the steps the Commission take enable these 700 MHz licensees to begin operating in areas in the band based on the licensees' own timetables, the Commission finds that these licensees' ability to meet their build-out obligations will not be hampered by interference from low power auxiliary stations, and the Commission reject proposals to delay implementation of 700 MHz construction requirements. For these same reasons, the Commission also rejects MetroPCS's argument that a delay in clearing the band could constitute a *de facto* modification of its licenses.

25. The rules adopted in this Report and Order with respect to the clearing of the 700 MHz Band by June 12, 2010 and the early clearing procedures will take effect upon the publication of a summary of this Report and Order in the **Federal Register.** The Commission finds that there is good cause for departure from the 30-day delay in the effective date under the Administrative Procedure Act. In this Report and Order, the Commission is taking steps to expedite the availability of unencumbered spectrum for public safety and new commercial licensees, in order that such licensees will be able to operate without interference in the 700 MHz Band. The Commission finds that under these circumstances, a further delay in the effective date of the clearing procedure rules would be contrary to the public interest.

B. Prohibition of the Manufacture, Import, Sale, Lease, Offer for Sale or Lease, or Shipment of 700 MHz Band Low Power Auxiliary Stations

26. The Commission revises its rules to prohibit the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations for operation in the 700 MHz Band in the United States, effective upon the publication of a summary of this Report and Order in the **Federal Register.** The Commission finds that this prohibition serves the public interest because it will provide greater assurance that the 700 MHz Band will be made available to public safety and new commercial licensees.

27. The Communications Act of 1934, as amended, authorizes the Commission "consistent with the public interest, convenience, and necessity, [to] make reasonable regulations * * * governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications" and these regulations "shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices * * *, and to the use of such devices." The Act further provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices * * *, or use devices, which fail to comply with regulations promulgated pursuant to this section."

28. The Commissions decision to prohibit the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations that operate in the 700 MHz Band is necessary to ensure that new services in this valuable spectrum will be provided without interruption to benefit all Americans. Public safety agencies are already making use of the 700 MHz Band, and deployment of additional public safety systems is expected to proceed at a rapid pace. Commercial wireless providers are currently preparing to deploy advanced systems that will support new and faster wireless broadband services, once the spectrum is available at the conclusion of the DTV transition.

29. This prohibition is a reasonable corollary to the Commission's decision in this Report and Order to prohibit the operation of low power auxiliary stations in the 700 MHz Band permanently after June 12, 2010, subject to conditions that would require their operation to cease at an earlier date. Since low power auxiliary station equipment will no longer be allowed to operate in the 700 MHz Band after June 12, 2010, the Commission must also prohibit the manufacture, sale, and all other steps that would make wireless microphones available for use in the 700 MHz Band. The prohibition on manufacture, sale, and lease of devices addresses concerns about the potential for increased interference to 700 MHz licensees, including public safety users, by decreasing the number of devices available for use in the band. For the same reason, it also addresses concerns about the proliferation of unauthorized uses in the band. The Commission notes that Shure, one of the largest manufacturers of wireless microphone equipment, states that it no longer manufactures 700 MHz equipment for use in the U.S., and that Audio-Technica, another large manufacturer of wireless microphones, ceased development of new 700 MHz equipment approximately eight years ago. In addition, allowing the sale or lease of devices that can operate in the 700 MHz Band is inconsistent with our goal of taking all steps necessary to make this spectrum available both to public safety and commercial licensees.

30. The Commission rejects Sennheiser's argument that the Commission delays the implementation of the ban on the marketing of devices. The Commission neither agrees that the lead time for implementation of the ban is unreasonable, nor that the Commission must wait for actual interference to occur. As the Commission discusses in this section, in adopting the ban the Commission is particularly concerned with the use of

the spectrum at a time when the spectrum is to be available for new licensees and new services. Moreover, contrary to Sennheiser's assertions, and as the Commission discusses elsewhere in this Report and Order, the Commission finds that sufficient notice was provided indicating that the use of the 700 MHz Band by wireless microphones and other low power auxiliary stations would no longer be authorized. Elsewhere in this Report and Order, the Commission finds that entities operating low power auxiliary stations in the 700 MHz Band must cease operations of those devices in the band after June 12, 2010, subject to the early clearing conditions set forth in this Report and Order. Therefore, it would not serve the public interest to permit the manufacturing and marketing of equipment that can be used in the 700 MHz Band beyond June 12, 2010, and earlier where the clearing mechanisms the Commission are adopting are utilized.

31. Consistent with the arguments of Shure and Sennheiser, the Commission does not prohibit manufacturers from manufacturing low power auxiliary stations, including wireless microphones, for export. The provisions of Section 302 of the Act, as amended, which addresses, among other matters, the prohibition of the manufacture, import, sale, offer for sale, or shipment of devices, are not applicable to "devices or home electronic equipment and systems manufactured solely for export. * * *" Accordingly, the Commission clarifies that its decision today to prohibit the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations that operate in the 700 MHz Band is not applicable to devices manufactured solely for export. Finally, the Commission revises its rules to require that any person who manufactures, sells, leases, or offers for sale or lease low power auxiliary stations, including wireless microphones, that are destined for non-U.S. markets and that are capable of operating in the 700 MHz Band shall include labeling in all sales, marketing, and packaging materials, including online materials, related to such devices. The labeling must make clear that the devices cannot be used in the United States. The Commission finds that this rule is consistent with the public interest, convenience, and necessity.

32. To protect consumers in the United States, and to help ensure that no wireless microphones and other low power auxiliary stations that operate in the 700 MHz Band continue to be made available for use in contravention of our efforts to remove those devices from the band in the United States, the Commission require retailers to remove from display (including online display) any low power auxiliary stations, including wireless microphones, that can operate in the 700 MHz Band, as well as any marketing material that does not comply with the requirements adopted herein.

33. The rules relating to the prohibition on the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations that operate in the 700 MHz Band will take effect upon the publication of a summary of this Report and Order in the **Federal Register,** except the labeling requirement for devices manufactured solely for export. The Commission finds that there is good cause for departure from the 30-day delay in the effective date under the Administrative Procedure Act. In this Report and Order, the Commission is taking steps to expedite the availability of unencumbered spectrum for public safety and new commercial licensees consistent with the Commission's long-standing goal of making the spectrum fully available for those licensees. Under these circumstances, the Commission finds that a delay in the effective date of the prohibition would be contrary to the public interest. With respect to the labeling requirement for devices manufactured solely for export, the Commission find that this requirement should take effect 90 days after release of this Report and Order (*i.e.,* April 15, 2010). This period provides sufficient time for entities that manufacture, sell, lease, or offer for sale or lease low power auxiliary stations that are destined for non-U.S. markets and that are capable of operating in the 700 MHz Band to comply with this labeling requirement.

C. Procedures To Modify Licenses

34. For the reasons set forth above, the Commission concludes that the public interest would be best served by clarifying that entities operating low power auxiliary stations, including wireless microphones, in the 700 MHz Band may continue to operate in that band until June 12, 2010, but only under the conditions adopted in this Report and Order. Accordingly, through this rulemaking proceeding, the Commission hereby modifies the licenses of all low power auxiliary stations that authorize operation in the 700 MHz Band (*i.e.,* 698–806 MHz) to delete the authorization to operate on this particular spectrum, effective June 12, 2010. In the event that any low power auxiliary station must cease operations prior to June 12, 2010 under the clearing mechanisms the Commission adopts in the Report and Order, then the license relating to that low power auxiliary station will be modified automatically without Commission action to delete the authorization to operate on the 700 MHz Band effective on the date that operations are required to cease in the band. In taking this action, the Commission implements its decisions to ensure that the effective use of the 700 MHz Band by public safety and commercial licensees at the end of the DTV transition is not compromised, and that these new licensees will be able to operate free from interference by low power auxiliary stations operating in the 700 MHz Band.

35. Most low power auxiliary station licensees that are authorized to operate in the 700 MHz Band are also authorized to operate in a number of other bands that are specified in Section 74.802 of the Commission rules. These multiple band licensees may continue to operate in other bands identified in their licenses without further Commission action. Those licensees, however, whose current authorization limits them in whole or in significant part to operations in the 700 MHz Band can be accommodated with the use of spectrum from other spectrum bands that are available for low power auxiliary station operations under Section 74.802 of the rules. Such licensees may wish to consult with a local Society of Broadcast Engineers (SBE) coordinator to identify suitable spectrum from the core TV bands that are available for low power auxiliary station operations under Section 74.802 of the rules. Once replacement spectrum has been identified, as a matter of administrative convenience, the licensee should file an application to modify its authorization to include the identified frequencies. This will enable the Wireless Telecommunications Bureau (Bureau) to modify the affected license in conformance with the revised rules adopted in this order.

D. Unlicensed Operation of Wireless Microphones Under Part 15; Waivers

36. The Commission concludes that it serves the public interest to waive two of its part 15 rules, to permit unauthorized users of low power auxiliary stations, including wireless microphones, to operate on an unlicensed basis under part 15 pursuant to certain specified technical requirements, in the 700 MHz Band until June 12, 2010 and in the core TV bands until the effective date of Commission action taken in response to the FNPRM. The Commission

anticipates that such unlicensed operations in the core TV bands pursuant to waiver will remain in place only for a short period of time, as the Commission intends to act expeditiously on its proposal to promulgate final rules that would authorize these operations on a permanent basis. Accordingly, the Commission waives Sections 15.201(b) and 15.209(a) of our part 15 technical rules. These waivers will permit entities that operate wireless microphones in the 700 MHz Band without the required license to continue those operations subject to the band clearing mechanisms that the Commission adopts in this Report and Order, and permit them to relocate their operations to the core TV bands on the same part 15 unlicensed basis. The waivers also will permit operation of wireless microphones outside of the 700 MHz Band without the required authorization. The operation of wireless microphones in the 700 MHz Band under these limited term waivers will be subject to the band clearing mechanisms the Commission adopts in this Report and Order. Thus, all entities may continue operating wireless microphones in the 700 MHz Band until June 12, 2010, unless they must cease operations sooner under the early band clearing mechanisms discussed above. During the temporary waiver period, any entity that chooses to operate a wireless microphone under these waivers must comply with the waiver conditions, including compliance with specified technical requirements that are identical to those the Commission is proposing in the FNPRM for the operation of wireless microphones under part 15. *See* Amendment of Part 101 of the Commission's Rules to Accommodate 39 Megahertz Channels in the 6525–6875 MHz Band; Amendment of Part 101 of the Commission's Rules to Provide for Conditional Authorization on Additional Channels in the 21.8–22.0 GHz and 23.0–23.2 GHz Band; Fixed Wireless Communications Coalition Request for Waiver, Notice of Proposed Rulemaking and Order in WTB Docket No. 09–114 and RM–11417, at paras. 23–24 (released Jun. 29, 2009) (granting request for waiver of Section 101.31(b)(vii) to allow for conditional authority under conditions that were proposed as rule changes in the NPRM portion of the decision).

37. Under these waivers, wireless microphones may be operated as part 15 devices without a license in the 700 MHz Band under the conditions adopted in this Report and Order, and they can also operate in the core TV bands. Operation under these waivers is subject to the following conditions. First, the wireless microphones must comply with specified technical requirements under part 15, which are the same technical rules that the Commission is proposing in the FNPRM for wireless microphone operations under part 15 (as set forth in Appendix E, below). Second, the devices must be certificated under the rules applicable to certification under our part 74, Subpart H rules. Third, the devices shall not cause harmful interference and must accept any interference received pursuant to Section 15.5 of our Rules. Finally, users operating in the 700 MHz Band must comply with the conditions for continued operation in that band during the transition period, including the early clearing procedures discussed above. The waivers will be effective upon the release of the Report and Order.

38. Section 1.3 of the Commission's rules provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown" subject to the provisions of the APA and its own rules. A waiver is appropriate when "particular facts would make strict compliance inconsistent with the public interest." A waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule. As discussed below, the Commission finds that good cause exists to waive Sections 15.201(b) and 15.209(a) of our part 15 technical rules in order to allow operation of wireless microphones in the 700 MHz Band and the core TV bands for a limited period.

39. The Commission is allowing operation of wireless microphones under these waivers to use a power of up to 50 milliwatts. The waivers should allow wireless microphones to operate outside of the 700 MHz Band in a manner that is largely consistent with their current operations. While part 74 rules permit wireless microphones to operate on VHF TV channels with a power level to the antenna of 50 milliwatts and on UHF channels with a power level of 250 milliwatts, two equipment manufacturers indicate that the actual power levels for most wireless microphones operating in the 700 MHz Band are in the 10–50 milliwatts range. We also note that a large majority of wireless microphones are certificated to operate with a power level of 50 milliwatts or less. These appear to be the most popular devices because the 50 milliwatts or less is sufficient for most uses and extends battery life. While some wireless microphones operate at power levels of 250 milliwatts, it appears most of these devices are used for professional applications requiring a longer operating range with a short duration of operation, such as electronic news gathering or movie production users that hold part 74 authorizations. In this regard, the Commission notes that devices authorized under part 74 as low power auxiliary stations are "intended to transmit over distances of approximately 100 meters" and may operate with a power level of 250 milliwatts. The Commission anticipates that wireless microphones operating up to 50 milliwatts under the terms of this waiver would transmit over a shorter distance. Therefore, the Commission believes that the operations that the Commission is allowing under the waivers will effectively accommodate users that are currently unauthorized. The Commission is not extending the waiver to permit these wireless microphone users to operate at power levels higher than 50 milliwatts because, unless operated on a licensed basis pursuant to part 74 requirements, use of these devices generally poses a greater interference risk to TV band licensees. Only Part 74 licensees are permitted to operate their devices at power levels higher than 50 milliwatts.

40. The Commission recognizes, however, that there may be instances where operation at a power level higher than 50 milliwatts may be needed and can be allowed without causing interference. The Commission finds that such instances should be evaluated based on their individual facts and circumstances to ensure that interference will not occur. The Commission therefore grants delegated authority to the Office of Engineering and Technology and Wireless Telecommunications Bureau to modify the limited waiver of the part 15 rules on a case-by-case basis to permit entities to operate wireless microphones at power levels higher than 50 mW where it can be shown there is no significant risk of harmful interference to other users of the spectrum, particularly to TV broadcast service.

41. The Commission finds that good cause for a limited waiver exists in this particular case, given the totality of the circumstances including the short-term nature of these waivers and the need to facilitate clearing of the 700 MHz band for use by the public safety and commercial licensees. For the same reasons that the Commission finds good cause exists for granting this waiver, as discussed in this Report and Order, the Commission has determined that there

would be good cause under Section 553(b)(3)(B) of the APA, 5 U.S.C. 553(b)(3)(B), for establishing interim rules that permit the same range of operations as the waiver. The Commission also finds that it serves the public interest to provide access to other spectrum for entities that are operating wireless microphones in the 700 MHz Band while this rulemaking is pending. Our primary goal in this proceeding is to clear all wireless microphones from the 700 MHz Band, thereby simplifying the process of making this spectrum fully available for public safety and commercial broadband licensees. In order to attain this goal, the Commission intends to have any wireless microphone user, authorized or not, transition out of the 700 MHz band and onto other available frequencies no later than June 12, 2010. Granting these waivers will allow currently unauthorized users that vacate the 700 MHz Band to operate in the 700 MHz Band temporarily under the umbrella of unlicensed part 15 operation. At the same time, the conditions the Commission imposes serve the public interest intent behind each of the two specific part 15 rules being waived, which is to prevent interference to authorized radio services. The power limits, minimum co-channel TV broadcast station distance provisions, specific frequency operation, and out-of-band emissions limits established herein provide safeguards to ensure that the policy objectives served by Sections 15.201(b) and 15.209(a) are met. Finally, the Commission notes that any operation of wireless microphones pursuant to the waivers is subject to the Section 15.5 interference restrictions. Taken together, these safeguards ensure that any operation done pursuant to the waivers will not undermine the purposes of, and public interest protected by, Sections 15.201(b) and 15.209(a).

42. The record in this proceeding includes a number of comments that describe the need for and the significance of wireless microphones in providing quality audio technology for performances and programs in theaters, classrooms, lecture halls, houses of worship, stadiums, and other venues. The Commission finds that temporarily waiving these two rules in order to permit the continued operation of wireless microphones, including wireless microphones that are used for these purposes, pending our final decisions of the issues raised in the FNPRM will provide this Commission with the opportunity to develop a full and balanced record before it adopts final, comprehensive rules that address the operation of wireless microphones by those entities that lack the required license. In addition, the Commission notes that some entities will be acquiring new wireless microphone equipment to operate in bands outside of the 700 MHz Band to replace their existing equipment, while some equipment that operates in the 700 MHz Band may be capable of being modified to operate in the core TV band spectrum. The waivers permitting operations will allow at least some of these users to make informed decisions with respect to new equipment purchases, or where applicable the modification of existing equipment, until the issues raised in the FNPRM are resolved. The Commission emphasizes that there are a variety of unique facts surrounding grant of this waiver, and the Commission does not anticipate that the Commission will soon encounter such a convergence of factors as these to warrant the type of accommodation afforded here.

43. While the Commission finds good cause for granting the limited term waivers, as discussed above, we stress that these waivers are temporary and that the granting of these waivers will not prejudice the outcome of this proceeding or otherwise limit the Commission's choices therein. Under this approach, the Commission will be able to compile a record and consider more fully the issues and proposals in response to the FNPRM concerning currently unauthorized users of wireless microphones, including whether to expand eligibility for licenses under part 74.

44. In order to address the potential for interference from the operation of wireless microphones in the core TV Bands, the Commission requires that all wireless microphones operating under the waivers are subject to the same technical limitations that the Commission is proposing in the FNPRM for the operation of "Wireless Audio Devices" under part 15. These technical rules provide for distances from existing co-channel TV broadcast stations, specific frequency operation, power limits, and out-of-band emissions. In addition, the unlicensed operators of wireless microphones that operate under the waivers will be subject to the restrictions in part 15 of the rules. The immediate and potential future harm to current TV band licensees of continued widespread use of previously unauthorized wireless microphones appears to be negligible, in light of the conditions the Commission is imposing on the waivers, including that the wireless microphones must comply with the specified technical requirements (consistent with those proposed for part 15 wireless microphone operations in the core TV bands, as set forth in the proposed rules) and that they must not cause harmful interference to licensed TV band users. The Commission notes that licensees that operate low power auxiliary devices under part 74 authorization will still receive interference protection with respect to wireless microphones that will be operating through these temporary waivers as unlicensed devices.

45. Given the actions the Commission is taking today, the Commission does not adopt PISC's remaining proposals, including that the Commission provide a "general amnesty" to certain unauthorized wireless microphone users. The Commission finds that various steps that the Commission is taking today appropriately address, on a going forward basis, the issues relating to the proliferation and use of wireless microphones that have not heretofore been authorized. Finally, the Commission does not rule at this time on PISC's proposal to create a General Wireless Microphone Service that would be licensed by rule pursuant to Section 307(e) of the Act. The Commission does not address at this time questions relating to the unauthorized use of wireless microphones prior to our actions today. The Commission instead seeks to address its concerns in the order that considers the issues set forth in the FNPRM.

E. Disclosure Requirements and Consumer Outreach

46. Based on this record, the Commission adopts certain measures, including point-of-sale disclosure requirements, to address concerns regarding a lack of consumer awareness of our rules, so that the Commission can best ensure the operation of wireless microphones and other low power auxiliary stations in conformance with the relevant policies and rules. Specifically, the Commission adopts a disclosure requirement for anyone selling, leasing, or offering for sale or lease wireless microphones or other low power auxiliary stations that operate in the core TV spectrum. Under this requirement, manufacturers, dealers, distributors, and other entities that sell or lease these devices will have to display a Consumer Disclosure, at the point of sale or lease, informing consumers of the conditions that apply to the operation of wireless microphones in the core TV bands during the temporary waiver period.

This disclosure requirement will apply until the effective date of the final rules addressing the issues raised in the FNPRM. In addition, the Commission will implement a comprehensive consumer outreach program that will include a Consumer Fact Sheet and other consumer publications, as well as other steps on the part of the Commission, to complement the expected outreach and education efforts on the part of low power auxiliary station manufacturers.

47. *Disclosure Requirement.* The Commission requires anyone selling, leasing, or offering for sale or lease wireless microphones or other low power auxiliary stations that operate in the core TV bands to provide certain written disclosures to consumers. These entities must display the Consumer Disclosure, the text of which will be developed by the Commission staff, at the point of sale or lease, in a clear, conspicuous, and readily legible manner. In addition, the Consumer Disclosure must be displayed on the Web site of the manufacturer (even in the event the manufacturer does not sell wireless microphones directly to the public) and of dealers, distributors, retailers, and anyone else selling or leasing the devices.

48. The Commission takes this step in recognition that a significant number of currently unauthorized users of wireless microphones and other low power auxiliary stations in the 700 MHz Band may have to purchase new equipment to transition into the core TV bands pursuant to temporary waivers. The Commission is intention in requiring display of the Consumer Disclosure is to make certain that these users understand their rights and obligations regarding the use of low power auxiliary stations in the core TV bands. For example, wireless microphone purchasers will need to know that they must not operate the device at a power level in excess of 50 milliwatts or in situations where it may cause harmful interference, and that they must accept any interference received from other devices. The Consumer Disclosure should help assure that purchasers of low power auxiliary stations operate their devices in a manner in compliance with the Commission's rules and policies and thereby do not cause interference to authorized radio services in the core TV bands.

49. The Commission finds that the only practicable way to ensure that users receive this information is to require clear disclosure at the point of sale or lease, and on manufacturer and distributor Web sites. A number of parties in comments and *ex parte* filings have urged the Commission to adopt labeling requirements so that users of wireless microphones and other low power auxiliary stations will be aware of eligibility requirements and other restrictions for the use of those devices. The Commission agrees with these parties that disclosure requirements are necessary to ensure compliance with the Commissions rules and to help consumers operate the equipment in a manner that does not cause interference.

50. The Commission delegates authority to the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau to prepare the specific language that must be used in the Consumer Disclosure and publish it in the **Federal Register.**

51. There is more than one way in which the point-of-sale Consumer Disclosure may be provided to potential purchasers or lessees of wireless microphones, but, as discussed above, each of them must satisfy all the requirements set out above, including that the disclosure be provided in writing at the point of sale in a clear, conspicuous, and readily legible manner. One way to fulfill this disclosure requirement would be to display the Consumer Disclosure in a prominent manner on the product box by using a label (either printed onto the box or otherwise affixed to the box), a sticker, or other means. Another way to fulfill the disclosure requirement would be to display the text immediately adjacent to each low power auxiliary station offered for sale or lease and clearly associated with the model to which it pertains. For wireless microphones offered online or via direct mail or catalog, the disclosure must be prominently displayed in close proximity to the images and descriptions of each wireless microphone. This requirement will remain in effect until the effective date of final rules adopted in response to the FNPRM.

52. The Commission will require manufacturers, dealers, distributors, and other entities that sell or lease wireless microphone devices for operation in the core TV bands to comply with the disclosure requirements no later than February 28, 2010, and the Commission encourages these entities to provide consumers with the required information earlier. In this Report and Order, the Commission is taking steps to ensure that low power auxiliary stations, including wireless microphones, are cleared from the 700 MHz Band no later than June 12, 2010, so that public safety and commercial licensees will be able to operate without interference in the band. As noted above, many currently unauthorized users of wireless microphones and other low power auxiliary stations in the 700 MHz Band will have to purchase or lease new equipment to transition into the core TV bands, and the consumer disclosure will provide information on the operation of those devices in the core TV bands. The Commission finds that delaying the effective date of the disclosure rules until some later time would be contrary to the public interest.

53. *Consumer Outreach.* In addition, the Commission finds that several means should be employed to provide as much notice as possible to users of the need to clear the 700 MHz Band of low power auxiliary stations, including wireless microphones.

54. The Commission will release consumer publications, including a Consumer Fact Sheet and answers to Frequently Asked Questions (FAQs), that inform the public of the Commissions decisions in this Report and Order. Specifically, the Consumer Fact Sheet will serve the public interest by explaining the need to clear the 700 MHz Band in order that the spectrum can be used for the provision of new public safety and commercial services. The Consumer Fact Sheet will explain that entities currently operating low power auxiliary stations, including wireless microphones, may continue to operate in the 700 MHz Band until June 12, 2010, subject to the conditions set forth in this Report and Order, including the early clearing mechanisms. The Consumer Fact Sheet will provide information concerning the early clearing mechanisms for the 700 MHz Band that the Commission is adopting in this Report and Order. It will also inform the public how to use the Commission's Web site to view public notices that identify the markets in which 700 MHz licensees are initiating operations. In addition, the Consumer Fact Sheet will provide information concerning our decision to prohibit the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations for operation in the 700 MHz Band in the United States. The Commission also will provide on its Web site answers to FAQs relating to this proceeding.

55. Commission staff also will identify and contact organizations that represent entities that are known to be users of low power auxiliary stations, including wireless microphones in the 700 MHz Band, including groups that represent theaters, houses of worship, and sporting venues. The Commission will inform these entities of its decisions in this Report and Order,

particularly the need to clear the 700 MHz Band in order that the spectrum can be used for the provision of new public safety and commercial services.

56. Further, the Commission expects all manufacturers of wireless microphones and other low power auxiliary stations to make significant efforts to ensure that all users of such equipment capable of operating in the 700 MHz Band are fully informed of the decisions in this Report and Order. Specifically, the Commission expects these manufacturers, at a minimum, to ensure that these users are informed of the need to clear the 700 MHz Band in order that the spectrum can be used for the provision of new public safety and commercial services. Manufacturers also should inform users of wireless microphones and other low power auxiliary stations that they may continue to operate in the 700 MHz Band until June 12, 2010, but only subject to the conditions set forth in this Report and Order, including the early clearing mechanisms. Further, the Commission expects all manufacturers to contact dealers, distributors, and anyone else who has purchased wireless microphones and other low power auxiliary stations, and inform them of the Commissions decisions in this Report and Order to help clear the 700 MHz Band. Manufacturers should also provide information on the decisions in this Report and Order to any users that have filed warranty registrations for 700 MHz Band equipment with the manufacturer. The Commission also expects manufacturers to post this information on their Web sites and include it in all of their sales literature.

In addition, the Commission urges all manufacturers to extend their rebate offers and trade-in programs for any 700 MHz Band low power auxiliary stations, including wireless microphones, and widely publicize these programs to ensure that all users of wireless microphones are fully informed. To the extent manufacturers do not offer a rebate or trade-in program for 700 MHz Band low power auxiliary stations, the Commission strongly encourage them to create or re-establish such programs. In contacting dealers and distributors, the Commission expects manufacturers to inform these entities that they should: (1) Inform all customers who have purchased low power auxiliary stations, including wireless microphones, that are capable of operating in the 700 MHz Band of our decision to clear the 700 MHz Band of such devices; (2) post such and (4) provide information in sales literature, including on their Web sites, on the availability of any manufacturer rebate offerings and trade-in programs related to low power auxiliary stations operating in the 700 MHz Band; and that they must comply with the disclosure requirements that we are adopting in this Report and Order.

III. Procedural Matters

Final Regulatory Flexibility Act Analysis

57. As required by the Regulatory Flexibility Act of 1980 ("RFA"), the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this Report and Order. Although Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Commission nevertheless believes that it would serve the public interest to analyze the possible significant economic impact of the policy and rule changes in this band on small entities. Accordingly, the FRFA includes an analysis of this impact in connection with all spectrum that falls within the scope of the Report and Order, including spectrum in the 746–806 MHz Band.

Final Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules considered in the *Notice* in WT Docket No. 08–166 and WT Docket No. 08–167. The Commission sought written public comment on the *Notice,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

59. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of the *Report and Order,* including spectrum in the 746–806 MHz Band.

A. Need for, and Objectives of, the Rules

60. As noted in the *Report and Order,* the DTV Act set a firm date by which the 700 MHz Band (698–806 MHz), currently occupied by television broadcasters in TV Channels 52–69, must be vacated to allow for use of the spectrum by public safety and commercial wireless services. In the DTV Delay Act, which was enacted on February 11, 2009, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009. In the *Report and Order,* the Commission takes several actions relating to the operation of low power auxiliary stations, including wireless microphones, in the 700 MHz Band, that are designed to ensure that these devices are cleared from the 700 MHz Band in order that, consistent with the Commission's long-standing goals, this spectrum is made fully available for use by the public safety and commercial licensees, and the customers that they serve, in the band following the DTV transition.

61. In the *Report and Order,* the Commission determines that entities currently operating part 74 low power auxiliary stations, including wireless microphones, in the 700 MHz Band will not have the right to operate on those frequencies except pursuant to certain specified conditions and only for a limited transition period of no more than one year from end of the DTV transition (June 12, 2010). In adopting this transition period, the Commission seeks to balance the needs of public safety and commercial licensees to operate without interference in the 700 MHz Band with the concern that entities currently operating low power auxiliary stations in the 700 MHz Band have sufficient time to remove their operations from the band and relocate to other bands. Furthermore, in certain areas, it may be necessary to end the transitional operations of low power auxiliary stations in the 700 MHz Band prior to that time, where public safety and commercial licensees are entering the 700 MHz Band. Specifically, to the extent that a 700 MHz public safety or commercial licensee chooses to notify the Commission that it will be initiating operations on specified frequencies in particular market(s), the Commission will issue a public notice to inform users of low power auxiliary stations in the 700 MHz Band in those market(s) that they will be required to cease operations within 60 days after such notice is issued. Alternatively, any 700 MHz public safety or commercial licensee may, at its option, notify any user of low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the entity operating low power

auxiliary stations in the affected market area must cease operation within 60 days. Finally, the Report and Order underscores that if, at any time during this transition period, users of low power auxiliary stations cause harmful interference to a 700 MHz public safety or commercial licensee, those users must cease operations in the band immediately.

62. Through this determination in the *Report and Order,* the Commission is acting to ensure that these low power auxiliary stations are cleared from the 700 MHz Band in order to make this spectrum fully available for use by the public safety and commercial licensees. This determination respecting operation of wireless microphones in the 700 MHz Band also is consistent with the Commission's previous concerns about the potential for interference in the band because low power auxiliary stations could interfere with public safety and commercial base and mobile receivers. Such interference raises the potential for a disruption of vital public safety services and commercial services.

63. Consistent with the Commission's goal of ensuring that 700 MHz Band spectrum is available for public safety and commercial users following the DTV transition, the Report and Order prohibits the manufacture, import, sale, offer for sale, or shipment of low power auxiliary stations designed to operate in the 700 MHz Band in the United States at any time following the publication of a summary of the Report and Order in the **Federal Register.** The Report and Order adopts additional marketing and labeling requirements designed to prevent the continued sale and distribution of low power auxiliary stations that operate in the 700 MHz Band. This prohibition is not applicable to devices manufactured solely for export. The prohibition on manufacture, import, sale, and shipment of low power auxiliary stations designed to operate in the 700 MHz Band in the United States serves the public interest by providing greater assurance that the 700 MHz Band will be made available to public safety and new commercial licensees. The Commission finds that good cause exists to have this prohibition take effect on less than 30 days notice in order to expedite the availability of unencumbered spectrum for public safety and new commercial licensees consistent with the statutory directive that the DTV transition end as of June 12, 2009.

64. The *Report and Order* also modifies the licenses of all low power auxiliary station licensees that currently are authorized to operate in the 700 MHz Band, removing any part of the authorization pertaining to the band, subject to the condition that if a licensee is unable to cease operations in the band by that date, it may continue to operate under its existing authorization within the transition limitations adopted in the *Report and Order.* The Commission takes this action to ensure that the effective use of the 700 MHz Band by public safety and commercial licensees after the end of the DTV transition is not compromised, and that these new licensees will be able to operate free from interference by low power auxiliary stations operating in the 700 MHz Band. The Commission also adopts procedures whereby existing low power auxiliary station licensees currently operating in the 700 MHz Band can have their licenses modified should it be necessary to add to their authorizations other spectrum bands that are available for low power auxiliary station operations under the rules.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

65. Nady Systems, Inc. (Nady) indicates that its comments also address the IRFA. In its comments, Nady addresses the suggestion by PISC that the Commission should order all wireless microphone manufacturers that engaged in illegal marketing to pay the cost of replacing microphone systems for those wireless microphone operators required to cease operation in the 700 MHz Band after the end of the DTV transition. Nady comments that a gradual migration of wireless microphone users out of the 700 MHz Band strikes a reasonable balance that protects competing interests, and comments that the Commission should provide a transition that includes voluntary negotiations between parties. According to Nady, the majority of wireless microphone manufacturers are "small entities" which "would go bankrupt if they had to finance migration of all wireless microphones operating in the 700 MHz Band." Nady also comments that wireless microphones will be migrating to the "white spaces" below the 700 MHz Band, and that these microphones require protection from interference by emerging technologies in the white spaces. A number of commenters, including Nady, argue that a delay in the effective date of the ban is needed to prevent unnecessary disruption of operations and costs, and the Commission has adopted a short time period for low power auxiliary station users to transition their operations out of the 700 MHz Band. Many commenters addressed issues regarding the use of wireless microphones without the required license.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

66. 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 proposed rules, if adopted. 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).

67. When identifying small entities that could be affected by the Commission's new rules, this FRFA provides information describing the number of small entities that currently hold low power auxiliary station licenses, as well as estimates of the number of small entities that currently manufacture low power auxiliary stations. In order to analyze the total number of potentially affected small entities, the Commission estimates the number of small entities that may be affected by the rule changes adopted in the *Report and Order.*

68. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. 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. 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. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

69. In the *Report and Order,* the Commission concludes that low power auxiliary stations authorized under part 74 of our rules—including wireless

microphones—will not be permitted to operate in the 700 MHz Band after the DTV transition. The Commission also concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band, effective upon the publication of a summary of the *Report and Order* in the **Federal Register.** Under Section 74.832 of the Commission's rules, only certain entities may be issued licenses authorizing the use of low power auxiliary stations. In particular, these entities fall within the following categories: (1) Licensees of AM, FM, TV, or International broadcast stations or low power TV stations; (2) broadcast network entities; (3) certain cable television system operators; (4) motion picture and television program producers as defined in the rules; and (5) certain entities with specified interests in Broadband Radio Service (BRS) Educational Broadcast Service (EBS) licenses, *i.e.,* BRS licensees (formerly licensees and conditional licensees of stations in the Multipoint Distribution Service and Multi-channel Multipoint Distribution Service), or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an Educational Broadcast Service (formerly Instructional Television Fixed Service) licensee or permittee.

70. Radio Stations. This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources." The SBA has established a small business size standard for this category, which is: such firms having $7.0 million or less in annual receipts. According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

71. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included. In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

72. Television Broadcasting. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $14.0 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,379. In addition, according to Commission staff review of the BIA Publications, Inc.'s *Master Access Television Analyzer Database* on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less. The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

73. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

74. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. These stations are non-profit, and therefore considered to be small entities. There are also 2,295 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

75. Cable Television Distribution Services. 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.

76. 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 fewer than 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.

77. 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.

78. Motion Picture and Video Producers. This economic census category comprises "establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials." The SBA has developed a small business size standard for firms within this category, which is: Firms with $27 million or less in annual receipts. According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year. Of this total, 7,685 firms had annual receipts of under $25 million and 45 firms had annual receipts of $25 million to $49,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

79. Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service). Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In its BRS/EBS Report and Order in WT Docket No. 03–66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495–2690 MHz. In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard.

80. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which is: 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 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, under this size standard, the majority of firms can be considered small.

81. Low Power Auxiliary Device Manufacturers: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

82. Low Power Auxiliary Device Manufacturers: Other Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)." The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment below 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

83. Radio, Television, and Other Electronics Stores. The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having $8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under $5 million, and 177 firms had sales of $5 million or more but less than $10 million. Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

84. The Report and Order adopts transition procedures for entities that have not been able to migrate their operations of low power auxiliary stations out of the 700 MHz Band by the effective date of the new rules. During a one-year transition period from the end of the DTV transition, to the extent that a 700 MHz public safety or commercial licensee chooses to notify the Commission that it will be initiating operations on specified frequencies in particular market(s), the Commission will issue a public notice providing that users of low power auxiliary stations in the 700 MHz Band in those market(s) will be required to cease operations within 60 days after such notice is issued. Alternatively, any 700 MHz commercial or public safety licensee may, at its option, notify any user of low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the entity operating low power auxiliary stations in the affected market area must cease operation within 60 days.

85. To protect consumers in the United States, and to help ensure that no wireless microphones and other low power auxiliary stations that operate in the 700 MHz Band continue to be made available for use in the United States, the Report and Order requires retailers to remove from display (including online display) any low power auxiliary stations, including wireless microphones, that can operate in the 700 MHz Band, as well as any marketing material that does not comply with the requirements adopted herein.

86. Current licensees with authority under part 74, Subpart H to operate low power auxiliary stations in the 700 MHz Band whose current authorization limits them in whole or in significant part to operations in the 700 MHz Band can be accommodated with the use of spectrum from other spectrum bands that are available for low power auxiliary station operations under Section 74.802 of the rules. Once replacement spectrum has been identified, as a matter of administrative convenience, the licensee should file an application to modify its authorization to include the identified frequencies.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

87. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance 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) and exemption from coverage of the rule, or any part thereof, for small entities."

88. In the *Report and Order,* the Commission adopts a single set of rules for all operators and manufacturers of low power auxiliary stations (including those operators and manufacturers that are small entities). The Commission decides on a single set of rules in accordance with its objective of limiting potential interference on the 700 MHz Band to ensure that it is available for public safety and commercial wireless services as of June 12, 2009. In the *Report and Order,* the Commission concludes to amend its rules to make clear that none of the entities currently operating low power auxiliary stations, including wireless microphones, within the 700 MHz Band will have the right to do so after the end of the DTV transition because such operations could cause harmful interference to new wireless services in the band, particularly public safety operations. To adopt a separate set of rules for small entities could undermine the Commission's objective of establishing an unencumbered 700 MHz Band for use by public safety and commercial wireless services after the end of the DTV transition.

89. The rules adopted in the *Report and Order* may have a significant economic impact on a substantial number of small entities. For example, the Commission has determined to amend its rules to provide that low power auxiliary stations licensed under part 74 of the rules (including those operated by small entities) no longer have a right to operate in the 700 MHz Band after the effective date of the rules adopted in the Report and Order. The Commission modifies the licenses of all low power auxiliary station licensees that currently are authorized to operate in the 700 MHz Band to remove this part of the authorization and prohibit such operations in the 700 MHz Band after the effective date of the new rules, as conditioned in the *Report and Order.* The Commission also concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band, effective upon publication of a summary of the *Report and Order* in the **Federal Register.** This ban includes the manufacture, import, sale, offer for sale, or shipment of such devices by small entities, and the requirements for complying with these rules would be the same for both large and small entities. To the extent that small entities feel this compliance burden more, we have, as noted herein in Section D and below, provided a transition period to lessen this burden.

90. In the *Report and Order,* the Commission takes several steps to minimize the economic impact of its rules on operators of low power auxiliary stations in the 700 MHz Band (including those operators which are small entities). For example, the Commission recognizes that not all entities operating low power auxiliary stations in the 700 MHz Band may succeed, despite their best efforts, in removing their operations from the band by the date of the new rules and finds that a transition period is appropriate for these users. This limited right terminates one year from the end of the DTV transition, subject to the transition procedures. All users of low power auxiliary stations must cease operations in the band immediately if they cause harmful interference to 700 MHz public safety and commercial licensees. To the extent that a 700 MHz public safety or commercial licensee chooses to notify the Commission that it will be initiating operations on specified frequencies in particular market(s), the Commission will issue a public notice providing that users of low power auxiliary stations in the 700 MHz Band in those market(s) will be required to cease operations within 60 days after such notice is issued. Alternatively, any 700 MHz commercial or public safety licensee may, at its option, notify any user of low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the entity operating low power auxiliary stations in the affected market area must cease operation within 60 days. Alternative procedures that the Commission did not adopt include a longer transition period that may have had an impact on small entities.

91. These transition procedures will apply both to licensed low power auxiliary stations and users of low power auxiliary stations in the 700 MHz Band that that did not obtain the required license. By making the procedures available to entities that have not had the required license, it is likely that many small entities will be provided with authority to operate on a limited basis, which has not previously been made available to them. The Commission also concludes that it serves the public interest to waive two of our part 15 rules, to permit unauthorized users of low power auxiliary stations, including wireless microphones, to operate on an unlicensed basis under Part 15 pursuant to certain specified technical requirements, in the 700 MHz Band until June 12, 2010 and in the core TV bands until the effective date of the rules that will be adopted in response to the FNPRM.

92. In addition, the Commission finds that those licensees whose current authorization limits them in whole or in significant part to operations in the 700 MHz Band can be accommodated with the use of spectrum from other spectrum bands that are available for low power auxiliary station operations under Section 74.802 of the rules. The *Report and Order* notes that such licensees may wish to consult with a local Society of Broadcast Engineers (SBE) coordinator to identify suitable spectrum from other spectrum bands that are available for low power auxiliary station operations under the rules. Once replacement spectrum has been identified, as a matter of administrative convenience the licensee should file an application to modify its authorization to include the identified frequencies. This will enable the Wireless Telecommunications Bureau to modify the license in conformance with the revised rules adopted in the *Report and Order.*

93. The Report and Order rejects an alternative proposal for a general amnesty for unauthorized wireless microphone users. The Commission permits wireless microphone users currently operating in the 700 MHz Band, which include many currently unauthorized users, to remain in the band for a limited period of time subject to specific transition procedures, while also permitting many currently unauthorized users the opportunity, on a going-forward basis, to locate wireless microphone operations in the TV band spectrum. In addition, the Report and Order declines to pursue the investigation requested by PISC.

F. Report to Congress

1. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register.**

Final Paperwork Reduction Act Analysis

94. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seek specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

95. The Commission finds that there is good cause to seek emergency OMB approval in order that the new information collections adopted in this Report and Order may take effect as soon as possible. The procedures under which public safety and commercial licensees may provide notice of their intention to initiate wireless operations constitute a new information collection under the PRA. The labeling requirements for 700 MHz Band equipment destined for non-U.S. markets also constitute a new information collection under the PRA. In addition, the consumer disclosure requirements for anyone selling, leasing, or offering for sale or lease low power auxiliary stations that operate in the core TV bands constitute a new information collection under the PRA. The Commission is submitting a request to OMB for approval of these rules under the emergency clearance provisions of the PRA. Accordingly, the information collections adopted in this Report and Order will become effective as follows. The information collections associated with the procedures for early clearing of the 700 MHz Band will become effective upon publication of a summary of this Report and Order in the **Federal Register** or upon OMB approval, whichever is later. The labeling requirements for 700 MHz Band equipment destined for export will become effective 90 days after release of this Report and Order (*i.e.,* April 15, 2010), subject to OMB approval, and the consumer disclosure requirements will become effective on February 28, 2010, subject to OMB approval.

Congressional Review Act

96. The Commission will include a copy of this Report and Order and FNPRM in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

97. Accordingly, *it is ordered,* pursuant to Sections 1, 2, 4(i), 4(j), 301, 302, 303, 304, 307, 308, 309, 316, 332, 336, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337, that this Report and Order in WT Docket No. 08–166, WT Docket No. 08–167, and ET Docket No. 10–24 is adopted, that parts 2, 15, and 74 of the Commission's rules, 47 CFR parts 2, 15, and 74 are amended as set forth in the final rules, and that the requirements of this Report and Order and the amended rules shall become effective upon the publication of a summary of the Report and Order in the **Federal Register,** except as follows with respect to the information collections: § 74.802(e) in the final rules shall become effective upon publication of a summary of the Report and Order in the **Federal Register;** § 15.216 in the final rules shall become effective on February 28, 2010; § 74.851(h) in the final rules shall become effective 90 days after release of this Report and Order (*i.e.,* April 15, 2010), and these information collections are subject to OMB approval. With respect to information collections subject to OMB approval, the Commission will issue a public notice announcing the date upon which these provisions shall become effective following receipt of such approval.

98. *It is further ordered* that, pursuant to authority in Section 1.3 of the Commission's rules, 47 CFR 1.3, and Sections 4(i), 302, 303(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), and 303(r), Sections 15.201(b) and 15.209(a) of the Commission's rules, 47 CFR 15.201(b), 15.209(a), are waived, consistent with the terms of this Report and Order. This action is effective upon release of this Report and Order.

99. *It is further ordered* that, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Consumer and Governmental Affairs Bureau are granted delegated authority to implement the policies set forth in this Report and Order and the rules, as revised, set forth in the final rules hereto.

100. *It is further ordered* that, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), the Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau are granted delegated authority to prepare the specific language that must be used in the Consumer Disclosure, as set forth in this Report and Order and the rules in the final rules, and publish it in the **Federal Register.**

101. *It is further ordered* that, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), the Office of Engineering and Technology and the Wireless Telecommunications Bureau are granted delegated authority to address requests to modify the limited waiver of Sections 15.201(b) and 15.209(a) of the Commission's rules, 47 CFR 15.201(b), 15.209(a), as set forth in this Report and Order, on a case-by-case basis to permit entities that are operating without a license authorization to operate low power auxiliary stations at power levels higher than 50 milliwatts.

102. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

103. *It is further ordered* that the Commission shall send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Communications equipment, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Labeling, and Reporting and recordkeeping requirements.

47 CFR Part 74

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15, and 74 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, Table of Frequency Allocations, is amended by revising footnotes NG115 and NG159 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

NON-FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NG115 In the bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–608 MHz, and 614–698 MHz, wireless microphones and wireless assist video devices may be authorized on a non-interference basis, subject to the terms and conditions set forth in 47 CFR part 74, subpart H.

* * * * *

NG159 Any full-power television licensee that holds a television broadcast license to operate between 698 and 806 megahertz (TV channels 52–69) shall be entitled to protection from harmful interference through June 12, 2009, and may not operate at that frequency after June 12, 2009. Auxiliary broadcast stations other than low power auxiliary stations (*i.e.,* low-power TV stations, translator stations, booster stations, and TV auxiliary (backup) facilities) may continue to operate indefinitely in the band 698–806 MHz on a secondary basis to all other stations operating in that band.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

■ 4. Part 15 is amended by adding § 15.216 to read as follows:

§ 15.216 Disclosure Requirements for wireless microphones and other low power auxiliary stations capable of operating in the core TV bands.

(a) Any person who manufactures, sells, leases, or offers for sale or lease, low power auxiliary stations capable of operating in the core TV bands (channels 2–51, excluding channel 37) is subject to the following disclosure requirements: (1) Such persons must display the consumer disclosure text, as specified by the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau, at the point of sale or lease of each such low power auxiliary station. The text must be displayed in a clear, conspicuous, and readily legible manner. One way to fulfill the requirement in this section is to display the consumer disclosure text in a prominent manner on the product box by using a label (either printed onto the box or otherwise affixed to the box), a sticker, or other means. Another way to fulfill this requirement is to display the text immediately adjacent to each low power auxiliary station offered for sale or lease and clearly associated with the model to which it pertains.

(2) If such persons offer such low power auxiliary stations via direct mail, catalog, or electronic means, they shall prominently display the consumer disclosure text in close proximity to the images and descriptions of each such low power auxiliary station. The text should be in a size large enough to be clear, conspicuous, and readily legible, consistent with the dimensions of the advertisement or description.

(3) If such persons have Web sites pertaining to these low power auxiliary stations, the consumer disclosure text must be displayed there in a clear, conspicuous, and readily legible manner (even in the event such persons do not sell low power auxiliary stations directly to the public).

(b) The consumer disclosure text described in paragraph (a)(1) of this section is set out in an appendix to this section.

Appendix to § 15.216—[Reserved]

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 5. The authority citation for part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 336(f), 336(h) and 554.

■ 6. Section 74.802 is amended by revising the last two entries in paragraph (a); revising paragraph (b)(3), and by adding paragraph (e), to read as follows:

§ 74.802 Frequency assignment.

(a) * * *

614.000–698.000 MHz

944.000–952.000 MHz

(b) * * *

(3) 470.000–608.000 MHz and 614.000–698.000 MHz.

All zones 113 km (70 miles)

* * * * *

(e) *Clearing mechanisms for the 700 MHz Band.* This section sets forth provisions relating to the transition of low power auxiliary stations operating at 698–806 MHz (700 MHz band).

(1) Any low power auxiliary station that operates at frequencies in the 700 MHz band while transitioning its operations out of that band must not cause harmful interference and must accept interference from any commercial or public safety wireless licensees in the 700 MHz band.

(2) Any low power auxiliary station that operates at frequencies in the 700 MHz band will have until no later than June 12, 2010 to transition its operations completely out of the 700 MHz band, subject to the following. During this transition period, any commercial or public safety licensee in the 700 MHz band may choose one or both of the following voluntary methods to notify low power auxiliary stations:

(i) Any commercial or public safety licensee in the 700 MHz band may notify the Commission that it has initiated or will be initiating operations on specified frequencies in a particular market(s) in the 700 MHz band. The wireless operations initiated by the commercial or public safety 700 MHz licensees may include system testing or trials. Following receipt of the notification, the Commission will issue

a public notice providing that operators of low power auxiliary stations, including wireless microphones, in the 700 MHz band in those market(s) will be required to cease operations within 60 days after the Commission's notice is released.

(ii) Any commercial or public safety licensee in the 700 MHz band may notify any low power auxiliary station users operating in the 700 MHz band that it has initiated or will be initiating operations on specified frequencies in the market in which the low power auxiliary station is operating. The wireless operations initiated by the commercial or public safety 700 MHz licensees may include system testing or trials. Upon receipt of such notice, the low power auxiliary station in the affected market area must cease operation within 60 days.

(iii) In the event that both of these notice provisions in paragraphs (e)(2)(i) and (ii) of this section are used with respect to a particular low power auxiliary station, the low power auxiliary station will have to cease operations in the market(s) in accordance with whichever notice provides for earlier termination of its operations.

(3) Notwithstanding this 60 day notice requirement, any low power auxiliary station that causes harmful interference to any commercial or public safety 700 MHz licensee must cease operations immediately, consistent with the rules for secondary use.

■ 7. Section 74.851 is amended by revising the heading and adding new paragraphs (g), (h), and (i) to read as follows:

§ 74.851 Certification of equipment; prohibition on manufacture, import, sale, lease, offer for sale or lease, or shipment of devices that operate in the 700 MHz Band; labeling for 700 MHz band equipment destined for non-U.S. markets; disclosure for the core TV bands.

* * * * *

(g) No person shall manufacture, import, sell, lease, offer for sale or lease, or ship low power auxiliary stations that are capable of operating in the 700 MHz band (698–806 MHz). This prohibition does not apply to devices manufactured solely for export.

(h) Any person who manufactures, sells, leases, or offers for sale or lease low power auxiliary stations, including wireless microphones, that are destined for non-U.S. markets and that are capable of operating in the 700 MHz band shall include labeling and make clear in all sales, marketing, and packaging materials, including online materials, relating to such devices that the devices cannot be operated in the U.S.

(i) Any person, whether such person is a wholesaler or a retailer, who manufactures, sells, leases, or offers for sale or lease low power auxiliary stations that operate in the core TV bands (channels 2–51, excluding channel 37) is subject to the disclosure requirements in § 15.216 of this chapter.

■ 8. Section 74.861 is amended by revising paragraph (e)(1)(ii) to read as follows:

§ 74.861 Technical requirements.

* * * * *

(e) * * *

(1) * * *

(ii) 470–608 and 614–698 MHz bands—250 mW

* * * * *

[FR Doc. 2010–1216 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[WT Docket Nos. 08–166, 08–167, and ET Docket No. 10–24; DA 10–92]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this order, Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau of the Federal Communications Commission adopt the specific language that must be used in the consumer disclosure that is required by Section 15.216 of Appendix B in the *Wireless Microphone Report and Order*.[1]

DATES: This rule amends § 15.216, which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in WT Docket Nos. 08–166 and 08–167, ET Docket No. 10–24 and DA 10–92, adopted January 15, 2010, and released on January 15, 2010. In this order, the Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau of the Federal Communications Commission adopt the specific language that must be used in the consumer disclosure that is required by Section 15.216 of Appendix B in the *Wireless Microphone Report and Order*.[2] This disclosure requirement is applicable to persons who manufacture, sell, lease, or offer for sale or lease low power auxiliary stations, including wireless microphones, capable of operating in the core TV bands (channels 2–51, excluding channel 37).

Order

1. On January 14, 2010, the Commission adopted a *Wireless Microphone Report and Order*.[3] In the *Wireless Microphone Report and Order,* the Commission took action to ensure that low power auxiliary stations, including wireless microphones, are cleared from the 700 MHz Band (689–806 MHz) so that public safety and commercial licensees can operate in the band without interference. The Commission adopted a new rule, Section 15.216, which provides that any person who manufactures, sells, leases, or offers for sale or lease wireless microphones and other low power auxiliary stations capable of operating in the core TV bands must display a consumer disclosure text.[4]

2. The Commission delegated authority to the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau to adopt the specific language that must be used in the consumer disclosure that is required by Section 15.216 of Appendix B in the Wireless Microphone Report and Order.[5] The Wireless Telecommunications Bureau

[1] Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, WT Docket Nos. 08–166, 08–167, ET Docket Nos. 10–24, *Report and Order and Further Notice of Proposed Rulemaking,* FCC 10–16 at para. 99 (rel. October 15, 2010) ("*Wireless Microphone Report and Order*").

[2] Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, WT Docket Nos. 08–166, 08–167, ET Docket Nos. 10–24, *Report and Order and Further Notice of Proposed Rulemaking,* FCC 10–16 at para. 99 (rel. October 15, 2010) ("*Wireless Microphone Report and Order*").

[3] *Id.*

[4] *See id.,* Appendix B.

[5] *Id.* at para. 99.

and the Consumer and Governmental Affairs Bureau hereby adopt the consumer disclosure text as required by the Commission.

List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, and Reporting and recordkeeping requirements.

PART 15—RADIO FREQUENCY DEVICES

■ For the reason discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

■ 2. Section 15.216 is amended by adding an appendix to read as follows:

§ 15.216 Disclosure Requirements for wireless microphones and other low power auxiliary stations capable of operating in the core TV bands.

* * * * *

Appendix to § 15.216—Consumer Alert

Consumer Alert

Most users do not need a license to operate this wireless microphone system. Nevertheless, operating this microphone system without a license is subject to certain restrictions: The system may not cause harmful interference; it must operate at a low power level (not in excess of 50 milliwatts); and it has no protection from interference received from any other device. Purchasers should also be aware that the FCC is currently evaluating use of wireless microphone systems, and these rules are subject to change. For more information, call the FCC at 1–888–CALL–FCC (TTY: 1–888–TELL–FCC) or visit the FCC's wireless microphone Web site at *http://www.fcc.gov/cgb/wirelessmicrophones.*

Ruth Milkman,

Chief, Wireless Telecommunications Bureau, Federal Communications Commission.

Joel Gurin,

Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission.

[FR Doc. 2010–1151 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–20]

Maupin, Oregon

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making issued at the request of Maupin Broadcasting Company, requesting the allotment of Channel 244C2 at Maupin, Oregon, as its first local service. A staff engineering analysis indicates that Channel 244C2 can be allotted to Maupin consistent with the minimum distance separation requirements of the Rules with a site restriction 1.2 kilometers (0.7 miles) west located at reference coordinates 45–10–24 NL and 121–05–43 WL.

DATES: Effective February 22, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of Proposed Rule Making, MB Docket 09–130, adopted January 6, 2010, and released January 8, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, *http://www.bcpiweb.com.*

This document does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

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 on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

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.* For submitting comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. 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.

For 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 rule making 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 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope 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.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Maupin, Channel 244C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–1155 Filed 1–21–10 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–40; MB Docket No. 09–210; RM–11583]

Television Broadcasting Services; Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Ketchikan TV, LLC, the permittee of KDMD(TV), channel 32, Anchorage, Alaska, requesting the substitution of channel 33 for channel 32 at Anchorage.

DATES: This rule is effective January 22, 2010.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–210, adopted January 8, 2010, and released January 11, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcipweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Alaska, is amended by adding channel 33 and removing channel 32 at Anchorage.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau, Federal Communications Commission.

[FR Doc. 2010–1249 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 75, No. 14
Friday, January 22, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1774

RIN 0572–AC14

Special Evaluation Assistance for Rural Communities and Households Program

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is issuing a regulation to establish the Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program as authorized by Section 6002 of The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill), which amended Section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926 (a)(2)). The amendment added the new SEARCH grant program under which the Secretary is authorized to make predevelopment planning grants for feasibility studies, design assistance, and technical assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects.

DATES: You may submit comments according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than February 22, 2010 to be eligible for consideration. Late comments will not be considered.
- Electronic copies must be received by February 22, 2010 to be eligible for consideration.

ADDRESSES: Submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and in the "Search Documents" box, enter RUS–09–Water–0001, and select GO>>. To submit a comment, choose "Send a comment or submission," under the Docket Title. In order to submit your comment, the information requested on the "Public Comment and Submission Form," must be completed. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "How To Use This Site" link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5162, Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–09–Water–0001.

Other Information: Additional information about Rural Development and its programs is available on the Internet at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, Water and Environmental Programs, U.S. Department of Agriculture, Rural Utilities Service, Room 2230 South Building, Stop 1570, 1400 Independence Ave., SW., Washington, DC 20250–1570. Telephone: (202)690–3789, FAX: (202)690–0649, E-mail: *anita.obrien@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be pre-empted; no retroactive effect will be given to the rule; and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. sec. 6912(e)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this rule will not be effective until approved by the Office of Management and Budget (OMB), subject to the submission of a paperwork package for which the Agency intends to request approval from OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). RUS invites comments, on any aspect of this collection of information including suggestions for reducing the burden. Send questions or comments regarding this information collection to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Washington, DC 20250–152, Fax: (202) 720–8435.

Nonprofit organizations applying for SEARCH grants must submit an application which includes an application form, various other forms, certifications, and supplemental information. RUS will use the information collected from applicants, borrowers, and consultants to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grants authorized by the SEARCH program.

The applicant will submit the following information:

SF–424, "*Application for Federal Assistance*." (cleared under 4040–0004)

Applicants use this form as a required cover sheet for applications submitted for SEARCH grants. The application is an official form required for all Federal grants and requests basic information about the applicant and the proposed project.

SF–424A, "*Budget Information—Non-Construction Programs*." (cleared under 4040–0006)

Applicants project costs and expenses for the grant project. The form also provides information on matching funds. This form is submitted as part of the pre-application and if the project is selected, as part of the formal application.

SF–424B, "*Assurances—Non-Construction Programs.*" (cleared under 4040–0007)

Applicants read and sign this form to indicate the organization's intent to comply with the laws, regulations, and policies to which a grant is subject.

Project Narrative

Applicants will provide a project narrative detailing the project to be financed with the SEARCH grant funds. The narrative will also provide details on the activities or tasks to be accomplished, objectives, timetables for task completion, and anticipated results.

RD 400–1, "*Equal Opportunity Agreement*" *and RD 400–4,* "*Assurance Agreement.*" (cleared under 0575–0018)

Applicants read and sign these forms to assure RUS that they agree to and will comply with Title VI of the Civil Rights Act of 1964, and the Equal Opportunity Clause under Executive Order 11246 of September 24, 1965.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

USDA regulations published at 7 CFR Part 3017 implement the government-wide debarment and suspension system for USDA's non-procurement transactions. Applicants for SEARCH grants are required to provide certification under these regulations. Form AD–1047 may also be used to obtain the required certification.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transaction

Form AD–1048 will be signed by applicant's suppliers, auditors, contractors, etc., and retained by applicant in their files.

Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—for Grantees Other Than Individuals

USDA regulations published at 7 CFR Part 3017 implement the Drug-Free Workplace Act of 1988, which requires that grant recipients agree that they will maintain a drug-free workplace. Applicants are required to provide certification under these regulations. Form AD–1049 may also be used to obtain the required certification.

Relationship or Association With RUS Employees

Applicants must identify and report any known relationship or association with a RUS employee such as close personal association, immediate family, close relatives, or business associates.

Supporting Documentation

Applicants must provide documentation of legal organization and authority to borrow funds, construct, operate, manage the facility, etc. The documentation may include articles of incorporation, certificate of incorporation and good standing, bylaws, rules, and organizational minutes. Applicants also must provide financial information such as financial statements, audits, or existing debt instruments. This information is necessary for RUS to determine an organization's legal existence, authority to perform certain functions, and financial capacity to borrow funds.

Agreements for Professional Services

Applicants must contract for the professional services rendered from an engineer, attorney, bond counsel, accountant, auditor, appraiser, or financial advisor. Contracts or other forms of agreement for services necessary for project planning and development are subject to RUS concurrence. Applicants must submit them to RUS for review and concurrence to ensure the needed services will be available at a reasonable cost.

Grant Agreement

The Grant Agreement sets forth the terms and conditions under which the applicant receives a RUS grant. Applicants and RUS must execute the document before RUS disburses grant funds.

Audits Based on Federal Assistance

Borrowers must submit audited financial statements annually in accordance with Generally Accepted Government Auditing Standards (GAGAS). The audit must comply with the requirements of OMB Circular A–133, "Audits of State, Local Governments, and Non-Profit Organizations" or Water and Waste Disposal audit requirements.

The requirements for submitting an audit report under OMB Circular A–133 are based on the total amount of Federal financial assistance expended during a borrower's fiscal year from all Federal sources. Borrowers that expend $500,000 or more in a year in Federal awards must have a single audit conducted for that year under OMB Circular A–133. Those that expend less than $500,000 in Federal awards and have an outstanding RUS loan balance equal to or greater than $1,000,000 must submit an audit in accordance with Water and Waste Disposal audit requirements. Borrowers expending less than $500,000 in Federal assistance and having a RUS loan balance less than $1,000,000 may submit a management report instead of an audit report. RUS will designate the type of audit borrowers must submit.

Management Reports

All borrowers must furnish management reports that will provide management a means of evaluating prior decisions and serve as a basis for planning future operations and financial strategies. This requirement is necessary to help assure that the facility will be properly managed and to protect the financial interest of the Government.

Form RD 1942–8, "*Resolution of Members or Stockholders*" (cleared under 0575–0015)

Nonprofit applicants prepare this form to indicate that the governing body has the authority to enter into a grant of a particular amount with RUS.

Form RD 442–7, "*Operating Budget*" (cleared under 0575–0015)

All applicants use the form to project income and expense items and a complete cash flow through the first full year of operations after they use the loan proceeds. These projections are necessary in determining the source and reliability of the projected income and the adequacy of resources to repay the loan in a timely manner, operate and maintain the facility, and maintain adequate reserves.

Comments on this information collection must be received by March 23, 2010.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption 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 on other forms and information technology.

Title: Special Evaluation Assistance for Rural Communities and Household Program (SEARCH).

OMB Control Number: 0572–NEW.

Type of Request: New.

Abstract: The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill) amended Section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926 (a)(2)). The amendment created a grant program to make Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program grants.

Under the SEARCH program, the Secretary may make predevelopment and planning grants to public or quasi-public agencies, organizations operated on a not-for-profit basis or Indian tribes on Federal and State reservations and other federally recognized Indian tribes. The grant recipients shall use the grant funds for feasibility studies, design assistance, and development of an application for financial assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects as authorized in Sections 306(a)(1), 306(a)(2) and 306(a)(24) of the CONACT.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 32.15 hours per responses.

Estimated Number of Respondents: 50.

Estimated Number of Total Annual Reponses per Respondents: 820.

Estimated Total Annual Burden on Respondents: 1,050.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis at (202) 720–7853.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.759—Special Evaluation Assistance for Rural Communities and Households Program (SEARCH). This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800 and at *https://www.cfda.gov.*

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015.

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Background

The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill) amended Section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(2)). The amendment added a grant program to make Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program grants. SEARCH grants are intended to assist the neediest, eligible communities that lack financial resources to pay for feasibility studies, design assistance and technical assistance associated with water and waste infrastructure needs.

Under the SEARCH program, the Secretary may make predevelopment and planning grants to public or quasi-public agencies, organizations operated on a not-for-profit basis or Indian tribes on Federal and State reservations and other federally recognized Indian tribes. Up to 100 percent of the eligible cost of the grant may be funded and may not exceed $30,000. The grant recipients shall use the grant funds for feasibility studies, design assistance, and development of an application for financial assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects as authorized in Sections 306(a)(1), 306(a)(2) and 306(a)(24) of the Consolidated Farm and Rural Development Act (CONACT).

Eligible entities for the SEARCH grants will be the same entities eligible to obtain a loan, grant, or loan guarantee from the Rural Utilities Service Water and Waste Disposal and Wastewater loan and grant programs. However, as applied to the SEARCH program, rural area has been defined as one with a population of 2,500 or less. The Agency will define financially distressed areas as those where the median household income of the areas to be served is either below the poverty line or below 80 percent of the statewide non-metropolitan median household income.

The Secretary may use not more than four percent of the total amount of funds made available for a fiscal year for water and waste disposal to carry out the SEARCH program.

The Administrator of the RUS is required to prescribe regulations to implement the provisions of Section 6002 of the Farm Bill and does so through the proposed regulations herein. In developing the proposed SEARCH program regulations, the Agency relied heavily on existing Rural Development regulations relative to water and waste disposal loans and grants.

List of Subjects in 7 CFR Part 1774

Community development, Grant programs, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

Therefore for the reasons discussed in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1774 to read as follows:

PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

Subpart A—General Provisions

Sec.

1774.1 General.
1774.2 Definitions.

1774.3 Availability of forms and regulations.
1774.4 Allocation of funds.
1774.5–1774.6 [Reserved]
1774.7 Environmental requirements.
1774.8 Other Federal statutes.
1774.9 [Reserved]

Subpart B—Grant Application Processing

1774.10 Applications.
1774.11 [Reserved]
1774.12 Eligibility.
1774.13 Limitations.
1774.14 Eligible grant purposes.
1774.15 Selection criteria.
1774.16 Grant application processing and approval.
1774.17 Grant closing and disbursement.
1774.18 Reporting requirements, accounting methods and audits.
1774.19 Applications determined ineligible.
1774.20 Conflict of interest.
1774.21–1774.23 [Reserved]
1774.25–1774.99 [Reserved]
1774.100 OMB Control Number.

Authority: 7 U.S.C. 1926(a)(2)(C).

Subpart A—General Provisions

§ 1774.1 General.

The purpose of the Special Evaluation Assistance for Rural Communities and Household (SEARCH) Grant program is to provide financial assistance to the neediest, eligible communities, who lack financial resources to pay for feasibility studies, design assistance and technical assistance. This subpart sets forth the general policies and procedures for making and processing predevelopment planning SEARCH grants for water and waste projects.

§ 1774.2 Definitions.

The following definitions apply to subparts A and B of this part.

Agency. The Rural Utilities Service of the United States Department of Agriculture (USDA) within the Rural Development mission area of the Under Secretary for Rural Development. The Processing Official will administer this water and waste program on behalf of the Rural Utilities Service.

Approval official. The Agency official at the State level who has been delegated the authority to approve grants.

ConAct. Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(2)).

Design assistance. Preliminary design and engineering analysis necessary for an application for funding. Design assistance does not include financial assistance for development of plans, specifications, or bidding documents.

DUNS Number. Data Universal Numbering System number obtained from Dun and Bradstreet and used when applying for Federal grants or cooperative agreements. A DUNS number may be obtained at no cost, by calling 1–866–705–5711.

Eligible entity. Entity that meets eligibility requirements to obtain a loan, loan guarantee or grant under Paragraphs 1, 2 or 24 of Section 306(a) of the ConAct (codified at 7 U.S.C. Section 1926(a)(1)(2) and (24)).

Feasibility study. Documentation associated with an objective analysis of project-related technical engineering or environmental impact analyses required to support applications for funding water or waste disposal projects through USDA, Rural Utilities Service or other agencies.

Financially distressed area. An area is considered financially distressed if the median household income of the area to be served is either below the poverty line or below 80 percent of the statewide non-metropolitan median household income based on available historic statistical information from the latest decennial census.

Grantee. The applicant receiving financial assistance directly from the RUS to carry out the project or program under this program.

Poverty line. The level of income for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Processing official. The Agency official designated by the approval official as having the authority to accept and process applications for water and waste disposal assistance.

Rural area. For the purposes of this SEARCH program, any area not in a city or town with a population of 2,500 or fewer, according to the latest decennial census of the United States.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the U.S. Virgin Islands.

Technical assistance. Supervision, oversight, or training by an organization for the development of an application for financial assistance.

§ 1774.3 Availability of forms and regulations.

Information about the forms, instructions, regulations, bulletins, OMB Circulars, Treasury Circulars, standards, documents and publications cited in this part is available from any UDSA/Rural Development Office or the United States Department of Agriculture, Washington, DC 20250–1500 and at *http://www.grants.gov.*

§ 1774.4 Allocation of funds.

The Secretary may use not more than four percent of the total amount of funds made available for a fiscal year for water and waste disposal activities for SEARCH grants.

§§ 1774.5–1774.6 [Reserved]

§ 1774.7 Environmental requirements.

The policies and regulations contained in Part 1794 of this chapter apply to grants made in accordance with this part.

§ 1774.8 Other Federal Statutes.

Other Federal statutes and regulations are applicable to grants awarded under this part. These include but are not limited to:

(a) 7 CFR part 1, subpart A—USDA implementation of Freedom of Information Act.

(b) 7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

(c) 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

(d) 7 CFR part 1794, RUS Implementation of the National Environmental Policy Act.

(e) 7 CFR part 1901, subpart E—Civil Rights Compliance Requirements.

(f) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(g) 7 CFR part 3016—USDA Implementation of OMB Circular Nos. A–102 and A–97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(h) 7 CFR part 3018— Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(i) 7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(j) 7 CFR part 3021, as amended—Government-wide Debarment and Suspension (Non-procurement); Government-wide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

(k) 7 CFR part 3052—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.

(l) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in federally assisted programs.

§ 1774.9 [Reserved]

Subpart B—Grant Application Processing

§ 1774.10 Applications.

(a) To file an application, an organization must provide their DUNS number. An organization may obtain a DUNS number from Dun and Bradstreet by calling (1–866–705–5711). To file a complete application, the following information should be submitted:

(1) Standard Form 424, "Application for Federal Assistance (For Non-Construction)."

(2) Standard Form 424A & B, "Budget Information—Non-Construction Programs."

(3) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, organizational documents, or existing debt instruments. The Processing Official will advise applicants regarding the required documents. Applicants that are indebted to RUS will not need to submit documents already on file with the Processing Official as long as such documents are current and valid.

(4) Project narrative detailing the project to be financed with the SEARCH grant funds. The narrative will also provide details on the activities or tasks to be accomplished, objectives, timetables for task completion, and anticipated results.

(5) The applicant's Internal Revenue Service Taxpayer Identification Number (TIN).

(6) Other Forms and certifications. Applicants will be required to submit the following items to the Processing Official, upon notification from the Processing Official to proceed with further development of the full application:

(i) Form RD 442–7, "Operating Budget";

(ii) Form RD 400–1, "Equal Opportunity Agreement";

(iii) Form RD 400–4, "Assurance Agreement";

(iv) Form AD–1047, "Certification Regarding Debarment, Suspension and other Responsibility Matters";

(v) Form AD–1049, Certification regarding Drug-Free Workplace Requirements (Grants) Alternative I For Grantees Other Than Individuals;

(vi) Certifications for Contracts, Grants, and Loans (Regarding Lobbying); and

(vii) Certification regarding prohibited tying arrangements. Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under this part to accept electric service as a condition of receiving assistance.

(b) Applicants are encouraged to contact the State Office or the Processing Official to find out how to file electronically. The application and supporting documentation must be sent or delivered to the Processing Official, unless it is filed electronically.

§ 1774.11 [Reserved]

§ 1774.12 Eligibility.

The following eligibility requirements must be met:

(a) The applicant must be:

(1) A public body, such as a municipality, county, district, authority, or other political subdivision or a state, territory or commonwealth, or

(2) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community, or

(3) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(b) The area to be served must be financially distressed and rural as defined in § 1774.2 of this part.

§ 1774.13 Limitations.

Grant funds may not be used to:

(a) Fund political or lobbying activities.

(b) Pay for work already completed.

(c) Purchase real estate or vehicles, improve or renovate office space, or repair and maintain privately owned property.

(d) Construct or furnish a building.

(e) Intervene in the Federal regulatory or adjudicatory proceedings.

(f) Sue the Federal Government or any other government entities.

(g) Pay for any other costs that are not allowable under OMB Circular A–87, OMB Circular A–110, OMB Circular A–102 or OMB Circular A–122.

(h) Make contributions or donations to others.

(i) Fund projects that duplicate technical assistance given to implement action plans under the National Forest-Dependent Rural Communities Economic Diversification Act of 1990 (7 U.S.C. 6613). Applicants cannot receive both grants made under this part and grants that the Forest Service makes to implement the action plans for five continuous years from the date of grant approval by the Forest Service.

(j) To pay an outstanding judgment obtained by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded. An applicant will be ineligible to receive a loan or grant until the judgment is paid in full or otherwise satisfied.

§ 1774.14 Eligible grant purposes.

(a) Eligible predevelopment planning costs are feasibility studies, preliminary design assistance, and technical assistance as each is defined in § 1774.2. The eligible predevelopment activities funded with these grant funds must be agreed to and accepted by the Agency prior to the disbursement of the SEARCH grant. The predevelopment planning costs must be related to a proposed project that meets the following requirements:

(1) To construct, enlarge, extend, or otherwise improve rural water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(2) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (a)(1) of this section.

(3) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a)(1) of this section.

(b) The Secretary, subject to the limitation in § 1774.4 of this part, may fund up to 100 percent of the eligible grant costs, not to exceed $30,000.

§ 1774.15 Selection criteria.

Projects will be selected based primarily on the funding priorities in 7 CFR 1780.17. The Program Official discretionary points stated in 7 CFR 1780.17(e) can also include consideration of the following criteria:

(a) Systems with limited resources.

(b) Smallest systems with lowest incomes.

(c) Funds availability.

§ 1774.16 Grant application processing and approval.

(a) Before starting to assemble the full application, the applicant should arrange through the Processing Official an application conference to provide a basis for orderly application assembly.

The processing office will explain program requirements, public information requirements and provide guidance on preparation of items necessary for final determination.

(b) The Processing Official will determine if the application is properly assembled. If not, the applicant will be notified within fifteen federal working days as to what additional submittal items are needed.

(c) The Processing Official and Approval Official will coordinate their reviews to ensure that the applicant is advised about eligibility and anticipated fund availability within 45 days of the receipt of a completed application.

(d) The Processing Official will submit the following to the Approval Official:

(1) "Water and Waste Project Information Summary";

(2) Form RD 442–3, "Balance Sheet" or a financial statement or audit that includes a balance sheet;

(3) Letter of Conditions;

(4) Form RD 1942–46, "Letter of Intent to Meet Conditions";

(5) Form RD 1940–1, "Request for Obligation of Funds";

§ 1774.17 Grant closing and disbursement.

(a) *Grant closing.* RUS Bulletin 1780–12 "Water or Waste System Grant Agreement" will be completed and executed in accordance with the requirements of grant approval. The grant will be considered closed when RUS Bulletin 1780–12 has been properly executed. Processing officials or Approval officials are authorized to sign the grant agreement on behalf of RUS.

(b) *Grant disbursements.* Agency policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. If an approved grant includes applicant or other contributions, then these funds will be disbursed before the disbursal of any Agency grant funds.

(c) *Payment for project costs.* Project costs will be monitored by the RUS processing office. Invoices will be approved by the borrower and submitted to the Processing Official for concurrence. The review and acceptance of project costs by the Agency does not attest to the correctness of the amounts, the quantities shown or that the work has been performed under the terms of the agreements or contracts.

(d) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions if SEARCH grants funds are financing less than 100 percent of the project. Funds remaining may be considered in direct proportion to the amounts obtained from each source. Remaining funds will be handled as follows:

(1) Remaining funds may be used for eligible grant purposes as described in 1774.14 of this subpart, or

(2) Grant funds not expended will be canceled. Prior to the actual cancellation, the borrower, its attorney and its engineer will be notified of RUS' intent to cancel the remaining funds.

§ 1774.18 Reporting requirements, accounting methods and audits.

All Agency grantees will follow the reporting requirements as outlined in 7 CFR 1780.47.

§ 1774.19 Applications determined ineligible.

If at any time an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The notification to the applicant will state that an appeal of this decision may be made by the applicant under 7 CFR Part 11.

§ 1774.20 Conflict of interest.

Any processing or servicing activity conducted pursuant to this part involving authorized assistance to Rural Development employees with Water and Environmental Programs responsibility, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants of this assistance are required to identify any known relationship or association with an RUS employee.

§§ 1774.21–1774.23 [Reserved]

§ 1774.24 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative course(s) of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. The exception decision will be documented in writing, signed by the Administrator, and retained in the files.

§§ 1774.25–1774.99 [Reserved]

§ 1774.100 OMB Control Number.

The information collection requirements in this part will not be effective until approved by the Office of Management and Budget (OMB), subject to the submission of a paperwork package to OMB and assigned an OMB Control Number.

Dated: January 15, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–1213 Filed 1–21–10; 8:45 am]

BILLING CODE 3410–15–P

FARM CREDIT ADMINISTRATION

12 CFR Part 652

RIN 3052–AC51

Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Risk-Based Capital Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, or we) proposes to amend our regulations on the Risk-Based Capital Stress Test (RBCST or model) used by the Federal Agricultural Mortgage Corporation (Farmer Mac or the Corporation). We propose to update the model to address recent additions to Farmer Mac's program authorities, specifically the authority for Farmer Mac to finance rural utility loans. We are also proposing to revise the existing treatment of risk mitigations of general obligations for the AgVantage Plus program and related structures, as established in Version 3.0 of the model. Finally, we propose revising the treatment of counterparty risk on non-program investments in the model by adjusting the haircuts applied to those investments to keep the model consistent with statutory requirements for calculating Farmer Mac's regulatory minimum capital level.

DATES: You may send us comments by March 8, 2010.

ADDRESSES: We offer a variety of methods for you to submit comments on this proposed rule. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

• *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*

• *FCA Web site: http://www.fca.gov.* Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TTY (703) 883–4434; or

Laura McFarland, Senior Counsel, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this proposed rule is to ensure that the RBCST for Farmer Mac continues to determine regulatory capital requirements in a manner that remains consistent with statutory requirements.

II. Background

Farmer Mac is a stockholder-owned instrumentality of the United States, chartered by Congress to establish a secondary market for agricultural real estate, rural housing mortgage loans, and rural utility loans as well as to facilitate capital markets funding for USDA-guaranteed farm program and rural development loans. Farmer Mac's Class C non-voting and Class A voting common stocks are listed on the New York Stock Exchange under the symbols AGM and AGM.A, respectively. FCA, an independent agency in the executive branch of the Federal Government, is the safety and soundness regulator of Farmer Mac. FCA regulates Farmer Mac through the Office of Secondary Market Oversight (OSMO).

Section 5406 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) [1] amended the definition of "qualified loan" in Title VIII of the Farm Credit Act of 1971, as amended, (Act) [2] to include rural utility loans. This change gave Farmer Mac the authority to purchase and guarantee securities backed by loans to rural electric and telephone utility cooperatives as program business. The 2008 Farm Bill further directed FCA to estimate the credit risk on the portfolio covered by this new authority at a rate of default and severity reasonably related to the risks in rural electric and telephone facility loans.

The existing RBCST (Version 3.0) for Farmer Mac is contained in subpart B of part 652,[3] and is used to determine the minimum level of regulatory capital Farmer Mac must hold to maintain positive capital during a 10-year period, as characterized by stressful credit and interest rate conditions. Version 3.0 of the RBCST was developed according to the provisions of section 8.32 of the Act before Farmer Mac was given rural utility authority and thus lacks a component to directly recognize the credit risk on such loans.[4] At the time of the Farm Bill's enactment, Farmer Mac held approximately $1.3 billion of such loans in its non-program investment portfolio. At the end of the first quarter 2009, Farmer Mac held $1.4 billion in loans to rural electric cooperatives in its program loan portfolio.

Based on the provisions of the 2008 Farm Bill, we are proposing to amend the RBCST (Version 3.0) to account for Farmer Mac's new authority to finance rural electric and telephone utility cooperatives. We are also proposing to address the existing adjustment factors for recognizing the risk-mitigating effects of an issuer's general obligation to Farmer Mac by applying increases (or "haircuts") to the historical default rates by whole-letter credit rating. In our rule published in June 2008, we established a method to recognize the risk-mitigating effects of the issuer's general obligation to Farmer Mac under the product referred to as "AgVantage Plus." [5] RBCST Version 3.0 recognized the risk mitigation provided by the general obligation by reducing the age-adjusted dollar losses estimated on the subject loans by a General Obligation Adjustment (GOA) factor derived from average historical default rates of corporate bond issuers with similar whole-letter credit ratings as reported by a nationally recognized statistical rating organization (NRSRO).[6] We now propose to apply stress generally to the current GOA factors and to further discount them to recognize the level of concentration risk associated with an individual counterparty's general obligation.

We are also proposing conforming changes to the haircuts on non-program investments. Our existing rule applies a method to account for counterparty risk on non-program investments by applying a discount (or "haircut") to the yields of non-program investments, scaled according to average credit ratings, with a 10-year phase-in. We are proposing modifications to the haircut levels applied to non-program investments to increase the severity of the haircuts.

III. Section-by-Section Analysis

The purpose of this proposed rule is to revise the risk-based capital regulations that apply to Farmer Mac to reflect changes in Farmer Mac's financing authorities, operations, and business practices. The issues addressed in this proposed rule include: (1) Treatment of program loan volume in the rural utility cooperative sector; (2) modification of the GOA factors (initially established in RBCST Version 3.0) to reflect greater prudence in the assumptions regarding the relationship between risk and pricing of Farmer Mac's exposure to certain structures known as "AgVantage Plus" and other similar arrangements that may arise in the future; and (3) modification of haircuts on non-program investments to retain consistency with the risk levels recognized by whole-letter rating category in the proposed modifications to GOA factors discussed in item "2" above. We refer to the version of the model proposed here as "Version 4.0 (proposed)."

[1] Pub. L. 110–246, 122 Stat. 1651 (June 18, 2008) (repealing and replacing Pub. L. 110–234).

[2] Public Law 92–181, 85 Stat. 583 (December 10, 1971).

[3] 73 FR 31937 (June 5, 2008).

[4] FCA currently treats Farmer Mac's portfolio investments in rural utility loans as non-program investments.

[5] AgVantage Plus is a program created by Farmer Mac in 2006 to provide guarantees on timely repayment of principal and interest on notes issued by the counterparty. The notes are secured by obligations of issuer, which obligations are, in turn, backed by Farmer Mac eligible loan assets.

[6] Emery, K., Ou. S., Tennant, J., Matos, A., Cantor, R. "Corporate Default and Recovery Rates, 1920–2008," published by Moody's Investors Service, February 2009; Default Rates, page 31, Recovery Rates (Severity Rate—1 minus Senior Unsecured Average Recovery Rate), page 26.

A. Credit Loss Estimation on Rural Utility Loans [§§ 652.50 and 652.65(b); Appendix A to Part 652]

1. Guarantee Fee

We propose to amend § 652.50 by adding a definition for guarantee fees charged on rural utility loans to distinguish treatment of these fees from those assessed against all other loans guaranteed by Farmer Mac. Guarantee fees are made up of Farmer Mac's estimate of likely long-term average annual losses on the investment, plus fee loads to cover operating costs and return-on-equity requirements. Section 8.10 of the Act establishes a limit on the guarantee fees Farmer Mac may charge, but the 2008 Farm Bill, when establishing the authority for Farmer Mac to deal in rural utility loans as program business, stated that this authority be handled in a manner reasonably related to the risks specific to rural utility loans. Based on this, we propose adding a "rural utility guarantee fee" definition to § 652.50 to clarify that rural utility guarantee fees are distinguished from those guarantee fees discussed in section 8.10 of the Act. Unlike all other fees under section 8.10 of the Act, we propose that the model use rural utility guarantee fees as a component of its loss estimation calculation. We also propose that the definition differentiate between on-balance sheet and off-balance sheet rural utility volume to recognize that on-balance sheet guarantee fee rates may need to be imputed from Farmer Mac's earnings spread, while off-balance sheet guarantee fee rates would always be contractually explicit. In each case, the intent is to isolate the earnings rate on the volume. In structuring the definition in this manner, we want to be clear that whether that earnings rate an explicitly set guarantee fee in a contract or not, we would apply the proposed credit risk multiple to Farmer Mac's net cash flow rate, *i.e.,* either the contractual guarantee fee rate (in the case of off-balance sheet rural utility exposure) or Farmer Mac's earnings spread (in the case of on-balance sheet rural utility exposure). The earnings spread is the incoming cash flow rate (as a percent of outstanding principal) minus Farmer Mac's total funding rate on that volume.

As a conforming technical change, we propose amending sections 1.0.a., 4.1.b., 4.2.b.(2), and 4.2.b.(3) of the model in Appendix A of part 652 to add rural utility guarantee fees.

2. Credit Risk

We propose to amend the model in Appendix A of part 652 to include rural utility program volume. We propose clarifying the applicability of individual sections of the model to the rural utility portfolio. We also propose adding new sections 2.6, 4.1.e., and 4.3.e. to calculate losses for rural utility loans. This proposed rule applies a stylized approach to characterizing credit risk for rural utility program volume by multiplying the dollar-weighted average rural utility guarantee fee by a factor of two to characterize average annual loss rates. A data set suitable to build a reliable default probability loss function was not available due to the fact that historical losses in the electric cooperative sub-sector of the utilities industry have been extremely rare.[7] The industry is characterized by low frequency of default and instances of default appear largely unrelated to specific underwriting decisions. Further, even among that small proportion of historical instances of nonperforming loans in the data we obtained, restructured credit defaults have in many instances become more profitable with deferred obligations carried at accumulating rates higher than the loan interest rates. For that reason, an empirical frequency-based analog for estimating credit risk, as was used to arrive at the model's approach to estimating agricultural loan risks, is not feasible.[8]

If there were no alternative but to use the available data set, rural utility loans' unique features (*e.g.,* few loans, very large loan sizes, often with unique individual project features) would compel us to adjust for extreme value possibilities.[9] Extreme value theory (EVT) employs methods to assign probability to possible outcomes in ranges beyond those included in the data. EVT provides a means to limit the relative probability assigned to sample outcomes and the probability assigned to ranges beyond the most extreme observed values. In such cases, simply relying on the empirical maximum loss value is not acceptable. For example, EVT is often applied by hydrologists who, when designing levees, are not satisfied with building protection against historical high-water marks when the maximum severity of water level in the historical data is not an acceptable level of protection to attain. Rather, they must protect against more severe high-water scenarios. However, in an EVT context, the wide divergence in the character of rural utility losses in the available data may have resulted in an even less reliable estimate of the "worst case" through a constructed limit under EVT theory. Therefore, we also rejected the EVT approach.

We next considered a cash-flow divergence (CFD) approach. A CFD approach would focus on losses related to the stress associated with delayed receipts of cash flows expected under the original amortization schedule. Even if the loan is ultimately profitable due to a restructuring, the CFD model would reflect the stress associated with funding the loan during the workout period. However, CFD models did not offer a reliable measure of loss experience that was significantly correlated with observable differences in loan underwriting characteristics in the data set.

Rather than basing the estimate of credit risk on data deemed unsuitable for reasons stated above, we propose to base a credit risk characterization on rural utility guarantee fees charged by Farmer Mac. We believe that the Farmer Mac rural utility guarantee fee represents the best available reference point, or benchmark, for quantifying credit risk because an alternative approach deemed acceptable for depicting the probability measures associated with default was not available. Version 4.0 (proposed) would impose stressed annual credit loss rates on loans in the rural utility portfolio by multiplying the dollar-weighted average rural utility guarantee fee by a factor of two. We discuss the rationale behind the selection of a factor of two in section III.C. of this preamble.

Farmer Mac bases its fees on an evaluation of credit-related variables associated with the loans and the interrelations among those variables, as well as the counterparties' access to alternative forms of liquidity through the capital markets (*i.e.,* an analysis of return opportunities related to what the market will bear). Among the credit-related variables are the modified debt service coverage ratios, long-term, debt-to-net utility plant ratio, debt-to-equity ratio, guaranteed supply contracts in place (if any), the level of discretion the borrower has to set electric rates, and the level of diversification in the borrower's customer base. The guarantee fee is, in part, Farmer Mac's estimate of the long-term average annual credit losses, *i.e.,* its assessment of

[7] In evaluating the suitability of empirical data sources, we examined historical loan performance data of the U.S. Department of Agriculture's (USDA) loan programs and interviewed market participants including the National Rural Utility Cooperative Financing Corporation, CoBank, and USDA's Rural Utility Service.

[8] For a detailed explanation of the empirical frequency-based approach, *see* 64 FR 61740 (November 12, 1999) and 66 FR 19048 (April 12, 2001).

[9] For a summary of the foundations of extreme value theory, *see:* Embrechts, P., Resnick, S., Samorodnitsky, G., "Extreme Value Theory as a Risk Management Tool", Cornell University, 1996.

average net credit risk embedded in those variables.

We propose a multiple of two be applied to the rural utility guarantee fees to represent stressed rural utility loan losses and to place the amount generally in the tail of the distribution (discussed more fully in section III.C. of this preamble). The multiple of two in this case is less than the value chosen to apply stress in the case of modifications to the GOA factors for general obligation risk mitigation on AgVantage Plus counterparties because in the case of the GOA factors we have good information on the historical average default rates—which we do not have in the case of rural utility loans. We propose using a multiple of the Farmer Mac rural utility guarantee fee as a proxy for loss rates because of the unsuitability of the data as discussed above. We recognize that the use of this loss rate proxy results in a different factor than in the case of the GOA factors. Our intent is to stress rural utility loss rates only and, since the proportion of the guarantee fees attributable to expected average annual losses will vary due to the necessarily coarse level of precision targeted in this treatment, we elected not to propose some portion of the guarantee fee as the assumed average credit risk coverage component. Such an approach would have added a level of calculation complexity that is disproportionate to the coarse level of precision achievable given data limitations. Therefore, we reduced the multiple we would have applied to a more precise average credit loss component of the guarantee fee (*i.e.,* some percentage of the total fee times three) down to two times the entire guarantee fee. We believe the proposed approach is consistent with the statutory credit risk target for agricultural loans since it targets a range meant to approximate a reasonable but stylized worst-case scenario.

By basing the loss estimate on a factor that Farmer Mac controls (rural utility guarantee fee), Farmer Mac could manipulate its minimum capital requirement through its guarantee fee pricing. However, the natural alignment of incentives to build capital and grow earnings renders the scenario implausible. If Farmer Mac were capital constrained, the incentive to take on large volumes of significantly underpriced rural utility loan exposure is more than offset by counterbalancing pressures from the continuing level of the proposed loss proxy relative to any guarantee fee regardless of whether it is abnormally low (*i.e.,* double that rate). For this reason, we view as extremely unlikely the scenario where Farmer Mac would reduce its guarantee fee below a level that might be appropriate for purposes of pricing the risk Farmer Mac assumes in the transaction in order to reduce the regulatory capital minimum requirement calculated on that volume. Further, additional offsetting pressures to this scenario can be found in the statutory leverage maximum requirements and ongoing oversight and supervisory risk monitoring by FCA, as well as Farmer Mac's internal control structures (also monitored by FCA).

Additionally, we note that while no new regulatory language is necessary, implicit in section 2.4 of the Appendix, is the proposal that if the contractual terms of an AgVantage Plus rural utility investment include overcollateral, it be treated in a manner consistent with the model's current treatment of such overcollateral in AgVantage Plus structures. Also consistent with current RBCST treatment, we propose that when rural utility loan pools submitted to Farmer Mac include overcollateral that is not contractually required, all submitted loans be modeled and the total pool loss estimate factored down proportionately. We further propose to apply no age adjustment to rural utility loss estimates because, unlike other credit loss estimates in the RBCST, rural utility loss rates are already characterized as average annual loss rates, not lifetime loss rates. Therefore, any aging affects are considered to be subsumed into that annual average. Finally, consistent with the proposed revisions to the GOA factors discussed below, we propose those GOA factors applied to rural utility AgVantage Plus volume be revised to reflect the relative concentration of rural utility loans in the portfolio of the issuer.

The proposed amendments to the model in Appendix A of part 652 discussed above includes amending the table of contents and section headings 2.1, 2.2, 2.3 and 2.5; adding new sections 2.6, 4.1.e., and 4.3.e.; and amending the contents of sections 2.0 and 4.2.b.(1)(A) to reflect the treatment of the rural utility authority. As conforming technical changes, we propose redesignating existing paragraphs (b)(5) and (b)(6) as (b)(6) and (b)(7) and adding a new paragraph (b)(5) to § 652.65 to indicate that the model in Appendix A of part 652 is to be used to calculate credit loss rates for rural utility loans.

B. Modification of the Treatment of Loans Backed by an Obligation of the Counterparty and Loans for Which Pledged Loan Collateral Volume Exceeds Farmer Mac-Guaranteed Volume [§§ 652.50 and 652.65(d); Appendix A to Part 652]

We propose to amend sections 2.4.b.3, 2.4.b.4, 4.1.f., and 4.2.b. of the model in Appendix A of part 652 to increase the GOA factors, address counterparty concentration risks, and ensure AgVantage Plus volume maturities are recognized in the model.

1. GOA Factors—Treatment of Loan Volume

In Version 3.0 of the RBCST, we established a treatment for program loan volume backed by the obligation of a counterparty under a general obligation (*e.g.,* AgVantage Plus). The derivation and application of the GOA factors in the current version of the RBCST can be summarized as follows: (1) Five levels of credit ratings from "AAA" to "below BBB and unrated" that are mapped to the various NRSRO rating categories, which include pluses ("+") and minuses ("−") to the whole-letter categories; (2) apply default rate factors equal to the average cumulative issuer-weighted 10-year corporate default rates by whole letter category from 1920 through the most recent year, as published by Moody's Investor Services; (3) apply a factor equal to the 10-year corporate default rates on Speculative-Grade bonds published in the same report for issuers that are rated below BBB or are unrated; [10] (4) adjust the rate to obtain an estimated loss rate related to a general obligation of the AgVantage Plus counterparty, with a given credit rating by considering the loss-severity rate as implied by senior unsecured bond recovery rates published in the same annual Moody's report (*i.e.,* 1 minus recovery rate).

We now propose revising the GOA factors by stressing the historical corporate bond loss rates to levels intended to represent stressed conditions instead of average conditions. The proposed rule would modify the adjustment factors through the application of increases (or "haircuts") to the estimated historical loss rates by whole-letter credit rating category. Currently, Version 3.0 effectively assumes that there is no relationship between agricultural stress

[10] Emery, K., Ou. S., Tennant, J., Matos, A., Cantor R., "Corporate Default and Recovery Rates, 1920–2008," published by Moody's Investors Service, February 2009; Default Rates, page 31, Recovery Rates (Severity Rate = 1 minus Senior Unsecured Average Recovery Rate, page 24).

and major stress on the issuer's overall financial condition (*i.e.,* in industry sectors unrelated to agriculture to which the issuer also has significant exposure). Thus, the average corporate bond default and recovery rates are currently assumed to represent an appropriate degree of stress to that component of the model.

While we remain convinced of the appropriateness of the existing overall approach, we believe using the average default and recovery rates is not sufficiently conservative. A conclusion that, while not driven by it, is nevertheless underscored by the recent crisis in the financial services sector. Our proposed revisions to the GOA factor would change existing assumptions in Version 3.0 to recognize the potential scenario that agricultural stress and major stress on the issuer's overall financial condition could occur at the same time. That is, the proposed changes to the GOA factors would assume a degree of positive correlation between the financial strength of the issuer and the loans underlying AgVantage Plus issuance. A resulting assumption would be that an individual firm's default and recovery experience likely differs from the average experience of similarly rated firms across average historic conditions. The result would be a model representing a stressed loss scenario, not an average loss scenario.

The proposed treatment is consistent with a scenario under which Farmer Mac's risk increases as the value of the issuer's general obligation declines simultaneously with the value of the underlying loan collateral. The revised factors and their components are set forth in the table below:

Whole letter rating	Default rate (percent)	Severity rate (percent)	GOA factor ver. 3.0 (percent)	Proposed GOA factor (percent)
AAA	0.86	54.51	0.47	1.41
AA	2.27	54.51	1.23	3.70
A	3.13	54.51	1.71	5.13
BBB	7.02	54.51	3.83	11.48
Below BBB and unrated	27.23	54.51	14.84	44.52

As the table illustrates, we propose to increase the historical loss rates by a factor of three. As in the current RBCST version, these figures would be updated annually, or as an updated version of the Moody's report on Default and Recovery Rates of Corporate Bond Issuers becomes available. We discuss the rationale behind the selection of the factor in section III.C. of this preamble.

2. GOA Factors—Concentration Ratios

We also propose modifying GOA factors to recognize the risk associated with a counterparty's (also referred to as the AgVantage Plus issuer) loan portfolio concentration in the industry sector used in an AgVantage Plus issuance. We believe we should recognize a reduction in the risk-mitigating value of a counterparty's general obligation due specifically to its loan portfolio concentration in the same industry sector as the loans underlying an AgVantage Plus pool. We are proposing to estimate that by reducing the value of the GOA factors proportionate to the counterparty's exposure to that sector in its total portfolio. The proposed revision would recognize conditions that stress the underlying assets, as well as the counterparty's financial position generally. The proposed change is expected to simultaneously reduce the risk-mitigating value of both the underlying portfolio and the general obligation.

We further propose that the Director of OSMO (Director) make final determinations of concentration ratios on a case-by-case basis. These determinations would define industry sectors broadly when there is limited availability of concentration data of a given counterparty. Specifically, we propose modifying section 2.4.b.3.A. of Appendix A to allow the Director to make final determinations of concentration ratios on a case-by-case basis by using publicly reported data on counterparty portfolios, nonpublic data submitted and certified by Farmer Mac as part of its RBCST submissions, and generally recognizing two rural utility sectors-rural electric cooperatives and rural telephone cooperatives. The following are two illustrative examples of how the Director would generally arrive at such determinations. First, if the underlying AgVantage Plus portfolio were rural electric utility cooperative loans and the counterparty's loan and lease portfolio were publicly reported to contain 25-percent electric utility loans, the Director would likely determine the concentration ratio at 25 percent, absent any other unique aspects of the counterparty's business. Second, if an AgVantage Plus underlying portfolio of agricultural loans has a counterparty whose portion of agricultural loans is not disaggregated from some larger portfolio segment in its publicly available disclosures, the Director would use the most appropriate publicly disclosed aggregated portfolio data to set the concentration ratio. In this final example, Farmer Mac could obtain the disaggregated portfolio information and certify to its accuracy in its quarterly RBCST submission in lieu of the Director relying on publicly disclosed aggregated portfolio data.

This proposed approach would continue to accept that the GOA factors should recognize that there are two levels of risk mitigation provided to Farmer Mac by the AgVantage Plus structure: the issuer's general obligation to Farmer Mac and the value of the underlying loan collateral. The revised approach would further recognize the relative difference in an induced correlation between the parent obligor and the underlying collateral that is likely to arise through portfolio concentrations. It would also scale the GAO factors for counterparty portfolio concentrations to reflect the Agency's view that the correlation between a significant decline in a highly concentrated issuer's overall financial condition and the underlying AgVantage Plus loan portfolio is likely to be high relative to a more diversified counterparty.

3. Technical Changes

We propose to amend § 652.50 by adding a definition for "AgVantage Plus" to clarify that, while "AgVantage Plus" is a product name used by Farmer Mac, we propose applying it throughout this subpart to refer both specifically to AgVantage Plus volume currently in Farmer Mac's portfolio as well as other similarly structured program volume that Farmer Mac might finance in the future under other names. We also propose conforming changes to the model at Appendix A of part 652 to replace the term "Off-Balance Sheet AgVantage" with "AgVantage Plus."

Since the introduction of the AgVantage product, volume has

accumulated through a few very large individual deals as opposed to a constant, steady deal-flow. However, we do not believe it is reasonable to assume that such volume would backfill on a steady-state basis because there has not been sufficient historical experience demonstrating the incidence of AgVantage Plus volume renewing into similar structures at the termination of existing deals. Therefore, as additional clarifying changes, we propose adding to paragraph (d)(2) of § 652.65 a statement that AgVantage Plus volume is not replaced when it matures. We also propose explaining in the parenthetical of section 4.2.b. of the Appendix A that, while the stress test is run as a "steady state," AgVantage Plus volume maturities will be recognized by the model.

C. Using Two Different Multiples of Externally Referenced Benchmarks To Represent Stressed Default Risk

In two of the proposed revisions, we use multiples of external points of reference (or "benchmark measurements") of average expected loss. Those revisions are: (1) Establishing a representation of rural utility credit losses, and (2) adjusting the GOA factors by stressing the historical corporate bond loss rates to levels intended to represent worst-case stress conditions. In both cases, the multiples were selected on the basis of the availability of historical information related to credit losses (or lack thereof in the case of rural utility loans) and the Agency's overarching intent to represent losses in a reasonable worst-case context. We refer to that targeted worst-case scenario as the level of loss "in the tail" of any given probability distribution. The statistical vernacular "in the tail" represents a level of loss severity sufficiently extreme that it would be a very low probability event. Targeting a low probability loss event (*i.e.,* a scenario of very high losses, relatively) can be equivalently thought of as a high probability of capital adequacy (*i.e.,* Farmer Mac's solvency) even under severe loss conditions. While the relative terms "high" and "low" remain unquantified targets thus far in the discussion, we now provide a generalized probabilistic description of the Agency's view of capital adequacy for purposes of these proposed revisions.

The proposed revisions reflect the Agency's targeting a high confidence level (*i.e.,* it has been noted that AA ratings often are used interchangeably with concepts like a 99.7 percent confidence level, or the level of probability below which an insolvency scenario would not be expected to occur).[11] We refer to this description as "generalized" because the calculation of the relevant probabilities is entirely dependent on the amount of information and data available to the Agency, and overreliance on a highly variable measure can induce unintended modeling variability and error. When the information and data are insufficient to draw specific inferences from the data, we can still use statistical theory to make generalized statements about probability if certain conditions are met. In the present context, the proposed multiples are used with the intent to target loss events that could be reasonably viewed as being "in the tail" of the distribution, without providing a false sense of accuracy based on data whose characteristics could be overly sensitive to small changes in experiences or assumptions. We believe our approach places the post-haircut corporate bond loss estimate in a range that provides a meaningfully stressful representation, consistent with possibly limited data, and reflects generally accepted statistical principles and relationships. If, for example, the coefficient of variation were equal to one, placement of the haircut loss rate estimate would be at a point on the distribution that generally corresponds to three standard deviations from the mean, which also corresponds to the 99.7-percent confidence level. Targeting the placement in this range is meant to be consistent with the Act's credit risk targets for agricultural loans, which directs us to focus on not less than a 2-year worst-case historical loss experience in agricultural lending.[12]

Mathematical identification and reliability issues limit our ability to make specific statements regarding how to represent the loss probability. However, we can place some limits on the probability distances in any loss distribution through statistical relationships such as Chebychev's theorem—which holds that the proportion of observations within some number of standard deviations from the mean must be at least some specific percentage, regardless of the shape of the distribution. This allows us to draw conclusions (though at a fairly coarse level) about the probability of events, even when we do not know the mean or the level of variation around the mean (or both) of the event we are trying to model.

The multiple of three was selected for the GOA factors based on the recognition that the average historical default and recovery rates within each whole-letter rating category as reported by Moody's provide a measure of central tendency that summarizes the varied individual experiences of investors who purchased bonds within each rating category at each point in time. If we were to apply a multiple using implications of Chebchev's theorem to the GOA factor, the specific quantitative proportions involved in Chebychev's theorem would require a multiple of 19 or perhaps even higher in order to achieve the targeted confidence level (99.7 percent). We deemed this approach too conservative. However, if we assume the distribution is normal with a ceofficient of variation of 1, then a multiple of 3 is required to achieve the targeted confidence level. While we cannot directly observe the variation of default rates within each rating category (or recovery rates among senior secured borrowers within each year), the coefficients of variation of the time series of annual default rates in Moody's 2008 report vary from roughly two to three within the range of ratings AA to the speculative grade group through time. Like Chebychev's theorem, we can also reasonably assume that the time series variation provides a lower bound on the cross sectional variation, were it observable, and that the proposed multiple is therefore not particularly aggressive.

D. Revise Haircuts on Non-Program Investments [Appendix A to Part 652]

We propose changing the haircut levels for non-program investments in existing section 4.1.e. of Appendix A, renumbering the section as 4.1.f. Specifically, we propose revising these haircut levels to the same loss rate adjustment factors proposed for application on loans underlying guaranteed notes (*i.e.,* AgVantage Plus) as discussed in section III.B.1 of this preamble. The proposed investment haircuts to recognize counterparty risk are as follows:

[11] The selected target confidence level is based on the Central Limit Theorem of statistics which holds that, if the distribution is approximately normal, about 99.7 percent of the values will fall within three standard deviations of the mean. The selection of this confidence level is supported by similar targets used by regulated entities of the Farm Credit System in their research and development work on economic capital which is being done with significant oversight by FCA, as well as in the literature of other regulatory entities including the Bank of International Settlements' Basel Committee on Banking Supervision (BCBS). *See,* BCBS working paper Basel II: International Convergence of Capital Measurement and Capital Standards: a Revised Framework, June 2004, pages 73 (paragraph 156), 107 (paragraph 527(a) and (j) page 109.

[12] *See* section 8.32(a)(1) of the Act.

Whole letter credit rating	Haircut (percent)
AAA	1.41
AA	3.70
A	5.13
BBB	11.48
Below BBB and Unrated	44.52

We likewise propose to update these figures annually, or as an updated version of the Moody's report on Default and Recovery Rates of Corporate Bond Issuers becomes available, just as we proposed for loss rate adjustment factors on loans underlying guaranteed notes.

IV. Impact of the Proposed Revisions on Required Capital

We have evaluated the impact of the proposed changes to Version 3.0 of the model. Our review indicates that changes related to the reclassification of rural utility volume as program business and the associated required application of worst-case credit risk, along with the recognition of more limited risk-mitigation in the counterparty's general obligation, would have the most significant impact on risk-based capital calculated by the model. The table below provides an indication of the impacts of the revisions in the quarter ended March 31, 2009.

CALCULATED REGULATORY MINIMUM CAPITAL, 3/31/2009

[$ in thousands]

0	RBCST Version 3.0 (calculated as of 3/31/2009)	40,061	.....
1	Revised Haircuts on Non-Program Investments	40,505	444
2	Tripling of Version 3.0 GOA Factors	40,201	140
3	Credit Risk on Rural Utility Loans & Concentration Risk	60,999	20,938
	All Version 4.0 Proposed Effects	62,937	22,876

As the table shows, the individual estimated impacts do not have an additive relationship to the total impact on the model output. This is due to the interrelationship of the changes with one another when they are combined in Version 4.0 (proposed). It is worth noting that the marginal effects are also not constant rate effects, but depend on the starting conditions and earnings spread of Farmer Mac and the magnitude of the effect considered. For example, as the volume in the rural utility category is increased, the rate of increase in the marginal minimum risk-based capital requirement begins to increase as the downward-pressure on that rate exerted by earnings from other activities are further diluted as those earnings become increasingly smaller in proportion to total estimated losses. The same effect is evident in other ways as risk increases and the offsetting effect of earnings is diminished relative to increased risk. For example, this effect would be observed, all else equal, with lower initial earnings spreads or higher AgVantage Plus counterparty concentrations, updated (and higher) Moody's base corporate bond default rates, or ratings downgrades. Thus, the values in the table above are illustrative of the relative effects of the proposals in this rulemaking, given the conditions at March 2009, but can be materially affected by changes in starting conditions or risk compositions through time.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. Farmer Mac has assets and annual income over the amounts that would qualify it as a small entity. Therefore, Farmer Mac is not considered a "small entity" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 652

Agriculture, Banks, Banking, Capital, Investments, Rural areas.

For the reasons stated in the preamble, part 652 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 652—FEDERAL AGRICULTURAL MORTGAGE CORPORATION FUNDING AND FISCAL AFFAIRS

1. The authority citation for part 652 continues to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

Subpart B—Risk-Based Capital Requirements

2. Amend § 652.50 by adding alphabetically the following definitions:

§ 652.50 Definitions.

* * * * *

AgVantage Plus means both the product by that name used by Farmer Mac and other similarly structured program volume that Farmer Mac might finance in the future under other names.

* * * * *

Rural utility guarantee fee means the actual guarantee fee charged for off-balance sheet volume and the earnings spread over Farmer Mac's funding costs for on-balance sheet volume on rural utility loans.

3. Amend § 652.65 by:

a. Redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7);

b. Adding a new paragraph (b)(5);

c. Revising newly redesignated paragraph (b)(6) and paragraph (d)(2) to read as follows:

§ 652.65 Risk-based capital stress test.

* * * * *

(b) * * *

(5) You will calculate loss rates on rural utility loans as further described in Appendix A.

(6) You will further adjust losses for loans that collateralize the general obligation of AgVantage Plus volume, and for loans where the program loan counterparty retains a subordinated interest in accordance with Appendix A to this subpart.

* * * * *

(d) * * *

(2) You must use model assumptions to generate financial statements over the 10-year stress period. The major assumption is that cashflows generated by the risk-based capital stress test are based on a steady-state scenario. To implement a steady-state scenario, when on- and off-balance sheet assets and liabilities amortize or are paid down, you must replace them with similar assets and liabilities (AgVantage Plus volume is not replaced when it matures). Replace amortized assets from discontinued loan programs with current loan programs. In general, keep assets with small balances in constant proportions to key program assets.

* * * * *

4. Amend Appendix A of subpart B, part 652 by:

a. Revising the table of contents;

b. Revising the last sentence of section 1.0.a.;

c. Adding a new fourth sentence to section 2.0;

d. Adding the words "for All Types of Loans, Except Rural Utility Loans" at the end of each heading for sections 2.1, 2.2, 2.3, and 2.5;

e. Revising section 2.4.b.3, b.3.A., and b.4;

f. Adding a new section 2.6;

g. Renumbering the footnote in section 3.0 from "15" to "16";

h. Redesignating section 4.1.e. as new section 4.1.f., adding a new section 4.1.e., and revising section 4.1.b. and newly redesignated section 4.1.f.;

i. Revising section 4.2.b. introductory paragraph, paragraphs b.(1)(A)(v), b.(1)(A)(vi), the last sentence of paragraph b.(1)(B), the first sentence of paragraph b.(2), the last sentence of paragraph b.(3) and adding a new paragraph b.(1)(A)(vii);

j. Adding a new section 4.3.e.; and,

k. Revising the second sentence of section 4.4.

The revisions and additions read as follows:

Appendix A—Subpart B of Part 652—Risk-Based Capital Stress Test

1.0 Introduction.
2.0 Credit Risk.
2.1 Loss-Frequency and Loss-Severity Models for All Types of Loans, Except Rural Utility Loans.
2.2 Loan-Seasoning Adjustment for All Types of Loans, Except Rural Utility Loans.
2.3 Example Calculation of Dollar Loss on One Loan for All Types of Loans, Except Rural Utility Loans.
2.4 Treatment of Loans Backed by an Obligation of the Counterparty and Loans for Which Pledged Loan Collateral Volume Exceeds Farmer Mac-Guaranteed Volume.
2.5 Calculation of Loss Rates for Use in the Stress Test for All Types of Loans, Except Rural Utility Loans.
2.6 Calculation of Loss Rates on Rural Utility Volume for Use in the Stress Test.
3.0 Interest Rate Risk.
3.1 Process for Calculating the Interest Rate Movement.
4.0 Elements Used in Generating Cashflows.
4.1 Data Inputs.
4.2 Assumptions and Relationships.
4.3 Risk Measures.
4.4 Loan and Cashflow Accounts.
4.5 Income Statements.
4.6 Balance Sheets.
4.7 Capital.
5.0 Capital Calculations.
5.1 Method of Calculation.

* * * * *

1.0 Introduction

a. * * * The stress test also uses historic agricultural real estate mortgage performance data, rural utility guarantee fees, relevant economic variables, and other inputs in its calculations of Farmer Mac's capital needs over a 10-year period.

* * * * *

2.0 Credit Risk

* * * Loss rates discussed in this section apply to all loans, unless otherwise indicated. * * *

* * * * *

2.4 Treatment of Loans Backed by an Obligation of the Counterparty, and Loans for which Pledged Loan Collateral Volume Exceeds Farmer Mac-Guaranteed Volume

* * * * *

b. * * *

3. Loans with a positive loss estimate remaining after adjustments in "1." and "2." above are further adjusted for the security provided by the general obligation of the counterparty. To make this adjustment in our example, multiply the estimated dollar losses remaining after adjustments in "1." and "2." above by the appropriate general obligation adjustment (GOA) factor based on the counterparty's whole-letter issuer credit rating by a nationally recognized statistical rating organization (NRSRO) and the ratio of the counterparty's concentration of risk in the same industry sector as the loans backing the AgVantage Plus volume, as determined by the Director.

A. The Director will make final determinations of concentration ratios on a case-by-case basis by using publicly reported data on counterparty portfolios, nonpublic data submitted and certified by Farmer Mac as part of its RBCST submissions, and will generally recognize rural electric cooperatives and rural telephone cooperatives as separate rural utility sectors. The following table sets forth the GOA factors and their components by whole-letter credit rating (Adjustment Factor = Default Rate x Severity Rate x 3), which may be further adjusted for industry sector concentration by the Director.[15]

Whole-letter rating	Default rate (percent)	Severity rate (percent)	V3.0 GOA factor (percent)	V4.0 GOA factors (D × 3) (percent)	Concentration ratio (*e.g.,* 25%) (percent)	Factor with concentration adjustment 1 − ((1 − E) × (1 − F)) (percent)
A	B	C	F	E	F	G
AAA	0.897	54	0.48	1.41	25.00	26.06
AA	2.294	54	1.24	3.70	25.00	27.78
A	2.901	54	1.57	5.13	25.00	28.84
BBB	7.061	54	3.82	11.48	25.00	33.61
Below BBB and Unrated	26.827	54	14.50	44.52	25.00	58.39

* * * * *

4. Continuing the previous example, the pool contains two loans on which Farmer Mac is guaranteeing a total of $2 million and with total submitted collateral of 110 percent of the guaranteed amount. Of the 10-percent total overcollateral, 5 percent is contractually required under the terms of the transaction. The pool consists of two loans of slightly over $1 million. Total overcollateral is $200,000 of which $100,000 is contractually required. The counterparty has a single "A" credit rating, a 25-percent concentration ratio, and after adjusting for contractually required overcollateral, estimated losses are greater than zero. The net loss rate is calculated as described in the steps in the table below.

		Loan A	Loan B
1	Guaranteed Volume	$2,000,000	
2	Origination Balance of 2-Loan Portfolio	$1,080,000	$1,120,000

[15] Emery, K., Ou S., Tennant, J., Kim F., Cantor R., "Corporate Default and Recovery Rates, 1920–2007," published by Moody's Investors Service, February 2008—the most recent edition as of March 2008; Default Rates, page 24, Recovery Rates (Severity Rate = 1 minus Senior Unsecured Average Recovery Rate) page 20.

		Loan A	Loan B
3	Age-Adjusted Loss Rate	7%	5%
4	Estimated Age-Adjusted Losses	$75,600	$56,000
5	Guarantee Volume Scaling Factor	90.91%	90.91%
6	Losses Adjusted for Total Overcollateral	$68,727	$50,909
7	Contractually Required Overcollateral on Pool (5%)		$100,000
8	Net Losses on Pool Adjusted for Contractually Required Overcollateral		$19,636
9	GOA Factor for "A" Issuer with 25% Concentration Ratio		28.84%
10	Losses Adjusted for "A" General Obligation		$5664
11	Loss Rate Input in the RBCST for this Pool		0.28%

* * * * *

2.6 Calculation of Loss Rates on Rural Utility Volume for Use in the Stress Test

You must submit the outstanding principal, maturity date of the loan, maturity date of the AgVantage Plus contract (if applicable), and the rural utility guarantee fee percentage for each loan in Farmer Mac's rural utility loan portfolio on the date at which the stress test is conducted. You must multiply the rural utility guarantee fee by two to calculate the loss rate on rural utility loans under stressful economic conditions and then multiply the loss rate by the total outstanding principal. To arrive at the net rural utility loan losses, you must next apply the steps "5" through "11" of section 2.4.b.4 of this Appendix. For loans under an AgVantage Plus-type structure, the calculated losses are distributed over time on a straight-line basis. For loans that are not part of an AgVantage Plus-type structure, losses are distributed over the 10-year modeling horizon, consistent with other non-AgVantage Plus loan volume.

* * * * *

4.1 Data Inputs

* * * * *

b. *Cashflow Data for Asset and Liability Account Categories.* The necessary cashflow data for the spreadsheet-based stress test are book value, weighted average yield, weighted average maturity, conditional prepayment rate, weighted average amortization, and weighted average guarantee fees and rural utility guarantee fees. The spreadsheet uses this cashflow information to generate starting and ending account balances, interest earnings, guarantee fees, rural utility guarantee fees, and interest expense. Each asset and liability account category identified in this data requirement is discussed in section 4.2 "Assumptions and Relationships."

* * * * *

e. *Loan-Level Data for All Rural Utility Program Volume.* The stress test requires loan-level data for all rural utility program volume. The specific loan data fields required for calculating the credit risk are outstanding principal, maturity date of the loan, maturity date of the AgVantage Plus contract (if applicable), and the rural utility guarantee fee percentage for each loan in Farmer Mac's rural utility loan portfolio on the date at which the stress test is conducted.

f. *Weighted Haircuts for Non-Program Investments.* For non-program investments, the stress test adjusts the weighted average yield data referenced in section 4.1.b. to reflect counterparty risk. Non-program investments are defined in § 652.5. The Corporation must calculate the haircut to be applied to each investment based on the lowest whole-letter credit rating the investment received from an NRSRO using the haircut levels in effect at the time. Haircut levels shall be the same amounts calculated for the GOA factor in section 2.4.b.3 above. The first table provides the mappings of NRSRO ratings to whole-letter ratings for purposes of applying haircuts. Any "+" or "−" signs appended to NRSRO ratings that are not shown in the table should be ignored for purposes of mapping NRSRO ratings to FCA whole-letter ratings. The second table provides the haircut levels by whole-letter rating category.

FCA Whole-Letter Credit Ratings Mapped to Rating Agency Credit Ratings

FCA Ratings Category	AAA	AA	A	BBB	Below BBB and Unrated.
Standard & Poor's Long-Term	AAA	AA	A	BBB	Below BBB and Unrated.
Fitch Long-Term	AAA	AA	A	BBB	Below BBB and Unrated.
Standard & Poor's Short-Term	A–1+SP–1+	A–1, SP–1	A–2, SP–2	A–3	SP–3, B, or Below and Unrated.
Fitch Short-Term	F–1+	F–1	F–2	F–3	Below F–3 and Unrated.
Moody's		Prime- MIG12 VMIg1.	Prime-2 MIG2 VMIG2.	Prime-3 MIG3 VMIG3.	Not Prime, SG and Unrated.
Fitch Bank Ratings	A	B, A/B	C, B/C	D, C/D	E, D/E.
Moody's Bank Financial Strength Rating.	A	B	C	D	E.

Farmer Mac RBCST Maximum Haircut by Ratings Classification

Ratings classification	Non-program investment counterparties (excluding derivatives) (percent)
Cash	0.00
AAA	1.41
AA	3.70
A	5.13
BBB	11.48
Below BBB or Unrated	44.52

* * * * *

4.2 Assumptions and Relationships

* * * * *

b. From the data and assumptions, the stress test computes pro forma financial statements for 10 years. The stress test must be run as a "steady state" with regard to program balances (with the exception of AgVantage Plus volume, in which case maturities are recognized by the model), and where possible, will use information gleaned from recent financial statements and other data supplied by Farmer Mac to establish earnings and cost relationships on major program assets that are applied forward in time. As documented in the stress test, entries of "1" imply no growth and/or no change in account balances or proportions relative to initial conditions with the exception of pre-1996 loan volume being transferred to post-1996 loan volume. The interest rate risk and credit loss components are applied to the stress test through time. The individual sections of that worksheet are:

(1) * * *

(A) * * *

(v) Loans held for securitization;

(vi) Farmer Mac II program assets; and

(vii) Rural Utility program volume on balance sheet.

(B) * * * The exceptions are that expiring pre-1996 Act program assets are replaced with post-1996 Act program assets and AgVantage Plus volume maturities are recognized by the model.

(2) *Elements related to other balance sheet assumptions through time.* As well as interest earning assets, the other categories of the balance sheet that are modeled through time include interest receivable, guarantee fees receivable, rural utility guarantee fees receivable, prepaid expenses, accrued

interest payable, accounts payable, accrued expenses, reserves for losses (loans held and guaranteed securities), and other off-balance sheet obligations. * * *

(3) *Elements related to income and expense assumptions.* * * * These parameters are the gain on agricultural mortgage-backed securities (AMBS) sales, miscellaneous income, operating expenses, reserve requirement, guarantee fees, rural utility guarantee fees, and loan loss resolution timing.

* * * * *

4.3 Risk Measures

* * * * *

e. The credit loss exposure on rural utility volume, described in section 2.6, "Calculation of Loss Rates on Rural Utility Volume for Use in the Stress Test," is entered into the "Risk Measures" worksheet applied to the volume balance. All losses arising from rural utility loans are expressed as annual loss rates and distributed over the weighted average maturity of the rural utility AgVantage Plus Volume, or as annual loss across the full 10-year modeling horizon in the case of rural utility Cash Window loans.

* * * * *

4.4 Loan and Cashflow Accounts

* * * The steady-state formulation results in account balances that remain constant except for the effects of discontinued programs, maturing AgVantage Plus positions, and the LLRT adjustment. * * *

Dated: January 19, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–1205 Filed 1–21–10; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0044; Directorate Identifier 2009–NM–084–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 767–200, –300, and –300F series airplanes. This proposed AD would require inspecting to verify the part number of the low-pressure flex-hoses of the flightcrew and supernumerary oxygen system installed under the oxygen mask stowage box at a flightcrew and supernumerary oxygen mask location, and replacing the flex-hose with a new non-conductive low-pressure flex-hose if necessary. This proposed AD results from reports of a low-pressure flex-hose of the flightcrew oxygen system that burned through due to inadvertent electrical current from a short circuit in an adjacent audio select panel. We are proposing this AD to prevent inadvertent electrical current, which can cause the low-pressure flex-hoses used in the flightcrew and supernumerary oxygen systems to melt or burn, resulting in oxygen system leakage and smoke or fire.

DATES: We must receive comments on this proposed AD by March 8, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0044; Directorate Identifier 2009–NM–084–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of a low-pressure flex-hose of the flightcrew oxygen system that burned through due to inadvertent electrical current from a short circuit in an adjacent audio select panel. An electrical current went through the support structure to a flightcrew mask stowage box and through the low-pressure oxygen hose. This caused the spring inside the low-pressure oxygen hose to act as an electrical conductor and heat up, causing the hose to burn through. This condition, if not corrected, could cause the low-pressure flex-hose of the flightcrew or supernumerary oxygen system to melt or burn, resulting in oxygen system leakage and smoke or fire.

Relevant Service Information

We have reviewed Boeing Service Bulletin 767–35A0034, Revision 1, dated June 22, 2000. The service bulletin describes procedures for replacing the existing low-pressure flex-hoses of the flightcrew and supernumerary oxygen systems installed under the oxygen mask stowage box at the flightcrew and supernumerary oxygen mask locations, with new non-conductive low-pressure flex-hoses of the oxygen system.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

Although Boeing Service Bulletin 767–35A0034, Revision 1, dated June 22, 2000, recommends accomplishing the replacement "at the earliest opportunity when manpower, material and facilities are available," we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 36 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Other Rulemaking

The oxygen mask installations on certain Model 737, 747, and 757 airplanes are almost identical to those on the affected Model 767 airplanes. Therefore, all of these airplanes may be subject to the identified unsafe condition. We are considering similar rulemaking related to the identified unsafe condition for certain Model 737, 747, and 757 airplanes.

Costs of Compliance

We estimate that this proposed AD would affect 297 airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $47,520, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0044; Directorate Identifier 2009–NM–084–AD.

Comments Due Date

(a) We must receive comments by March 8, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 767–200, –300, and –300F series airplanes, certificated in any category; line numbers 1 through 763 inclusive, except line number 758, which was accomplished in production.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD results from a report of a low-pressure flex-hose of the flightcrew oxygen system that burned through due to inadvertent electrical current from a short circuit in an adjacent audio select panel. We are issuing this AD to prevent inadvertent electrical current, which can cause the low-pressure flex-hoses used in the flightcrew and supernumerary oxygen systems to melt or burn, resulting in oxygen system leakage and smoke or fire.

Compliance

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

Inspection

(g) Within 36 months after the effective date of this AD, do an inspection to determine whether any low-pressure flex-hose of the flightcrew and supernumerary oxygen systems installed under the oxygen mask stowage location has a part number identified in Table 1 of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the low-pressure flex-hoses of the flightcrew and supernumerary oxygen system can be conclusively determined from that review.

(1) For any hose having a part number identified in Table 1 of this AD, before further flight, replace the hose with a new or serviceable part, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–35A0034, Revision 1, dated June 22, 2000.

(2) For any hose not having a part number identified in Table 1 of this AD, no further action is required by this paragraph.

TABLE 1—APPLICABLE PART NUMBERS

Boeing specification part number	Equivalent Boeing supplier part numbers			
	Sierra engineering	Spencer fluid	Puritan bennett	Hydraflow
60B50059–70	835–01–70	9513–20S5–18.0	ZH784–20	38001–70
60B50059–81	Not applicable	Not applicable	Not applicable	38001–81
60B50059–94	Not applicable	Not applicable	Not applicable	38001–94
60B50059–101	Not applicable	Not applicable	Not applicable	38001–101
60B50059–130	Not applicable	Not applicable	Not applicable	38001–130

Parts Installation

(h) As of the effective date of this AD, no person may install a flightcrew or supernumerary oxygen hose with a part number identified in Table 1 of this AD on any airplane.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–35A0034, dated September 2, 1999, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle 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: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on January 8, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–1174 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0045; Directorate Identifier 2009–NM–085–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 747 airplanes. This proposed AD would require inspecting to verify the part number of the low-pressure flex-hoses of the crew oxygen system installed under the oxygen mask stowage boxes in the flight deck, and replacing the flex-hose with a new non-conductive low-pressure flex-hose if necessary. This proposed AD results from reports of low-pressure flex-hoses of the crew oxygen system that burned through due to inadvertent electrical current from a short circuit in the audio select panel. We are proposing this AD to prevent inadvertent electrical current, which can cause the low-pressure flex-hoses of the crew oxygen system to melt or burn, causing oxygen system leakage and smoke or fire.

DATES: We must receive comments on this proposed AD by March 8, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0045; Directorate Identifier

2009–NM–085–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of low-pressure flex-hoses of the crew oxygen system that burned through due to inadvertent electrical current from a short circuit in the audio select panel on a Model 757 airplane. An electrical current went through the support structure to the flight crew mask stowage box and through the low-pressure oxygen hose. This caused the spring inside the low-pressure oxygen hose to act as an electrical conductor and heat up, causing the hose to burn through. This condition, if not corrected, could result in the low-pressure flex-hose of the crew oxygen system melting or burning, causing oxygen system leakage and smoke or fire.

Relevant Service Information

We have reviewed Boeing Service Bulletin 747–35A2101, Revision 1, dated May 15, 2003. The service bulletin describes procedures for replacing the existing low-pressure flex-hoses of the crew oxygen system installed under the oxygen mask stowage boxes in the flight deck with new non-conductive low-pressure flex-hoses of the oxygen system.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

Although Boeing Service Bulletin 747–35A2101, Revision 1, dated May 15, 2003, recommends accomplishing the replacement "at the earliest opportunity when manpower, material and facilities are available," we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 36 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Other Rulemaking

The oxygen mask installations on certain Model 737, 757, and 767 airplanes are almost identical to those on the affected Model 747 airplanes. Therefore, all of these airplanes may be subject to the identified unsafe condition. We are considering similar rulemaking related to the identified unsafe condition for certain Model 737, 757, and 767 airplanes.

Costs of Compliance

We estimate that this proposed AD would affect 211 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $16,880, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0045; Directorate Identifier 2009–NM–085–AD.

Comments Due Date

(a) We must receive comments by March 8, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; line numbers 1 through 1229 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD results from reports of low-pressure flex-hoses of the crew oxygen system that burned through due to inadvertent electrical current from a short circuit in the audio select panel. The Federal Aviation Administration is issuing this AD to prevent inadvertent electrical current, which can cause the low-pressure flex-hoses of the crew oxygen system to melt or burn, resulting in oxygen system leakage and smoke or fire.

Compliance

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

Inspection

(g) Within 36 months after the effective date of this AD, do an inspection to determine whether any low-pressure flex-hose of the crew oxygen system installed under the oxygen mask stowage box in the flight deck has a part number identified in Table 1 of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the low-pressure flex-hoses of the crew oxygen system can be conclusively determined from that review.

(1) For any hose having a part number identified in Table 1 of this AD, before further flight, replace the hose with a new or serviceable part, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–35A2101, Revision 1, dated May 15, 2003.

(2) For any hose not having a part number identified in Table 1 of this AD, no further action is required by this paragraph.

TABLE 1—APPLICABLE PART NUMBERS

Boeing specification part number	Equivalent hydraflow part number
60B50059–19	38001–19
60B50059–20	38001–20
60B50059–60	38001–60
60B50059–62	38001–62
60B50059–69	38001–69
60B50059–70	38001–70
60B50059–81	38001–81
60B50059–94	38001–94
60B50059–95	38001–95
60B50059–101	38001–101
60B50059–129	38001–129

Parts Installation

(h) As of the effective date of this AD, no person may install a crew oxygen hose with a part number identified in Table 1 of this AD on any airplane.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle 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: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on January 8, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–1175 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0030; Directorate Identifier 2009–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Model 757 airplanes. This proposed AD would require repetitive inspections for corrosion and cracking in the front spar lower chord at the four fastener locations common to the side link support fitting at wing station (WS) 292, and corrective actions if necessary. This proposed AD results from reports that several operators have found cracking in the front spar lower chord at the four fastener locations common to the side link support fitting at WS 292. We are proposing this AD to detect and correct such corrosion and cracking, which, if not corrected, could grow and result in structural failure of the spar.

DATES: We must receive comments on this proposed AD by March 8, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Chris Hartman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0030; Directorate Identifier 2009–NM–135–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this

proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports that, over the past 7 years, several operators have found cracking in the front spar lower chord at the four fastener locations common to the side link support fitting at WS 292. This area is not covered by the normal maintenance activities. The length of the cracks ranged from 0.025 inch to 0.080 inch on airplanes that had accumulated from 13,100 to 29,209 total flight cycles. The cracks were repaired by oversizing the holes and installing freeze plugs. Such cracking, if not detected and corrected, could grow and result in structural failure of the spar.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009. This service bulletin describes procedures for repetitive ultrasonic and general visual inspections for cracking and corrosion of the front spar lower chord at the four fastener locations common to the side link support fitting at WS 292. For airplanes on which any cracking or corrosion is found, Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, specifies contacting Boeing for additional repair instructions and doing the repair.

The compliance time for doing the inspections is at the latest of the following times, as applicable:

- Before 37,500 total flight cycles or 20 years since the date of issuance of the original standard certificate of airworthiness, whichever occurs first.
- Within 3,000 flight cycles after the date of the service bulletin.
- Within 12,000 flight cycles after the incorporation of the modification requirements of AD 2004–12–07, Amendment 39–13666 (69 FR 33561, June 16, 2004), or AD 2003–18–05, Amendment 39–13296 (68 FR 53496, September 11, 2003).

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Explanation of Compliance Times

We have provided two compliance times in paragraph (g) of this AD. Paragraph (g)(1) of this AD requires a compliance time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009. Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, contains a compliance time that refers to modifications required by AD 2003–18–05, Amendment 39–13296 (68 FR 53496, September 11, 2003); and AD 2004–12–07, Amendment 39–13666 (69 FR 33561, June 16, 2004). We anticipate superseding these ADs. As a result, we have provided an additional compliance time in paragraph (g)(2) of this AD which is contingent upon having done the modifications required by those two ADs.

Differences Between the Proposed AD and Service Bulletin

Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD would affect 668 airplanes of U.S. registry. We also estimate that it would take about 6 work-hours per airplane to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $320,640 per inspection cycle, or $480 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0030; Directorate Identifier 2009–NM–135–AD.

Comments Due Date

(a) We must receive comments by March 8, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from reports of cracking at the front spar lower chord at the four fastener locations common to the side link support fitting at wing station (WS) 292. The Federal Aviation Administration is issuing this AD to detect and correct such cracking and corrosion, which, if not corrected, could grow and result in structural failure of the spar.

Compliance

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

Inspect for Cracking and Corrosion

(g) At the later of the times in paragraphs (g)(1) and (g)(2) of this AD, do ultrasonic and general visual inspections for cracking and corrosion of the front spar lower chord at the four fastener locations common to the side link support fitting at WS 292, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009. Where Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, specifies a compliance time "after the date on this service bulletin," this AD requires compliance at the specified time after the effective date of this AD. Repeat the inspection thereafter at intervals not to exceed 12,000 flight cycles.

(1) At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009.

(2) Within 12,000 flight cycles after doing the modification of the nacelle and wing structure in accordance with Boeing Service Bulletin 757–54–0034 or Boeing Service Bulletin 757–54–0035.

(h) If any cracking or corrosion is found during any inspection required by this AD: Before further flight, repair the cracking or corrosion using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle 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: Chris Hartman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6432; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on January 14, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–1137 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0046; Directorate Identifier 2009–NM–086–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–300, –400, –500, –600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 737–300, –400, –500, –600, –700, and –800 series airplanes. This proposed AD would require inspecting to verify the part number of the low-pressure flex-hoses of the crew oxygen system installed under the oxygen mask stowage boxes located within the flight deck, and replacing the flex-hose with a new non-conductive low-pressure flex-hose if necessary. This proposed AD results from reports of low-pressure flex-hoses of the crew oxygen system that burned through due to inadvertent electrical current from a short circuit in the audio select panel. We are proposing this AD to prevent inadvertent electrical current, which can cause the low-pressure flex-hoses of the crew oxygen system to melt or burn, causing oxygen system leakage and smoke or fire.

DATES: We must receive comments on this proposed AD by March 8, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0046; Directorate Identifier 2009–NM–086–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of low-pressure flex-hoses of the crew oxygen system that burned through due to inadvertent electrical current from a short circuit in the audio select panel on a Model 757 airplane. An electrical current went through the support structure to the flight crew mask stowage box and through the low-pressure oxygen hose. This caused the spring inside the low-pressure oxygen hose to act as an electrical conductor and heat up, causing the hose to burn through. This condition, if not corrected, could result in the low-pressure flex-hose of the crew oxygen system to melt or burn, causing oxygen system leakage and smoke or fire.

Relevant Service Information

We have reviewed Boeing Service Bulletin 737–35A1053, Revision 1, dated June 1, 2000; and Boeing Service Bulletin 737–35A1058, Revision 1, dated June 1, 2000. The service bulletins describe procedures for replacing the existing low-pressure flex-hoses of the crew oxygen system installed under the oxygen mask stowage boxes in the flight deck with new non-conductive low-pressure flex-hoses of the oxygen system.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletins."

Differences Between the Proposed AD and the Service Bulletins

Although Boeing Service Bulletins 737–35A1053, Revision 1; and 737–35A1058, Revision 1; both dated June 1, 2000; recommend accomplishing the replacement "at the earliest opportunity when manpower, material and facilities are available," we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 36 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Other Rulemaking

The oxygen mask installations on certain Boeing Company Model 747, 757, and 767 airplanes are almost identical to those on the affected Model 737 airplanes. Therefore, all of these airplanes may be subject to the identified unsafe condition. We are considering similar rulemaking related to the identified unsafe condition for certain Model 747, 757, and 767 airplanes.

Costs of Compliance

We estimate that this proposed AD would affect 851 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $68,080, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0046; Directorate Identifier 2009–NM–086–AD.

Comments Due Date

(a) We must receive comments by March 8, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) The Boeing Company Model 737–300, –400, and –500 series airplanes, as identified in Boeing Service Bulletin 737–35A1053, Revision 1, dated June 1, 2000.

(2) The Boeing Company Model 737–600, –700, and –800 series airplanes, as identified in Boeing Service Bulletin 737–35A1058, Revision 1, dated June 1, 2000.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD results from reports of low-pressure flex-hoses of the crew oxygen system that burned through due to inadvertent electrical current from a short circuit in the audio select panel. The Federal Aviation Administration is issuing this AD to prevent inadvertent electrical current, which can cause the low-pressure flex-hoses of the crew oxygen system to melt or burn, resulting in oxygen system leakage and smoke or fire.

Compliance

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

Inspection and Replacement

(g) Within 36 months after the effective date of this AD, do an inspection to determine whether any low-pressure flex-hose of the crew oxygen system installed under the oxygen mask stowage box in the flight deck has a part number identified in Table 1 of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the low-pressure flex-hoses of the crew oxygen system can be conclusively determined from that review.

(1) For any hose having a part number identified in Table 1 of this AD, before further flight, replace the hose with a new or serviceable part, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–35A1053, Revision 1, dated June 1, 2000; or Boeing Service Bulletin 737–35A1058, Revision 1, dated June 1, 2000; as applicable.

(2) For any hose not having a part number identified in Table 1 of this AD no further action is required by this paragraph.

TABLE 1—APPLICABLE PART NUMBERS

Boeing specification part number	Equivalent Boeing supplier part numbers	
	Puritan Bennett	Hydraflow
10–60174–31	173470–31	37001–31
10–60174–35	173470–35	37001–35
10–60174–46	Not Applicable	37001–46
60B50059–99	Not Applicable	38001–99
60B50059–124	Not Applicable	38001–124

Parts Installation

(h) As of the effective date of this AD, no person may install a crew oxygen hose with a part number identified in Table 1 of this AD, on any airplane.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–35A1053, dated September 2, 1999; or Boeing Alert Service Bulletin 737–35A1058, dated September 2, 1999; as applicable; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle 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: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on January 8, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–1176 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 307

Request for Comments Concerning Regulations Implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986; Termination of Regulatory Review

AGENCY: Federal Trade Commission.

ACTION: Notice of Termination of Regulatory Rule Review.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has terminated the regulatory review of its regulations ("smokeless tobacco regulations"), implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act").

EFFECTIVE DATE: December 3, 2009.

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580. The notice also is available on the Internet on the Commission's Web site, (*http://www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Shira Modell, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, 202-326-3116.

SUPPLEMENTARY INFORMATION: In 1986, Congress enacted the Smokeless Tobacco Act, requiring manufacturers, importers, and packagers of smokeless tobacco products to display on a rotating basis one of three statutory health warnings on product packages and in most advertising (other than billboards). The 1986 Smokeless Tobacco Act also directed the FTC to issue implementing regulations governing the format and display of the health warnings. The Commission issued its smokeless tobacco regulations on November 4, 1986.[1] 51 FR 40015. The Smokeless Tobacco Act also directed the FTC to review and approve,

[1] The original regulations exempted utilitarian items such as hats or other personal items. The exemption was challenged, and the Court of Appeals for the District of Columbia ordered the Commission to delete the exemption. *Public Citizen v. FTC*, 869 F. 2d 1541 (D.C. Cir. 1989), *aff'g*, 688 F. Supp. 667 (D.D.C. 1988). As a result, the Commission amended its regulations to include provisions for the rotation and display of the statutory warnings on utilitarian items. 56 FR 11654 (Mar. 20, 1991).

if appropriate, smokeless tobacco plans specifying how affected companies planned to comply with the rotational warning requirements specified in the Smokeless Tobacco Act and the implementing regulations.

On March 7, 2000, the Commission published a request for public comment on the regulations, 65 FR 11944, as part of its periodic review of its trade regulation rules and guides. The purpose of the review was to determine whether the existing smokeless tobacco regulations continued to meet the goals of the Smokeless Tobacco Act and to provide the protections intended when they were promulgated. The comment period was extended twice in 2000, 65 FR 26534 (May 8, 2000) and 65 FR 60899 (Oct. 13, 2000). The request for comments elicited 39 written responses.[2] Virtually all of the comments supported the continuation of health warnings on smokeless tobacco packages and in advertising. Most comments also recommended that the FTC amend its regulations to require stronger, more effective, and more enforceable health warning requirements. Members of the smokeless tobacco industry recommended against any amendments, stating that the existing regulations effectively served the purpose of the Smokeless Tobacco Act.

On June 22, 2009, President Obama signed into law the Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (2009) ("Family Smoking Prevention Act"). The Family Smoking Prevention Act, among other things, amends the Smokeless Tobacco Act to require new size, format, and display requirements for the statutory health warnings, and to transfer authority over the review and approval of rotational warning plans to the Secretary of the Department of Health and Human Services ("DHHS"). The Family Smoking Prevention Act also gives the Secretary of the DHHS authority to change the warning statements and to change the size, format, and display requirements of those warnings. The statute specifies that the new warning scheme for smokeless tobacco products will become effective by July 2010.

Given the new statutory size, format, and display requirements, and the transfer of authority over the health warnings to the DHHS, the Commission's regulatory review has been terminated.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–1043 Filed 1–21–10; 8:45 am]

BILLING CODE 6750–01–S

[2] The commenters included Members of Congress, officials at federal, state, and local government health agencies, the largest smokeless tobacco manufacturer, the smokeless tobacco trade association, a manufacturer of cigarettes and smokeless tobacco products, public health organizations, and individuals.

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations under the Comprehensive Smokeless Tobacco Health Education Act; Termination of Rulemaking Proceeding

AGENCY: Federal Trade Commission.

ACTION: Notice of Termination of Rulemaking Proceeding.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has terminated its rulemaking concerning a proposed amendment to its regulations ("smokeless tobacco regulations"), , implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act"). The proposed amendment expressly provided that sponsored racing vehicles and other event-related objects that display the brand name, logo, or selling message of smokeless tobacco products are advertising subject to the Smokeless Tobacco Act and the Commission's implementing regulations. In addition, the proposal set out a method for the display and rotation of the statutory health warnings on the objects subject to the amendment.

EFFECTIVE DATE: December 3, 2009.

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580. The notice also is available on the Internet on the Commission's Web site, (*http://www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Shira Modell, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580, 202-326-3116.

SUPPLEMENTARY INFORMATION: In 1991, the Coalition on Smoking OR Health petitioned the Commission to enforce the Smokeless Tobacco Act by requiring rotational health warnings on sponsored racing cars, banners, flags, and other event-related objects. On November 4, 1993 (58 FR 58810), the FTC published a Notice of Proposed Rulemaking ("Notice") requesting public comment on a proposed amendment to the Commission's smokeless tobacco regulations that expressly provided that sponsored racing vehicles and other event-related objects bearing smokeless tobacco brand names, logos, or selling messages are subject to the statutory health warning requirements. The Notice also set out a method for displaying and rotating the health warnings on the objects encompassed by the proposed amendment.

During the public comment period, the Commission received approximately 217 substantive comments, numerous petitions signed by members of specific racing teams, and about 53,000 postcards.[1] Of the substantive comments, 200 opposed the proposed regulations and 17 supported the proposal to require warnings on vehicles and other event-related objects. The race team petitions likewise generally opposed the proposal, and the postcards contained a pre-printed message opposing the proposal.

On June 22, 2009, President Obama signed into law the Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (2009) ("Family Smoking Prevention Act"). The Family Smoking Prevention Act, among other things, transfers authority over the size, format, and display of the smokeless tobacco health warnings to the Secretary of the Department of Health and Human Services ("DHHS"). Thus, pursuant to the Family Smoking Prevention Act, determinations as to whether and how to display and rotate warnings on various objects or vehicles will be made by DHHS. Further, the Family Smoking Prevention Act directs the DHHS to re-issue its Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents, 61 FR 44615-618 (Aug. 28, 1996). Those regulations would prohibit cigarette and smokeless tobacco manufacturers from sponsoring athletic and entertainment events using brand names, logos, or selling messages.

Given these legislative and likely regulatory changes, the Commission has determined that it would be more appropriate for the DHHS to consider the issues raised in this rulemaking proceeding. Accordingly, the Commission concludes that it is not in

[1] The comments were filed by Members of Congress, a state governor, four manufacturers of smokeless tobacco products, state health agencies, a local chamber of commerce, public health and public interest organizations, representatives of event-related businesses such as arenas, race track owners, team owners, sports sanctioning bodies, sporting event announcers, and racing car drivers, as well as other individuals.

the public interest to continue this proceeding and it hereby gives notice of its termination.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–1041 Filed 1–21–10: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101896–09]

RIN 1545–BI66

Basis Reporting by Securities Brokers and Basis Determination for Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on Thursday, December 17, 2009, relating to reporting sales of securities by brokers and determining the basis of securities.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 1012, Edward C. Schwartz, (202) 622–4960; Concerning the proposed regulations under sections 3406, 6045, 6045A, 6045B, 6721, and 6722, Stephen Schaeffer, (202) 622–4910 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking that is the subject of this document is under sections 408, 1012, 6039, 6042, 6044, 6045, 6045A, 6045B and 6049 of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking (REG–101896–09), published Thursday, December 17, 2009 (74 FR 67010), contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking (REG–101896–09), which was the subject of FR Doc. E9–29855, is corrected as follows:

1. On page 67013, column 3, in the preamble, under paragraph heading "a. Form and Manner of New Broker Reporting Requirements", last line of the first paragraph of the column, the language "*pub/irs-dft/f1099k-dft.pdf.*" is corrected to read "*pub/irs-dft/f1099b--dft.pdf.*".

§ 1.6045–1 [Corrected]

2. On page 67035, column 2, paragraph (f)(2)(i), lines 6 thru 8, the language "shall show on Form 1099, "U.S. Information Return for Calendar Year 1971," or any successor form the name," is corrected to read "shall show on Form 1099–B, "Proceeds from Broker and Barter Exchange Transactions," or any successor form the name".

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2010–1122 Filed 1–21–10; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 383

[Docket No. 2009–2 CRB New Subscription II]

Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations that set the rates and terms for the use of sound recordings in transmissions made by new subscription services and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing January 1, 2011, and ending on December 31, 2015.

DATES: Comments and objections, if any, are due by no later than February 22, 2010.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000, between 8:30 a.m. and 5 p.m. If delivered by commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

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

SUPPLEMENTARY INFORMATION:

Background

Section 114(f)(2)(C) of the Copyright Act, title 17 of the United States Code, allows a new type of eligible nonsubscription service or a new subscription service on which sound recordings are performed that is or is about to become operational to file a petition with the Copyright Royalty Judges ("Judges") for the purpose of determining reasonable terms and rates. 17 U.S.C. 114(f)(2)(C). Section 112(e) allows the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions, including those made by new subscription services. 17 U.S.C. 112(e). Upon receipt of a petition filed pursuant to section 114(f)(2)(C), the Judges are required to commence a proceeding to determine said reasonable terms and rates. 17 U.S.C. 804(b)(3)(C)(ii). The Judges have conducted one proceeding pursuant to these provisions. *See* 70 FR 72471, 72472 (December 5, 2005) (after receipt of petition, commencing proceeding to determine rates and terms for a new type of subscription service that "performs sound recordings on digital audio channels programmed by the licensee for transmission by a satellite television distribution service to its residential customers, where the audio channels are bundled with television channels as part of a 'basic' package of service and not for a separate fee"). The parties to that proceeding ultimately reached an agreement on the rates and

terms for the new subscription service at issue; and the Judges, after public comment, adopted the settlement as final regulations.[1] *See* 72 FR 72253 (December 20, 2007). The current rates expire on December 31, 2010.

Pursuant to section 803(b)(1)(A)(i)(III) of the Copyright Act, the Judges, published in the **Federal Register** a notice commencing the rate determination proceeding for the license period 2011–2015 for the new subscription service defined in § 383.2(h) and requesting interested parties to submit their petitions to participate. *See* 74 FR 319 (January 5, 2009). Petitions to Participate in this proceeding were received from SoundExchange, Inc.; Royalty Logic, LLC ("RLI"); and Sirius XM Radio Inc. ("Sirius XM").

The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than September 29, 2009. On September 22, 2009, the Judges received a joint motion from all parties to stay the filing of the written direct statements in light of the parties reaching a settlement which they intended to submit to the Judges for adoption. On September 23, 2009, the Judges issued an order extending the deadline for the filing of written direct statements to October 29, 2009. *See* Order on Extending Deadline to File Written Direct Statements, Docket No. 2009–2 CRB New Subscription II (September 23, 2009). SoundExchange and Sirius XM submitted the settlement to the Judges on October 21, 2009.[2]

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

- The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
- The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Rates and terms adopted pursuant to this provision are binding on all copyright owners of sound recordings and new subscription services performing the sound recordings on digital audio channels programmed by the licensee for transmission by a cable or satellite television distribution service to its residential customers where the audio channels are bundled with television channels as part of a "basic" package of service and not for a separate fee. *See* 37 CFR 383.2(h).

As noted above, the public may comment and object to any or all of the proposed regulations contained in this notice of proposed rulemaking. Such comments and objections must be submitted no later than February 22, 2010.

List of Subjects in 37 CFR Part 383

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Proposed Regulation

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 383 as follows:

PART 383—RATES AND TERMS FOR SUBSCRIPTION TRANSMISSIONS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY NEW SUBSCRIPTION SERVICES

1. The authority citation for part 383 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

§ 383.1 [Amended]

2. Amend § 383.1 as follows:

a. In paragraph (a), by removing "2010" and adding in its place "2015"; and

b. In paragraph (b), by removing "112" and adding in its place "112(e)".

§ 383.2 [Amended]

3. Amend § 383.2 as follows:

a. In paragraph (d), by removing "2010" and adding in its place "2015"; and

b. In paragraph (e), by removing "112" and adding in its place "112(e)".

4. Amend § 383.3 as follows:

a. In paragraph (a) introductory text, by removing "112" and adding in its place "112(e)" and by adding "during the License Period," after "such transmissions,";

b. In paragraph (a)(1)(ii)(E), by removing "and";

c. By adding new paragraphs (a)(1)(ii)(F) through (J);

d. In paragraph (a)(2)(ii)(E), by removing "and";

e. By adding new paragraphs (a)(2)(ii)(F) through (J);

f. In paragraph (b), by removing "112" and adding in its place "112(e)"; and

g. By adding a new paragraph (c).

The additions to § 383.3 read as follows:

§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

(a) * * *
(1) * * *
(ii) * * *
(F) 2011: $0.0155
(G) 2012: $0.0159
(H) 2013: $0.0164
(I) 2014: $0.0169
(J) 2015: $0.0174 and
(2) * * *
(ii) * * *
(F) 2011: $0.0258
(G) 2012: $0.0265
(H) 2013: $0.0273
(I) 2014: $0.0281
(J) 2015: $0.0290

* * * * *

(c) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of phonorecords used by the Licensee solely to facilitate transmissions during the License Period for which it pays royalties as and when provided in this part shall be included within, and constitute 5% of, such royalty payments.

5. Revise § 383.4 to read as follows:

§ 383.4 Terms for making payment of royalty fees.

(a) *Terms in general.* Subject to the provisions of this section, terms governing timing and due dates of royalty payments to the Collective, late fees, statements of account, audit and verification of royalty payments and distributions, cost of audit and verification, record retention requirements, treatment of Licensees' confidential information, distribution of royalties by the Collective, unclaimed funds, designation of the Collective, and any definitions for applicable terms not defined herein and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for subscription transmissions and the

[1] The new subscription service is defined at 37 CFR 383.2(h).

[2] SoundExchange and Sirius XM also moved that the Judges stay further proceedings until the settlement process under 17 U.S.C. 801(b)(7)(A) has been completed. They noted that RLI, the only other participant to the proceeding, joins in the request for stay. The Judges granted the motion. *See* Order on Joint Motion to Stay, Docket No. 2009–2 CRB New Subscription II (October 28, 2009).

reproduction of ephemeral recordings by preexisting satellite digital audio radio services in 37 CFR part 382, subpart B of this chapter, for the license period 2007–2012. For purposes of this section, the term "Collective" refers to the collection and distribution organization that is designated by the Copyright Royalty Judges. For the License Period through 2015, the sole Collective is SoundExchange, Inc.

(b) *Reporting of performances.* Without prejudice to any applicable notice and recordkeeping provisions, statements of account shall not require reports of performances.

(c) *Applicable regulations.* To the extent not inconsistent with this part, all applicable regulations, including part 370 of this chapter, shall apply to activities subject to this part.

Dated: January 15, 2010.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2010–1172 Filed 1–21–10; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2005–OH–0003; FRL–9105–7]

Conditional Approval and Promulgation of State Implementation Plans; Ohio; Carbon Monoxide and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a variety of actions regarding revisions to Ohio Administrative Code (OAC) 3745–21 (Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and related Materials Standards). EPA is proposing the following actions: To approve into the State Implementation Plan (SIP) certain regulation revisions within OAC 3745–21 which have been adopted by the State; to disapprove a regulation revision pertaining to high performance architectural coatings; to conditionally approve a revision of paragraph (BBB)(1) of OAC 3745–21–09, if the State gives EPA a letter that commits to address noted deficiencies no later than one year from the expected date of EPA's conditional approval; to take no action on certain regulation revisions, and to provide notice that EPA and Ohio have created a path forward for facilities operating under previously issued alternate VOC limit and emission control exemptions for miscellaneous metal coating operations under OAC 3745–21–09(U)(2)(f). This action addresses revisions to OAC 3745–21 in a set of submittals dated October 9, 2000, February 6, 2000, and August 3, 2001; and also addresses revisions to OAC 3745–21, submitted on June 24, 2003, as part of Ohio's five-year rule review process.

DATES: Comments must be received on or before February 22, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2005–OH–003, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov*.
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2005–OH–003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Anthony Maietta, Life Scientist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony J. Maietta, Life Scientist, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), Air Programs Branch, Criteria Pollutant Section, 77 West Jackson Boulevard, Chicago, Illinois 60604. (312) 353–8777; *maietta.anthony@epa.gov*.

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

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When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. 2000/2001 Submittals

A. Review of the State's Submittals

1. What rule revisions does the State want approved into the SIP, and are these rule revisions approvable?

The State of Ohio has adopted a number of revisions to the State's organic material and volatile organic compounds (VOC) [1] emission control regulations, and has requested EPA to approve these rule revisions for incorporation into Ohio's SIP. Two separate State submittals for the 2000/2001 period are addressed in this proposed rule. On October 9, 2000, Ohio submitted revisions to a number of Ohio's VOC and organic material emission control regulations covering multiple source facilities. On February 6, 2001, Ohio submitted a request for EPA to review a Permit-To-Install (PTI) for Adelphia, Incorporated. The source-specific PTI relies on certain VOC rule revisions documented in the State's October 9, 2000 submittal, and, therefore, the concurrence by EPA depends on the approval and SIP-incorporation of the specific State rule revisions.

On August 3, 2001, Ohio submitted a request for EPA to review a PTI for Honda of America Manufacturing, Incorporated. However, on December 4, 2002, Honda sent a letter to the Ohio Environmental Protection Agency (Ohio EPA) acknowledging concerns about whether the company had adequately reviewed the option of add-on controls and whether the company had justified a long-term limit on coating usage. As a result, Honda formally withdrew its request to Ohio EPA. On June 12, 2008, Ohio EPA submitted a formal withdrawal of the PTI request, and so this rulemaking does not address such request.

As noted below, the State's June 24, 2003 submittal includes rule paragraphs which have been amended and adopted by the State since the State's October 9, 2000 submittal. Because the June 24, 2003 submittal reflects current versions of these particular rule paragraphs and because the versions of these rule paragraphs contained in the October 9, 2000 submittal may now be outdated, we will address these rule paragraphs in the discussion of the 2003 submittal or in a separate rulemaking.

In addition, the State submitted a new version of OAC 3745–21–07 on April 7, 2008. This submittal is currently under review by EPA, so we are not taking action on these parts of the original submittal in this notice, and will instead address these rule paragraphs in a separate rulemaking.

Revisions to Ohio's VOC and Organic Material Rules Submitted on October 9, 2000

Revisions to OAC 3745–21–01 (Definitions):

OAC 3745–21–01(B)(4):

Ohio revised the definition of "organic compound" to match the definition of that term as used in paragraph (PP) of OAC 3745–31–01. Ohio now defines "organic compound" to mean any chemical compound containing carbon, excluding: Carbon monoxide, carbon dioxide; carbonic acid; metallic carbides; metallic carbonates; ammonium carbonate; methane (except methane from landfill gases); and ethane. This rule revision is acceptable and we are proposing to approve it.

OAC 3745–21–01(B)(6):

Ohio revised the definition of "Volatile Organic Compounds" to exclude additional compounds considered to be negligibly reactive in the chemical formation of ozone. Since this definition is further amended in the June 24, 2003, five-year rule review submittal, we will address all of the relevant changes in the definition in Section III of this proposed rule.

Revisions to OAC 3745–21–04 (Attainment Dates and Compliance Time Schedules):

All amended rule paragraphs in this section are also covered in Section III of this proposed rule.

Revisions to OAC 3745–21–09 (Control of Emissions of Volatile Organic Compounds from Stationary Sources):

OAC 3745–21–09(A)(4):

Paragraph (A) addresses the applicability of the VOC emission control requirements contained in OAC 3745–21–09. Paragraph (A)(4) has been revised to remove the applicability of paragraph (DDD) (Stage II vapor control system requirements for gasoline dispensing facilities) for gasoline dispensing facilities located in the Toledo, Ohio area (Lucas and Wood Counties). Ohio revised this rule because the Toledo area was redesignated to attainment of the one-hour ozone standard before the Stage II vapor control requirements were required to be implemented in this area and because the need for Stage II vapor controls has been superseded by the implementation of vehicle onboard emission controls. Therefore, the revision to paragraph (A)(4) is acceptable and we are proposing to approve it.

OAC 3745–21–09(B)(3):

Paragraphs (B)(3)(d) and (B)(3)(e) address requirements for recordkeeping and notification of violation (exceedance of maximum daily coating usage limits) for coating lines exempted from the VOC emission limitations specified in OAC 3745–21–09(U)(1).

Because, as discussed below, the addition of paragraph (U)(2)(e)(ii) to OAC 3745–21–09 is acceptable, it is appropriate to also incorporate paragraphs (B)(3)(d) and (B)(3)(e) into the SIP. Exempted sources must continue to monitor coating usage and VOC emissions and must notify the State of exceedances of maximum daily coating usage limits.

[1] The State differentially defines "organic material" and "volatile organic compounds" in the State's rules. Volatile organic compounds, as defined, are a subset of organic material.

OAC 3745–21–09(O)(1) and OAC 3745–21–09(O)(6):

Paragraph (O) addresses requirements for solvent metal cleaning sources. Paragraph (O)(1) has been modified to reference new paragraph (O)(6), which exempts specified types of sources from the requirements of paragraphs (O)(2) (cold cleaner requirements), (O)(3) (open top vapor degreaser requirements), and (O)(4) (conveyorized degreaser requirements).

Paragraph (O)(6) is further revised in the June 24, 2003, submittal and is addressed in Section III of this proposed rule. Since Paragraph (O)(1) depends on paragraph (O)(6), we also propose action on the revision to paragraph (O)(1) in Section III of this proposed rule.

OAC 3745–21–09(R)(4):

Paragraph (R) contains VOC emission control requirements for filling of underground storage tanks at gasoline service stations. Paragraph (R)(4) specifies source exemption criteria for this State rule. Paragraph (R)(4)(a) has been modified to exempt two source types: (i) Any gasoline service station which has an annual gasoline throughput of less than 120,000 gallons; and (ii) gasoline transfers made to stationary storage tanks which are equipped with internal or external floating roofs. The uncorrected language of this paragraph would have exempted sources only if they met both of these conditions, which was not the intent of the State. We believe that the two exemptions are acceptable as independent exemptions. Therefore, the revision of paragraph (R)(4) is acceptable and we are proposing to approve it.

OAC 3745–21–09(U)(1)(h):

OAC 3745–21–09(U) specifies VOC emission control requirements for sources conducting surface coating of miscellaneous metal parts and products. Paragraph (U)(1) specifies VOC content limits for various coating operations or coating types. The State-adopted rule, in paragraph (U)(1)(h), contains a VOC content limit of 6.2 pounds per gallon of coating, or, if an emissions control system is employed, 39.2 pounds of VOC per gallon of solids, for high performance architectural aluminum coatings. (As a result of the difference between VOC content limits expressed per gallon of coating versus per gallon of coating solids, these are comparable limits.) Although the State has previously requested that these VOC content limits be placed into the SIP, EPA has not approved these VOC content limits. In its October 9, 2000, SIP revision request, Ohio EPA is again requesting the approval of these VOC content limits for high performance architectural aluminum coatings as a SIP revision.

The VOC content limit for high performance architectural aluminum coatings of 6.2 pounds per gallon of coating, or, if an emissions control system is employed, 39.2 pounds of VOC per gallon of solids, was incorporated into the Control Techniques Guidelines (CTG) for miscellaneous metal and plastic parts coatings document in September, 2008. This limit is less stringent than the general limit that applied to this subcategory in previous guidance. For Ohio in particular, approval of OAC 3745–21–09(U)(1)(h) would allow more emissions than the Ohio SIP currently allows.

Under section 110(l) of the Clean Air Act (CAA), EPA "shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment [or other requirements]." The State has not demonstrated that the relaxation of the VOC content limit for high performance architectural aluminum coatings would not interfere with attainment of the ozone standard and other requirements. Therefore EPA believes it must continue to disapprove this requested relaxation.

OAC 3745–21–09(U)(2):

Paragraph (U)(2) specifies the types of sources that are exempted from the emission control requirements of paragraph (U)(1).

OAC 3745–21–09(U)(2)(e):

Paragraph (U)(2)(e), which exempts sources based on coating usage rate limits, has been amended to restrict the exemption of miscellaneous metal parts and products coating lines in Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, and Warren Counties to coating lines that apply no more than three (3) gallons of coating per day. Other exemption clauses in this paragraph remain essentially unchanged, but have been grammatically modified to accommodate the revised exemption limit for the applicable counties.

Ohio EPA has submitted analyses for the Cincinnati and Cleveland areas assessing the allowable VOC emission rates for miscellaneous metal coating lines under the reasonably available control technology (RACT) based VOC content limit and under various coating usage rate limits (gallons per day per coating line). The analysis considered VOC emissions for all miscellaneous metal coating facilities in each area as contained in Ohio EPA's source permit files. The analysis determined daily allowable VOC emissions for each coating line at each facility. Based on the coatings in use at the facilities, the analysis concluded that, in both areas, an exemption of coating lines using no more than three gallons per day per coating line would allow total VOC emissions within five percent of the allowable VOC emissions expected without the exemption.

Based on these results, we conclude that the State rule, as revised, will provide emission reductions that are suitably close to the emission control benefits that would be achieved with a regulation strictly following RACT requirements. Therefore, this rule revision is acceptable and we are proposing to approve it.

Please note that paragraph (U)(2)(e) is further revised in the State's June 24, 2003, submittal; we discuss this paragraph in more detail below. This section discusses paragraph (U)(2)(e) only to the extent that it is revised in the October 9, 2000, submittal.

OAC 3745–21–09(U)(2)(f):

Paragraph (U)(2)(f) authorizes the exemption of metal coating lines meeting certain criteria from the miscellaneous metal coating VOC content and emission control requirements of paragraph (U)(1). Effective January 24, 1983, Ohio EPA's rule stated that in order to qualify for this emission control exemption, a coating line must be subject to a state-issued permit to install (PTI) that specifies alternate emission control requirements constituting "best available technology." Sources qualify for an alternative to the limits of paragraph (U)(1) only if best available technology for the source is found to be less stringent than, or inconsistent with, the emission control requirements of paragraph (U)(1). The best available technology must provide, where an emission limitation is applicable, the lowest emission limitation that a subject emissions unit is capable of meeting by application of control technology that is reasonably available considering technological and economic feasibility.

On March 23, 1995, (60 FR 15235), EPA inadvertently approved a version of paragraph (U)(2)(f) which allowed the State to approve and issue PTIs for miscellaneous metal coating units without EPA review and concurrence, and without approval of source-specific SIP revisions for the applicable coating units. The particular version that EPA approved had a State effective date of January 17, 1995. Subsequently, EPA realized that it erred in approving this paragraph. In a September 24, 1999, letter to Ohio EPA, we informed the State of the erroneous approval of (U)(2)(f) and commented that, if the State did not adopt and submit an

acceptable revision to the paragraph, EPA intended to publish a correction rescinding the 1995 approval.

In an attempt to rectify the deficiencies in the 1995 version, the State submitted an October 9, 2000, SIP revision request that provided a revised version of (U)(2)(f) (which became effective at the State on June, 15, 1999) that required EPA review of, and concurrence with, the PTIs prior to their finalization and issuance by the State. This revised version of paragraph (U)(2)(f), however, did not provide a suitable process involving formal EPA review of prospective exemptions for inclusion in the Ohio SIP. Section 110 of the CAA dictates a process in which States adopt measures required under the CAA, States submit these measures to EPA, and then EPA conducts formal rulemaking to assess whether these measures are to be added to the SIP. From the State's effective date of their rule change (June 15, 1999), paragraph (U)(2)(f) remained deficient because it did not contain the necessary language to require exemptions to be submitted to EPA as SIP revisions.

On March 23, 2009, Ohio submitted a revised version of paragraph (U)(2)(f) which, upon review, was found to be approvable because it provides EPA its proper role in reviewing and incorporating exemption limits into Ohio's SIP. EPA approved this version of paragraph (U)(2)(f) on July 28, 2009, at 74 FR 37171. Because this version supersedes previous versions, we propose to take no action on paragraph (U)(2)(f) from any submittal in this notice.

EPA and Ohio EPA have held discussions on how to best address future requests for exemptions from the miscellaneous metal coating limits in paragraph (U)(1). These discussions have reflected several premises:

1. Given the broad coverage of the miscellaneous metal coating rule, cases will arise where reasonably available control technology for a particular coating unit is less stringent or is inconsistent with the limits given in Ohio's rule 3745–21–09(U)(1), such that an alternative emissions limit is necessary;

2. Ohio has been applying exemption provisions of paragraph (U)(2)(f) in good faith. EPA does not intend to revisit the exemptions that Ohio granted during the time that Ohio had this unilateral authority. Discussions between EPA and Ohio EPA are intended instead to define a process for addressing future exemption requests;

3. EPA and Ohio EPA will seek to define an exemption review process that accommodates requirements within the State of Ohio for prompt permit review;

4. EPA and Ohio will seek to define an exemption review process that provides for joint review of exemption requests, that provides for Ohio to issue permits containing alternative emission limits after any EPA comments are taken into account, but that also reflects standard provisions that the Federally enforceable limitations in the SIP are revised only after EPA formally approves source-specific revisions through formal EPA SIP revision rulemaking.

EPA and Ohio have taken steps to establish a process for review of alternate miscellaneous metal coating limits based on the above premises. As noted above, Ohio has adopted and submitted a rule which provides for formal EPA SIP review of such alternate limits, and EPA has approved this rule. EPA and Ohio have also prepared a MOU outlining a process for issuing those exemptions.

The following table lists the facilities and source units that have been granted source permits by the State before June 15, 1999, under paragraph (U)(2)(f), along with their associated emission/VOC content limits. EPA proposes to retain the effectiveness of (U)(2)(f) exemptions issued between May 5, 1995, and June, 15, 1999. The permits issued before that date are listed here but will be addressed in the near future in a separate rulemaking. This table does not list any permits issued after June 15, 1999, because State rules starting on that date did not authorize the State to issue permits exempting sources from limits under paragraph (U)(1) without EPA concurrence.

Facility ID	Facility name	Short term limit (hr/day)	TPY limit	VOC content/other limit	PTI#	PTI issue date
1409000714 ..	Polymet Corporation.	25 lbs VOC/month	0.15 tons VOC/yr ..	None	14–4578	Wednesday, September 23, 1992.
1409000716 ..	Chase-Durus Industries.	55 lbs VOC/day; 10 gal/day for both metal and non-metal.	5.72 tons OC/yr from coating metal and 5.72 TPY from coating non-metal; PTO: 2.48 tons VOC/yr.	5.5 lbs OC/gal, as applied, including water and exempt solvents (PTO uses VOC/gal).	14–04268	Wednesday, June 24, 1998.
1409000842 ..	Ransoholff Inc	75 lbs VOC/day from coatings; 830 lbs VOC/mo from CU; 10 gal/day of coating.	10.55 tons VOC/yr	7.5 lbs VOC/gal coating, as applied; 8.3 lbs VOC/gal CU, as applied.	14–04268	Wednesday, March 5, 1997.
1409000842 ..	Ransoholff Inc	75 lbs VOC/day from coatings; 830 lbs VOC/mo from CU; 10 gal/day of coating.	10.55 tons VOC/yr	7.5 lbs VOC/gal coating, as applied; 8.3 lbs VOC/gal CU, as applied.	14–04612	Wednesday, March 5, 1997.
1409000892 ..	Phoenix Presentations Inc.	56.1 lbs OC/day	4.5 tons OC/yr	None	14–04612	Thursday, January 21, 1999.
1409000892 ..	Phoenix Presentations Inc.	56.1 lbs OC/day	4.5 tons OC/yr	None	14–04612	Thursday, January 21, 1999.
1409000892 ..	Phoenix Presentations Inc.	56.1 lbs OC/day	4.5 tons OC/yr	None	14–04014	Thursday, January 21, 1999.

Facility ID	Facility name	Short term limit (hr/day)	TPY limit	VOC content/other limit	PTI#	PTI issue date
1413080305 ..	Lt. Moses Willard Inc.	49.6 lbs/day w/ metal parts.	4.75 tons OC/yr from metal parts; 10.7 tons OC/yr from wood and metal and all CU.	7.3 lbs OC/gal, including water and exempt solvents for all coatings and all CU materials.	14–4220	Tuesday, December 23, 1997.
1413080305 ..	Lt. Moses Willard Inc.	49.6 lbs/day w/ metal parts.	4.75 tons OC/yr from metal parts; 10.7 tons OC/yr from wood and metal and all CU.	7.3 lbs OC/gal, including water and exempt solvents for all coatings and all CU materials.	14–4348	Tuesday, December 23, 1997.
1431072466 ..	Air Placement Equipment Co.	5.27 lbs VOC/hr; 1 gal/hr topcoat; 1 gal/hr primer.	1.36 TPY: PTO and a Summary limit in PTI.	5.27 lbs VOC/gal topcoat as an average; 5.22 lbs VOC/gal primer; 6.47 lbs VOC/gal CU.	14–4027	Wednesday, September 27, 1989.
1431403268 ..	Cincinnati Sub-Zero Products.	5.0 lbs VOC/gal, as a monthly volume weighted average.	6.46 tons VOC/yr ..	5.0 lbs VOC/gal, as a monthly volume weighted average.	14–1750	Wednesday, December 7, 1988.
1431403268 ..	Cincinnati Sub-Zero Products.	5.0 lbs VOC/gal, as a monthly volume weighted average.	1.28 tons VOC/yr ..	5.0 lbs VOC/gal, as a monthly volume weighted average.	14–1750	Wednesday, December 7, 1988.
1431403974 ..	WHM Equipment Co.	46.15 lbs VOC/day; 8 gals coating/day and 1 gal/day CU.	4.03 tons VOC/yr ..	5.0 lbs VOC/gal coatings; 6.15 lbs VOC/gal CU.	14–4610	Wednesday, May 28, 1997.
1431483908 ..	Panel Fab, Inc	56.05 lbs VOC/day; 8 gal/day coating; 1 gal/day CU.	5.56 tons VOC/yr ..	6.1 lbs VOC/gal of coating, as applied; 7.25 lbs/gal of CU.	01–6635	Wednesday, March 6, 1996.
1483060233 ..	Fujitec America, Inc.	2.89 lbs VOC/gal of prime coat.	11.7 tons/yr	2.89 lbs VOC/gal of prime coat.	01–08869	December 8, 1983.
1483060233 ..	Fujitec America, Inc.	5.383 lbs VOC/day; 0.801 gal coating/day.	0.864 ton VOC/yr including CU.	6.72 lbs VOC/gal coating, minus water (PTO: Excluding water and exempt solvents).; 7.2 lbs VOC/gal CU minus water (PTO: Excluding water and exempt solvents).	01–6743	October 15, 1990.
1483090326 ..	Cincinnati Fan & Ventilator.	102.4 lbs VOC/day	Summary limit: 16.54 tons VOC/yr.	5.7 lbs VOC/gal coating, excluding water and exempt solvents; 7.3 lbs VOC/gal for CU.	01–6743	Wednesday, April 26, 1995.
0180000130 ..	Honda MAP	6.5 lbs VOC/gal, as applied, when coating metal motorcycle parts and non-metal.	81.7 tons/rolling 12-mo.	6.5 lbs VOC/gal as applied, when coating metal auto parts; 4.3 lbs VOC/gal of clear coat, excluding water and exempt solvents, or if a control system is used 10.3 lbs VOC/gal of solids on metal non-motorcycle parts; 3.5 lbs VOC/gal coating, excluding water.	03–10256	01–2675, issued 9/18/90; 01–6642 mod 8/7/01; 01–8869 mod 12/02/04; mod 1/13/05, mod 9/20/07.

Facility ID	Facility name	Short term limit (hr/day)	TPY limit	VOC content/other limit	PTI#	PTI issue date
0180000130 ..	Honda MAP	4.7 lbs VOC/gal as a daily volume-weighted average.	55.3 tons/rolling 12 mo. from coatings.	4.7 lbs VOC/gal as a daily volume-weighted average.	03–10256	December 24, 1997.
0180000130 ..	Honda MAP	4.7 lbs VOC/gal as a daily volume-weighted average.	43.7 tons/rolling 12 mo. from coatings.	4.7 lbs VOC/gal as a daily volume-weighted average.	03–10256	December 24, 1997.
0278080612 ..	Ohio Trailer	4.0 lbs VOC/gal Zn primer, excluing water; 4.5 lbs VOC/gal topcoat, excluding water (PTO: Excluding water and exempt solvents, as applied on a daily volume-weighted average); 60 gal coating/day for R001, R002, and R003 together.	None	4.0 lbs VOC/gal Zn primer, excluding water; 4.5 lbs VOC/gal topcoat, excluding water (PTO: Excluding water and exempt solvents, as applied on a daily volume-weighted average).	03–10256	October 11, 1984.
0278080612 ..	Ohio Trailer	4.0 lbs VOC/gal Zn primer, excluing water; 4.5 lbs VOC/gal topcoat, excluding water (PTO: Excluding water and exempt solvents, as applied on a daily volume-weighted average); 60 gal coating/day for R001, R002, and R003 together.	None	4.0 lbs VOC/gal Zn primer, excluing water; 4.5 lbs VOC/gal topcoat, excluding water (PTO: Excluding water and exempt solvents, as applied on a daily volume-weighted average).	03–10256	October 11, 1984.
0278080612 ..	Ohio Trailer	4.0 lbs VOC/gal Zn primer, excluding water; 4.5 lbs VOC/gal topcoat, excluding water (PTO: Excluding water and exempt solvents, as applied on a daily volume-weighted average); 60 gal coating/day for R001, R002, and R003 together.	None	4.0 lbs VOC/gal Zn primer, excluding water; 4.5 lbs VOC/gal topcoat, excluding water (PTO: Excluding water and exempt solvents, as applied on a daily volume-weighted average).	03–0257	October 11, 1984.
0306010138 ..	Goodyear Tire and Rubber, St. Marys.	202 lbs VOC/day ..	None	None, 202 lbs VOC/day; 416 gal primer/mo and 520 gal top coat/mo.	14–04268	October 2, 1991.
0306020025 ..	American Trim (Superior Metal Products: Plant #4).	basecoat: 1.53 lbs OC/hr; topcoat 1.72 lbs OC/hr; ink: 0.07 lb OC/hr.	basecoat: 6.69 tons OC/yr; topcoat 7.57 tons OC/yr; ink: 0.31 tons OC/yr; CU 6.00 tons/yr and 986 lbs OC/mo.	basecoat: 4.64 lbs VOC/gal; topcoat 4.92 lbs VOC/gal; ink: 3.43 lbs VOC/gal, all excluding water and exempt solvents.	14–04268	October 29, 1997.
0306020025 ..	American Trim (Superior Metal Products: Plant #4).	basecoat: 1.96 lbs OC/hr; topcoat: 1.96 lbs OC/hr.	basecoat: 8.56 tons OC/yr; topcoat 8.56 tons OC/yr; CU 6.00 tons/yr and 986 lbs OC/mo.	basecoat and topcoat: 3.00 lbs VOC/gal excluding water and exempt solvents.	14–04612	October 29, 1997.

Facility ID	Facility name	Short term limit (hr/day)	TPY limit	VOC content/other limit	PTI#	PTI issue date
0387020354 ..	Henry Filters	35.0 lbs OC/hr-K001.	19.0 ton OC/yr & 1.6 tons/mo from K001, K002, K003 together (K002 and K003 in different permit).	7.0 lbs VOC/gal, excluding H20 & exempt solvents, as applied.	14–04612	June 26, 1996; last as a modification on 8/22/2002.
0546000117 ..	Honda East Liberty	87.2 lbs VOC/hr	EU Group Limits: 11 EUs: 1,268.65 tons VOC/rolling 12-mo coating; 18 EUs: 103.3 tons per rolling 12 mo. and 38.44 tons/mo from CU.	5.32 lbs VOC/gal, excluding water and exempt solvents, as a monthly volume-weighted average.	14–04612	April 17, 1996.
0546000117 ..	Honda East Liberty	19.6 lbs VOC/hr from coatings; 5.8 lbs/hr from non-PRM solvents.	29.2 tons VOC per rolling 12-mo. from coatings; 9.98 tons VOC per rolling 12-mo for non-PRM solvents.	6.54 lbs VOC/gal, excluding water and exempt solvents, as a monthly volume-weighted average.	14–04014	April 17, 1996.
0575010106 ..	American Trim	5.36 lbs VOC/gal coating as applied minus water and exempt solvents, for extreme performance coatings.	18.895 tons VOC/rolling 12.	5.36 lbs VOC/gal coating as applied minus water and exempt solvents, for extreme performance coatings.	14–4822	June 30, 1994.
0575010106 ..	American Trim LLC	5.21 lbs VOC/gal coating as applied minus water and exempt solvents, for extreme performance coatings; 7.76 lbs VOC/gal cleanup.	18.874 tons VOC/rolling 12.	5.21 lbs VOC/gal coating as applied minus water and exempt solvents, for extreme performance coatings; 7.76 lbs VOC/gal cleanup.	14–4822	January 5, 1994.
0575010106 ..	American Trim	5.36 lbs VOC/gal coating as applied minus water and exempt solvents, for extreme performance coatings; 7.76 lbs VOC/gal cleanup.	22.8 tons VOC/rolling 12.	5.36 lbs VOC/gal coating as applied minus water and exempt solvents, for extreme performance coatings; 7.76 lbs VOC/gal cleanup.	14–4220	September 13, 1995.
0575010106 ..	American Trim	5.21 lbs VOC/gal, as applied minus water and exempt solvents for extreme performance coatings; 7.76 lbs VOC/gal CU.	27.8 tons VOC/rolling 12 mo.	5.21 lbs VOC/gal, as applied minus water and exempt solvents for extreme performance coatings; 7.76 lbs VOC/gal CU.	14–4220	December 3, 1998 (05–9516); 05–12030 mod issued final 7/30/02 and new mod draft issued 9/9/04.
0708000017 ..	Hawkline, LLC (formerly Trinity Industries).	2007.87 lbs VOC/day.	204.4 tons VOC/rolling 12.	3.5 lbs VOC/gal, excluding water as a monthly volume-weighted average.	14–4348	February 28,1996.

As noted below, Ohio submitted requests for two source facilities, *i.e.,* Honda of America Manufacturing, Incorporated and Adelphia, Incorporated, for exemptions from RACT requirements through source permits based on paragraph (U)(2)(f), as revised in 1999. These permits were issued at a time when the state's rules required EPA concurrence on the permit, and EPA intends to grant concurrence only through rulemaking on a formal SIP submittal. Ohio has not formally requested SIP approval of these permits, and, in fact Ohio has withdrawn the submittal for Honda. Nevertheless, in this proposed rulemaking, we are providing a partial review of these permits to facilitate future review, presumably to occur if and when Ohio submits the provisions

of these permits as a formal SIP revision request.

OAC 3745–21–09(Y):

This paragraph addresses the VOC emissions control requirements for flexographic, packaging rotogravure, and publication rotogravure printing lines. Paragraph (Y)(1)(a) specifies the VOC content limits for coatings and inks used in these printing lines. The VOC content limit contained in paragraph (Y)(1)(a)(i) has been revised to add the exclusion of "exempt solvents." The revised VOC content limit becomes: Forty (40) percent VOC by volume of the coating/ink, excluding water and exempt solvents. This revision to Paragraph (Y) is acceptable and we are proposing to approve it.

OAC 3745–21–09(KK):

This paragraph contains source-specific non-control technique guideline (non-CTG) RACT requirements for the Morton Thiokol facility located at 2000 West Street, Cincinnati, Ohio. Paragraph (KK)(1) has been revised to change the method of calculating the emissions control efficiency of the vapor recovery system for this facility. The revised method requires the owner/operator to determine the amount of VOC vented to the vapor recovery system and the percentage of vented VOC captured by the vapor recovery system. The revised emissions monitoring requirement provides a more accurate determination of the emissions control efficiency of the vapor recovery system than the prior use of the assumption that all VOC used in the processes are emitted.

This revision to the rule is a technical improvement. Since the rule depends on the determination of the emission control efficiency of the VOC recovery system, this rule revision will allow a more accurate determination of compliance with the VOC emission control requirements. This rule revision is acceptable and we are proposing to approve it.

OAC 3745–21–09(BBB):

This paragraph contains source-specific non-CTG RACT requirements for the BF Goodrich Company Akron Chemical Plant located at 240 West Emerling Avenue, Akron, Ohio. Paragraph (BBB)(1) has been amended to delete a requirement that, for the agerite resin D process, the VOC emissions from the vapor recovery system vents and neutralization and distillation system vents (except wash kettle or still feed condenser vents, stills vacuum jet tailpipe vents, and process emergency safety relief devices) be vented to an emissions control device that is designed and operated to achieve an emissions control efficiency of at least 90 percent, by weight. In place of this deleted emissions control efficiency requirement, the revised paragraph now specifies a total annual VOC emissions limit of 1.0 ton from the recovery system and neutralization and distillation system vents.

A 1994 compliance test showed that the facility's agerite resin D process unit emits a maximum of 0.146 pounds VOC per hour. In-process VOC reductions help to keep the annual VOC emissions from the agerite resin D process to under 1.0 ton per year. Because the BF Goodrich Company has claimed that a 90 percent VOC control efficiency requirement is not reasonable, the Company has sought an alternate emission requirement based on an annual emission limit.

Although EPA can approve alternative site-specific source emission requirements where warranted and this emission source is relatively small, constrained to VOC emissions of 1.0 ton per year or less, this revised rule is deficient from the standpoint that the revised rule does not specify or identify test procedures and recordkeeping requirements compatible with the revised emission limit. Therefore, this revised rule is not enforceable and is not approvable in its current form. EPA assumes that the State can correct this rule deficiency and submit a revision to the rule in a reasonable time of less than one year following final rulemaking on this rule revision. Therefore, we are proposing to conditionally approve this rule. EPA may approve the requested revision based on a commitment of the State to correct the erroneous content by a date certain, but not later than one year after the date of conditional approval of the plan revision. The State must submit such a commitment to EPA before EPA completes final rulemaking on this conditional approval. Any such conditional approval will be treated as a disapproval if the State fails to comply with such commitment. EPA is not required to propose the finding of disapproval. If Ohio submits revisions correcting the deficiencies, as discussed above, within one year from this conditional approval becoming final and effective, EPA will publish a subsequent notice in the **Federal Register** to acknowledge conversion of the conditional approval to a full approval.

OAC 3745–21–09(DDD):

This rule paragraph is further revised in the June 24, 2003 submittal. All revisions to this paragraph, including those in the October 9, 2000 submittal, are addressed in the discussion of the 2003 submittal.

Summarized Revisions to OAC 3745–21–10 (Compliance Test Methods and Procedures):

OAC 3745–21–10(C):

Paragraph (C)(3)(c) refers to the determination of the emissions capture efficiency of any vapor collection system used to collect and transport VOC from the point of origin to an emissions control system. This paragraph has been amended to require that capture efficiencies be determined in accordance with Methods 204 through 204F, as specified in the Code of Federal Regulations (CFR) at 40 CFR part 51, Appendix M or in accordance with the alternative capture efficiency testing protocols specified in the EPA Office of Air Quality Planning and Standards document titled "Guidelines for Determining Capture Efficiency," dated January 9, 1995. This revised capture efficiency test method requirement replaces a requirement that the capture efficiency be computed or measured in a manner based on accepted engineering practices and in a manner acceptable to Ohio EPA.

Ohio's requested SIP revision seeks to require that capture efficiency determinations either comply with the test procedures specified in the CFR or comply with alternative test procedures outlined in EPA's January 9, 1995, "Guideline for Determining Capture Efficiency." This requirement is acceptable and we are proposing to approve it.

OAC 3745–21–10(O):

Paragraph (O)(2)(c) allows the owner/operator of equipment at a petroleum refinery subject to paragraphs (T) or (DD) of OAC 3745–21–09 to use engineering judgment rather than more specific quantitative procedures specified in paragraph (O)(2)(b) to demonstrate that the VOC content of a process fluid does not exceed 10 percent by weight. In the event that Ohio EPA or EPA disagree with an engineering judgment, the specific quantitative procedures specified in paragraph (O)(2)(b) must be used to resolve the disagreement.

Paragraph (O)(2)(c) has been revised to correct prior typographical errors in this portion of the rule. These typographical error corrections do not significantly change this rule from the previously approved version contained in the SIP. Therefore, these error corrections are acceptable and we are proposing to approve them.

2. What is EPA's view of the source-specific miscellaneous metal coating submittal currently before EPA?

A February 6, 2001 state specific submittal from Ohio EPA with a VOC

emissions control exemption for Adelphia, Incorporated (Adelphia) in Cleveland, Ohio involves the source seeking alternative VOC emission limits through a State PTI under the provisions of revised OAC 3745–21–09(U)(2)(f). As noted above, this revised rule allows a miscellaneous metal coating source to seek a State PTI which would establish emission control requirements that are less stringent than, or are otherwise inconsistent with, RACT requirements without obtaining EPA approval of a source-specific SIP revision, but requiring EPA concurrence with the PTI.

As noted above, under the version of OAC 3745–21–09(U)(2)(f) applicable at the time this PTI was issued, this permit may only be issued after EPA concurrence, but EPA intends to provide concurrence only if Ohio satisfies the applicable public hearing requirements so we can process this PTI as a possible source-specific SIP revision. EPA does not have a formal SIP revision request, and so we are not proposing to act on the PTI in the context of this rule. Nevertheless, we interpret Ohio's submittal for Adelphia as a possible future source-specific SIP revision request. Although the PTI inherently depends on the approval of OAC 3745–21–09(U)(2)(f), which we are proposing to take no action on, the State could revert the PTI submittal to a SIP revision request, which is an acceptable approach under the CAA. To avoid further delay in addressing the possible needs of this source for special consideration under existing RACT requirements, we are addressing the merits of the submittal here as if the State had submitted it as a source-specific SIP revision request. Before any approval of this submittal as a source-specific SIP revision request could occur, the State would need to issue the PTI or otherwise adopt the limits and then formally request its approval by EPA as a SIP revision. The State would also have to address SIP procedure requirements, including addressing the public hearing requirement. The PTI submittal is addressed below.

Adelphia, Incorporated

Adelphia owns and operates a facility in Cleveland, Ohio that coats threads of metal fasteners used by several customers in the manufacture of automobiles. This facility has been in operation since 1974, and is located in the Cleveland ozone maintenance area, where miscellaneous metal parts and products coating facilities have been required to comply with RACT requirements.

Prior to submitting its request for a source control variance PTI under OAC 3745–21–09(U)(2)(f), Adelphia operated five coating lines at the Cleveland facility. These coating lines typically operated at rates below maximum capacities. Adelphia, however, realized that it would have to increase production rates to meet customer demands. This observation was coupled with the realization that Adelphia uses coatings with VOC contents exceeding the limits contained in OAC 3745–21–09(U)(1) and that compliant coatings were not currently available. These observations were the basis for Adelphia seeking the PTI. The requested PTI would provide for the use of six coating lines with limitations on coating usage rates and for increased VOC content limits.

To meet anticipated coating demands and to possibly comply with Ohio VOC control requirements, Adelphia considered a number of options, including: (1) Adding coating lines to keep per line coating usages rates below 3 gallons per day, in compliance with Ohio's VOC control requirements for the Cleveland area; (2) use of new VOC-compliant coatings; and (3) use of add-on VOC emission control systems.

Adelphia anticipated that coating usage rates in the near future would approach 40 gallons per day. To achieve a per line coating usage rate limit of 3 gallons per day, as allowed under OAC 3745–21–09(U)(2)(e)(ii), as amended in 1999 and as reviewed elsewhere in this proposed rule, Adelphia would have to add a significant number of coating lines. Adelphia determined that the economics of its coating operations would not support the use of so many coating lines applying limited amounts of coatings each day (no more than 3 gallons of coating per line per day).

Adelphia has documented that it has made serious attempts to obtain compliant coatings from a number of coating suppliers. Prior to requesting the PTI, Adelphia was able to obtain acceptable coatings (those coatings that meet customer specifications) from only one supplier. That coating supplier only provides acceptable coatings with VOC contents of 5.7 pounds per gallon of coating as applied, well above the VOC content limits of 3.5 and 3.0 pounds per gallon of coating, excluding water and exempt compounds, as applicable to Adelphia's operations as specified in OAC 3745–21–09(U)(1)(c) and (i). Adelphia is currently only licensed to apply the coatings from this single supplier. Adelphia's attempts to expand its license to additional suppliers with compliant coatings have been refused by those coating suppliers.

Adelphia documented its assessment of the technical and economic feasibility of using add-on VOC emission controls. Following Ohio's Guideline #46 to determine cost-effectiveness of alternative emission control systems, Adelphia investigated the use of add-on controls for each coating line singly and for all lines vented to a single add-on emissions control system. Adelphia investigated both regenerative VOC capture systems and thermal destruction systems. Adelphia determined that the most cost-effective VOC control systems would involve the use of a regenerative thermal oxidizer system. Use of such an emissions control system with appropriate VOC capture and ducting systems resulted in cost-effectiveness estimates ranging from $18,868 per ton of VOC controlled for a single control system for all lines combined to $21,642 per ton of VOC controlled for separate emission control systems on each coating line. Adelphia notes that the lowest cost-effectiveness estimate is double the highest value that Ohio has previously found to be cost-effective for miscellaneous metal coating operations. Adelphia also notes that such emission control costs would be a high percentage of Adelphia's annual operating costs, jeopardizing the continued existence of its coating operations.

Considering Adelphia's supporting documentation and best available technology determination, Ohio EPA issued a draft PTI to Adelphia on February 6, 2001. Besides standard PTI requirements, the PTI included the following source-specific VOC control requirements:

(1) The VOC emissions from the coatings facility-wide are limited to 29.64 tons per rolling twelve month period, and the VOC emissions from each coating line are limited to 10.4 tons for each rolling twelve month period;

(2) The application of coatings for each coating line is limited to 10 gallons per day, and all six permitted coating lines are limited to the application of no more than 40 gallons of coatings in total per day; and,

(3) The VOC content of the coatings applied cannot exceed 5.7 pounds per gallon, excluding water and exempt solvents.

The PTI also specifies the monitoring and recordkeeping requirements needed to track and enforce these VOC emission control requirements for each coating line. The PTI specifies reporting requirements, which include requirements for notification of Ohio EPA in the event that monthly records show a violation of the VOC emission control requirements. Finally, the PTI

requires Adelphia to continue the pursuit to find suppliers of coatings meeting the requirements of OAC 3745–21–09(U)(1) and to periodically inform Ohio EPA of its progress in this effort.

We have determined that Adelphia has made reasonable efforts to comply with the requirements of OAC 3745–21–09(U)(1) and (U)(2)(e) and has successfully documented the need for a source-specific rule revision. The only issue of concern that we have found in the PTI is that the source-specific rule would provide for annual limits on VOC emissions, which deviate from short-term emission limits preferred by EPA. This problem, however, is mitigated by the inclusion of daily coating usage limits and a VOC content limit that together will constrain daily peak VOC emissions. We conclude that, if Ohio satisfies the applicable public hearing requirements to process this PTI as a possible source-specific SIP revision, we would expect that this SIP revision would be approvable.

III. Five-Year Rule Review

A. Background

1. Why has the State requested revisions to this rule?

Every five years, Ohio EPA is required to review and revise its rules as necessary. Changes are generally minor, and clarification language is added to address rule comprehension problems.

2. When did the State submit the requested rule revisions to EPA?

On June 24, 2003, the Director of Ohio EPA submitted a request to approve the incorporated revisions to OAC 3745–21: Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards into the SIP.

On October 9, 2000, Ohio submitted prior revisions to OAC 3745–21. The previous section of this notice addresses revisions to OAC 3745–21 which were requested prior to the State's June 24, 2003, submittal. Some of the rule paragraphs with revisions contained in the State's October 9, 2000, submittal, however, include rule paragraphs further amended and adopted by the State and covered by the State's June 24, 2003, submittal. These paragraphs include: (1) 3745–21–01: (B)(6); (2) 3745–20–04: (B)(1), (B)(1)(a), (B)(5), (C)(16)(b), and (C)(27)(c); and, (3) 3745–21–09: (O)(1), (O)(6), and (DDD).

The June 24, 2003, submittal reflects current versions of these particular rule paragraphs, and since the versions of these rule paragraphs contained in the October 9, 2000, submittal may now be outdated, we are also addressing those older rule paragraphs in this section.

3. When did the State adopt these rule revisions and have they become effective?

Ohio EPA adopted the revisions on October 25, 2002, and the revisions became effective on November 5, 2002.

4. When were public hearings held?

Ohio EPA held a public hearing on March 14, 2002, in Columbus, Ohio. Ohio EPA also submitted the draft rules to a list of interested parties.

5. What issues were raised at the public hearings and how did the State respond?

No comments were received concerning OAC 3745–21–02, 3745–21–03, 3745–21–04, 3745–21–06, 3745–21–08, and 3745–21–11. One comment was received for OAC 3745–21–01, in which the interested party requested the addition of a definition for "CARB certification". Ohio EPA added the requested definition to the rule.

Ohio received multiple comments for OAC 3745–21–09. Honda of America requested clarification language for portions of this rule. In response to Honda of America's requests, Ohio EPA revised the portions of the rules which would not affect the rule's scope or definition. Ohio EPA denied revision requests that, in its opinion, did not provide further clarification. Ohio EPA also denied revision requests which would have changed the scope or definition of the rule.

One comment was received for OAC 3745–21–10, in which the interested parties requested revising the rule language to reflect the addition of the "CARB certification" definition to OAC 3745–21–01. Ohio EPA revised the rule.

B. What are the revisions that the State requests be incorporated into the SIP?

The State requests changes to OAC 3745–21–01 Definitions; 3745–21–02 Ambient air quality standards and guidelines; 3745–21–03 Methods of ambient air quality measurement; 3745–21–04 Attainment dates and compliance schedules; 3745–21–06 Classification of regions; 3745–21–08 Control of carbon monoxide emissions from stationary sources; 3745–21–09 Control of emissions of volatile organic compounds from stationary sources and perchloroethylene from dry cleaning facilities; and, 3745–21–10 Compliance test methods and procedures. The revisions are of the following nature:

1. Grammar, Spelling, and Definitions

A number of the revisions to OAC 3745–21 correct improper grammar and spelling. Revisions of this nature have been made to the following: (1) OAC 3745–21–01: Paragraphs (B)(6), (M)(17); and, (2) OAC 3745–21–09: Paragraphs (O)(5)(b), (O)(6)(a), (FF)(1), (II)(3), (II)(4), (PP)(2), (UU)(3), Appendix A.

The phrases "CARB certified" and "CARB certification" have been added to OAC 3745–21–01(H)(4) which applies to rules that govern vapor recovery systems. Paragraphs (H)(4) to (H)(19) have been renumbered to allow for the addition of the new definition. Further additions of "CARB certification" references have been added to OAC 3745–21–09(DDD) and OAC 3745–21–10 Appendix A and Appendix B.

A definition which does not have a corresponding rule attached to it has been removed. The rule that referenced the definition for "Architectural coatings" in 3745–21–01(C)(1) was amended in a previous revision, and the definition is no longer necessary.

Spelling and grammar revisions to OAC 3745–21–01, 3745–21–02, 3745–21–09, and 3745–21–10 do not affect the scope or enforceability of these rules. The revisions have been made to make the rules easier to read and understand.

2. Attainment Dates and Compliance Schedules

Because so many changes were made to OAC 3745–21–04, the entire rule was rescinded and rewritten. OAC 3745–21–04(A) defines attainment dates for counties that do not meet the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) and ozone. The dates of attainment for these counties have been revised to be consistent with the CAA, as amended.

OAC 3745–21–04(C) contains a lengthy list of interim and final compliance dates for categorized and site specific CO and VOC sources. All of the interim and final compliance dates for these sources passed prior to the November 5, 2002, adoption of these revisions into Ohio law. Ohio EPA removed the now defunct interim compliance dates and rewrote the following paragraphs of OAC 3745–21–04(C) to reflect only the final compliance dates: (C)(2), (C)(3)(c), (C)(4)(a), (C)(4)(b), (C)(5)(a), (C)(5)(b), (C)(6)(a), (C)(6)(b), (C)(7), (C)(8)(a), (C)(8)(b), (C)(8)(c), (C)(9)(a), (C)(9)(b), (C)(10)(a), (C)(10)(b), (C)(11), (C)(12), (C)(13), (C)(14), (C)(16)(a), (C)(17), (C)(18), (C)(19)(a), (C)(20), (C)(21), (C)(22), (C)(23), (C)(24), (C)(25), (C)(26), (C)(27), (C)(28)(a), (C)(28)(b), (C)(30), (C)(31), (C)(33), (C)(35), (C)(36), (C)(37),

(C)(38), (C)(39), (C)(40), (C)(41), (C)(46), (C)(48)(a), (C)(48)(b), (C)(51), (C)(54), (C)(55), (C)(58), (C)(59), (C)(60), (C)(62), (C)(65), and (C)(66).

The final compliance dates remain federally enforceable. Because the interim compliance dates have long passed, and because the final compliance dates are the only ones necessary for enforcement of the rule, removing the interim compliance dates is acceptable and we are proposing to approve it. It should be noted that we are taking no action on paragraph (C)(3)(a) because the paragraph has subsequently been amended by the State in a March 23, 2009, submittal and will be addressed in a separate rulemaking.

OAC 3745–21–04 contains two paragraphs which offer alternative compliance timelines for can coating lines and printing lines. These alternative compliance timelines were originally offered so that affected sources could take advantage of extra time for complying with the regulations, if necessary. Paragraphs (C)(3)(b) and (C)(32)(b) have been removed in the revision because the alternative dates (December 31, 1985, and December 31, 1987) have long since passed, and there is no longer any need to offer these alternative dates. Removal of these paragraphs is acceptable and we are proposing to approve it.

3. Clarifications

Many revisions to OAC 3745–21 have been made to make the rule easier to understand. These revisions resulted in part because of comments received from interested parties. The revisions allow the rules to be brief and clear as to what necessary steps should be taken to comply with the law.

Ohio EPA revised paragraphs (A) and (B) of OAC 3745–21–02 so that the concentration of CO and ozone will be measured solely in parts per million by volume (ppmv). The measurement definition of CO and ozone in milligrams per cubic meter was removed. This change is acceptable because the ppmv measurement already existed in the rule, because ppmv are the official units of these standards, and removal of the alternative measurement simplifies the sampling process. We are proposing to approve these revisions.

Paragraphs (B), (B)(1), and (B)(2) of OAC 3745–21–03 have been revised so that the reader gains a better understanding of what is considered valid equipment for monitoring CO and ozone. References to the CFR have been added to OAC 3745–21–03(C) which the reader can reference to determine the Federal standards for continuous ozone sampling equipment. Ohio EPA clarified the language of final compliance dates for gasoline dispensing facilities and gasoline tank trucks in the following paragraphs of OAC 3745–21–04: (C)(19)(b), (C)(19)(c), (C)(19)(d), (C)(28)(e), (C)(29), (C)(64)(a)(i), (C)(64)(a)(ii), (C)(64)(a)(iii), (C)(64)(b)(i), (C)(64)(b)(ii), and (C)(64)(b)(iii).

The original compliance dates were stated in relation to a period of time after a specified date. The revised compliance dates now state the final date possible for compliance (for example, "by not later than six months after March 31, 1993" becomes, "September 30, 1993").

OAC 3745–21–08(A) states which areas in Ohio are subject to controls and measures contained in OAC 3745–21–08. Paragraph (A) states that only counties classified as "Priority I" are subject to this rule. This paragraph has been rescinded.

OAC 3745–21–08(B), which concerns best available control techniques (BACT) applicability to new sources of CO, has been rescinded. OAC 3745–31–05(A)(3) is now the rule that covers new source BACT.

OAC 3745–21–08(C), which allows the use of alternative means of emission control, has been rescinded. This does not decrease the effectiveness of OAC 3745–21–08, because with the revision, a new source must use federally enforceable, State-mandated control technology.

OAC 3745–21–08(D) has been reworded to apply the CO controls described within this paragraph to new sources of CO that are emitted during the operation of grey iron cupolas, blast furnaces, or basic oxygen steel furnaces. The additions clarify the fact that the paragraph applies to new sources of CO of the type described in this paragraph.

OAC 3745–21–08(E) has been reworded to apply described CO controls to new sources of CO emitted through the waste gas stream during the operation of petroleum cracking systems, petroleum fluid cokers, or other petroleum processes. The additions clarify the fact that the paragraph applies to new sources of CO of these types.

Various paragraphs in OAC 3745–21–09 have been revised to let the reader understand which specific rules apply. The revised paragraphs state various recordkeeping, recording, applicability, emissions, and emissions exceedances reports requirements for sources in Ohio in a clearer way. Revisions of this nature were made to the following paragraphs: (B)(3)(a), (B)(3)(f), (B)(3)(h), (B)(3)(j), (B)(3)(l), (B)(4)(a), (B)(4)(b), (C)(4), (H)(1)(a), (H)(1)(b), (H)(3), (O)(6)(b), (U)(1), (U)(2)(e), and (U)(2)(h).

Ohio EPA added references to the CFR in paragraphs (NN) and (VV) of OAC 3745–21–09. These revisions clarify the specifications for a continuous VOC emission control system (paragraph (NN)) and methods for continuous emissions monitoring (Paragraph (VV)).

The last type of clarification revisions deal with perchloroethylene's non-VOC status. Perchloroethylene is a widely used dry cleaning chemical which EPA removed from the list of VOC's (see 40 CFR 51.100(s)). As a result, portions of OAC 3745–21 were revised to clarify the status of perchloroethylene. The following paragraphs have been revised in this manner: OAC 3745–21–01(C)(5)(a); OAC 3745–21–09(AA)(1)(b) and (AA)(1)(c); and OAC 3745–21–10(J).

These clarification revisions were made in part because of comments received from interested parties. They allow the rules to be brief and clear as to what steps are necessary to comply with the law. The revisions do not change the scope or enforceability of the rule, and, therefore, are acceptable. We are proposing to approve these revisions.

4. Revised State Rule Applicability

OAC 3745–21–06, which classifies regions of the State for determining applicability to CO and VOC regulations, has been revised by eliminating an exemption for CO regulations. This revision does not reduce the scope or enforceability of CO regulations, and therefore, it is acceptable. We are proposing to approve this revision.

5. Site-Specific Emissions Limit Amendments

OAC 3745–21–09(II), which deals with site-specific non-CTG RACT emissions limits for the "International Paper Company" in Springdale, Ohio, has been revised to lower the acceptable amount of VOC in the fountain solution employed in any sheet-fed offset lithographic printing process while refrigerated in a cooling unit. The acceptable amount of VOC in the solution has been lowered from 10 percent to 8.5 percent. This revision increases the stringency of the rule, which is acceptable. We are proposing to approve this revision.

OAC 3745–21–09 paragraph (OO) was revised. This paragraph determines the allowable VOC content of materials used in the processes at "Armco Steel Company, L.P." located in Middletown, Ohio.

Paragraph (OO)(1) has been changed so that the maximum allowable VOC content of any rolling oil employed in

the temper mills of "Armco Steel Company, L.P." or any subsequent owner of the facility at 1801 Crawford Street, Middletown, Ohio, is 6.9 pounds of VOC per gallon of oil, excluding water and exempt solvents. The previously allowed amount was 2.9 pounds of VOC per gallon of oil, excluding water and exempt solvents.

Paragraph (OO)(2) has been changed so that the maximum allowable VOC content of any rust preventive oil employed in the temper mills, shears, corrective rewinds, slitters, coating lines, and pickle lines of "Armco Steel Company, L.P." or any subsequent owner of the facility at 1801 Crawford Street, Middletown, Ohio, is 3.3 pounds of VOC per gallon of oil, excluding water and exempt solvents. The previously allowed amount of VOC was 1.1 pounds per gallon of oil, excluding water and exempt solvents.

Paragraph (OO)(3) has been changed so that the maximum allowable VOC content of an anti-galling material employed in the aluminum coating operation of "Armco Steel Company, L.P." or any subsequent owner of the facility at 1801 Crawford Street, Middletown, Ohio, is 1.2 pounds per gallon of oil, excluding water and exempt solvents. The previously allowed amount of VOC was 6.4 pounds per gallon of oil, excluding water and exempt solvents.

Paragraph (OO)(4) was added to OAC 3745–21–09(OO). This paragraph states that the VOC content of any prelube oil employed at the facility ["Armco Steel Company, L.P." or any subsequent owner of the facility at 1801 Crawford Street, Middletown, Ohio] shall not exceed 0.8 pound of VOC per gallon of oil, excluding water and exempt solvents.

The revisions to the previously cited four paragraphs of 3745–21–09(OO) are acceptable because they are substantively equivalent to the Final Findings and Orders issues by the Director of Ohio EPA on August 21, 1995, which EPA approved on April 24, 1996, (81 FR 18257). The August 21, 1995, Director's Final Findings and Orders state that the aforementioned four paragraphs of 3745–21–09(OO) constitute RACT for the "Armco Steel, L.P." facility in Middletown, Ohio. These revisions are acceptable, and we are proposing to approve them.

6. Site-Specific Source Removal

OAC 3745–21–04(C)(61) and 3745–21–09(AAA) have been reserved because of the closure of the facility "Reilly Industries, Inc." located at 3201 Independence Road, Cleveland, Ohio. The facility closed on December 31, 2000, and its permit to emit was withdrawn. Any future owner or operator of this facility will have to apply for a new source permit to emit. Such permit would control future emissions from the facility. Information about the facility's closure was received from the Cleveland Local Air Agency on November 4, 2003, and is available in the docket.

C. What are the environmental effects of these actions?

There are no adverse environmental results expected from any approval of these revisions. The majority of these rule revisions are editorial in nature. Such changes increase understanding of, and compliance with, the rules. Since a number of the rules require emissions reductions, approval of these revisions will improve air quality.

The revisions to OAC 3745–21–09(OO) relax some of these rules but do not relax the requirements applicable to the Armco Steel Company. This is because Ohio has simply revised these rules to match the limits already contained in a federally approved set of findings and orders. No other rule revisions in Ohio's submittal increase any limits in these rules. Therefore, none of the revisions contained in today's proposed rulemaking will allow for increases in air pollution within the state of Ohio.

IV. Proposed Rulemaking Action

Proposed rulemaking action on Ohio's various submittals is described below.

A. 2000/2001 Submittals

Based on the rule-by-rule review, we propose to approve and to incorporate into the Ohio SIP the following revised rule paragraphs as adopted by the State of Ohio and as defined in Ohio's October 9, 2000, submittal:

Revisions to OAC 3745–21–01

Paragraph (B)(4)

Revisions to OAC 3745–21–09

Paragraph (A)(4)
Paragraph (B)(3)(d)
Paragraph (B)(3)(e)
Paragraph (R)(4)
Paragraph (U)(2)(e)
Paragraph (Y)(1)(a)(i)
Paragraph (KK)(1)

Revisions to OAC 3745–21–10

Paragraph (C)(3)(c)
Paragraph (O)(2)(c)

We propose to conditionally approve a revision of paragraph (BBB)(1) of OAC 3745–21–09, provided that, during the comment period of this proposed rule, the State commits to correct this rule within one year of the conditional approval. If the State fails to correct this rule and confirm this correction within the allowed one year period, this conditional approval will revert to a disapproval.

We propose to disapprove the coating VOC content limit for high performance architectural aluminum coatings contained in paragraph (U)(1)(h) of OAC 3745–21–09.

Finally, we are taking no action on revisions to 3745–21–09(U)(2)(f), from both the October 9, 2000, and June 7, 1993, submittals, because EPA approved a later version of this paragraph on July 28, 2009 (74 FR 37171). EPA will continue to honor exemptions granted by Ohio under this rule after May 5, 1995, but prior to June 15, 1999. EPA will address exemptions granted prior to May 5, 1995, in a separate rulemaking after we work with Ohio EPA to determine the proper course of action for dealing with these sources. Sources seeking alternate limits under this paragraph after June 15, 1999, will be subject to limits which result from the ongoing EPA and Ohio EPA resolution of this matter.

B. 2003 Submittal

We are proposing to approve certain portions of the June 24, 2003, submittal. These proposed rulemakings are listed below.

Proposed approval.

EPA proposes to approve all of the following sections of OAC 3745–21 as amended:

3745–21–01 Definitions:

Paragraphs (B)(6), (C)(1), (C)(5)(a), (H)(4), (H)(4) to (H)(19), (M)(17).

3745–21–02 Ambient air quality standards and guidelines:

Paragraphs (A) and (B).

3745–21–03 Methods of ambient air quality measurement:

Paragraphs (B) and (C).

3745–21–04 Attainment dates and compliance schedules:

Paragraphs: (A), (B), (B)(1), (B)(1)(a), (B)(1)(b), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (C), (C)(1), (C)(2), (C)(2)(a), (C)(2)(b), (C)(2)(c), (C)(2)(e), (C)(3), (C)(3)(b), (C)(3)(c), (C)(3)(d), (C)(4), (C)(4)(a), (C)(4)(b), (C)(5), (C)(5)(a), (C)(5)(b), (C)(6), (C)(6)(a), (C)(6)(b), (C)(7), (C)(8), (C)(8)(a), (C)(8)(b), (C)(8)(c), (C)(9), (C)(9)(a), (C)(9)(b), (C)(10), (C)(10)(a), (C)(10)(b), (C)(11), (C)(12), (C)(13), (C)(14), (C)(15), (C)(15)(a), (C)(15)(b), (C)(16), (C)(16)(a), (C)(16)(b), (C)(17), (C)(18), (C)(19), (C)(19)(a), (C)(19)(b), (C)(19)(c), (C)(19)(d), (c)(20), (C)(20)(a), (C)(20)(b), (C)(21), (C)(21), (C)(22), (C)(23), (C)(24), (C)(25), (C)(26), (C)(27), (C)(28), (C)(28)(a), (C)(28)(b), (C)(28)(c),

(C)(28)(d), (C)(28)(e), (C)(29), (C)(30), (C)(31), (C)(32), (C)(33), (C)(34), (C)(35), (C)(36), (C)(37), (C)(38), (C)(39), (C)(40), (C)(41), (C)(42), (C)(43), (C)(44), (C)(45), (C)(46), (C)(47), (C)(48), (C)(48)(a), (C)(48)(b), (C)(49), (C)(50), (C)(51), (C)(52), (C)(53), (C)(54), (C)(55), (C)(56), (C)(57), (C)(58), (C)(59), (C)(60), (C)(61), (C)(62), (C)(63), (C)(64), (C)(64)(a), (C)(64)(a)(i), (C)(64)(a)(ii), (C)(64)(a)(iii), (C)(64)(b), (C)(64)(b)(i), (C)(64)(b)(ii), (C)(64)(b)(iii), (C)(65), (C)(66).

3745–21–06 Classification of Regions:

Entire rule as revised including removal of paragraphs (A) and (B).

3745–21–08 Control of carbon monoxide from stationary sources:

Paragraphs (A), (B), (C), (D), and (E).

3745–21–09 Control of emissions of volatile organic compounds from stationary sources and perchloroethylene from dry cleaning facilities:

Title, Paragraphs (B)(3)(a), (B)(3)(f), (B)(3)(h), (B)(3)(j), (B)(3)(l), (B)(4)(a), (B)(4)(b), (C)(4), (H)(1)(a), (H)(1)(b), (H)(3), (O)(5)(b), (O)(6)(a), (O)(6)(b), the portion of paragraph (U)(1) which states, "If a miscellaneous metal parts or products coating is subject to two or more limits as listed in (U)(1)(a) through (U)(1)(i) above, the limit which is least restrictive shall apply", the portion of paragraph (U)(2)(e) which states, "Daily usage limitations included in (U)(2)(e)(i) through (U)(2)(e)(iii) above shall not apply to coatings employed by the metal parts or products coating line on parts or products which are not metal", (U)(2)(h), (AA)(1)(b), (AA)(1)(c), (FF)(1), (II)(2), (II)(3), (II)(4), (NN)(1), (NN)(2), (NN)(3), (NN)(4), (NN)(5), (OO), (OO)(1), (OO)(2), (OO)(3), (OO)(4), (PP)(2), (UU)(3), (AAA), (DDD), and Appendix A. EPA approved more recent versions of paragraphs (O)(6)(b) and (VV)(1)(e) on March 30, 2007, at 72 FR 15045, and so no rulemaking on the versions of these paragraphs submitted in 2003 is necessary.

3745–21–10 Compliance test methods and procedures:

Title, Paragraphs (J), (J)(1), (J)(2), (J)(4), Appendix A, and Appendix B.

We are taking no action on revisions to 3745–21–04 (C)(3)(a) because the paragraph was subsequently revised in a March 23, 2009, submittal. EPA has approved this revision in separate rulemake published July 28, 2009, at 74 FR 37171.

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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 13, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–1223 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0960; FRL–9105–8]

Revisions to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) from residential water heaters. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by February 22, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0960, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *Http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address

will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

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

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD	4902	Residential Water Heaters	03/19/09	04/29/09

On 07/20/09, EPA determined that the submittal for SJVAPCD Rule 4902 met the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 4902 into the SIP on February 17, 2004 (69 FR 7370).

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

NO_X emissions help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Rule 4902 limits NO_X, emissions from residential water heaters and was amended to extend the applicability of the rule and strengthen the emission limits for NO_X. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules for NO_X emissions must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each major source in ozone nonattainment areas classified as moderate or above (see sections 182(b)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). Although the SJVAPCD regulates a serious (8-hour) and extreme (1-hour) ozone nonattainment area, submitted Rule 4902 is not subject to RACT because it is applies only to sources that are not major sources of NO_X.

Guidance and policy documents that we use to evaluate enforceability requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the rule meet the evaluation criteria?

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

C. EPA recommendations to further improve this rule. We do not have further recommendations to improve this rule.

D. Public comment and final action.

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it under section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: December 29, 2009.

Jane Diamond,

Acting Deputy Regional Administrator, Region IX.

[FR Doc. 2010–1184 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[WT Docket Nos. 08–166, 08–167, and ET Docket No. 10–24; FCC 10–16]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Further Notice of Proposed Rulemaking (FNPRM) the Commission seeks to refine and update its rules governing the use of wireless microphones, seeking comment on a range of issues concerning the operation of these devices in the core TV bands.

DATES: Interested parties may file comments on or before February 22, 2010, and reply comments on or before March 15, 2010.

ADDRESSES: You may submit comments, identified by WT Docket No. 08–166, 08–167 and ET Docket No. 10–24, 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.

■ *Mail:* 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 the Commission continues 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.

■ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Wireless Telecommunications Bureau, (202) 418–1550, e-mail *Paul.Dari@fcc.gov,* or Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's rules noted in the Report and Order and Further Notice of Proposed Rulemaking in WT Docket Nos. 08–166 and 08–167, ET Docket No.10–24, and FCC 10–16, adopted January 14, 2010, and released on January 15, 2010. This summary should be read with its companion document, the Report and Order summary published elsewhere in this issue of the **Federal Register**. The full text of the Report and Order and FNPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket numbers, WT Docket No. 08–166, WT Docket No. 08–167, and ET Docket No. 10–24. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Further Notice of Proposed Rulemaking Section of the Report and Order and Further Notice of Proposed Rulemaking

I. Introduction

1. In this Further Notice of Proposed Rulemaking (FNPRM), the Commission addresses the use of wireless low power auxiliary stations, including wireless microphones that operate on the TV bands by entities that are not eligible for a part 74 low power auxiliary station license. In light of the important functions that these types of devices provide to the public, the Commission propose that the Commission should revise its rules to permit the use of wireless microphones and other low power audio devices in the core TV bands on an unlicensed basis under part 15 of the rules by entities that are not currently eligible for licensing under part 74, Subpart H of the rules. The Commission also proposes to adopt technical rules for such operation under part 15. In addition, the Commission seeks comment on whether to provide for some expansion of the eligibility under part 74, Subpart H of the rules to create additional categories of licensed use of wireless microphones or other low power auxiliary stations. The Commission also seeks comment on the adoption in its rules marketing and labeling requirements, including possible requirements pertaining to part 74 low power auxiliary stations that could help ensure that ineligible entities do not obtain such devices. Consistent with the Commissions broader efforts to manage spectrum as effectively and efficiently as possible, the Commission also seek comment on possible long-term reform, based in part on technological innovation such as digital technology, that would enable wireless microphones to operate more efficiently and with improved immunity to harmful interference, thereby increasing the availability of spectrum for wireless microphone and other uses. Finally, the Commission seeks comment on whether there are any changes it could make to other rule parts, including part 90, that would address the needs of wireless microphone users.

2. As discussed in the Report and Order, there are several reasons why this is an appropriate time for the

Commission to examine, in a comprehensive fashion, the rules for wireless microphones in the TV bands. In addition to those discussed above, the Commission adopted rules in November 2008 in the *TV White Spaces Second Report and Order* to permit new types of devices to operate on an unlicensed basis in vacant "white spaces" spectrum in the TV bands. These "TV Band Devices" are regulated under part 15 of the Commission's rules. The rules require TV Band Devices to protect licensed operations in the TV bands, including wireless microphones and other part 74 low power auxiliary stations. A number of petitions for reconsideration of the *TV White Spaces Second Report and Order* raise issues related to the protections afforded wireless microphones in that order. Although the issues in these petitions for reconsideration and the proposals in this FNPRM are related, the Commission does not address herein the specific issues raised in the petitions for reconsideration of the rules regarding wireless microphone operations and TV Band Devices. Rather, the proposals and other issues in this FNPRM are intended to balance the needs of various wireless microphone users, in particular, with other important uses of the spectrum, including new unlicensed devices that can be used for broadband and other applications in portions of the TV bands.

A. Operation in the TV Bands

1. Unlicensed Operation Under Part 15

3. The Commission seeks comment on allowing wireless microphones to operate on an unlicensed basis in the TV bands under part 15 of the rules generally, the technical proposals discussed herein, and the other specific proposals that commenters and other interested parties have made in the record with respect to permitting wireless microphones to operate under part 15 of the Commission's rules.

4. Many users may need only a single or a small number of wireless microphones operating simultaneously, and only one or two vacant TV channels may be required for such users. Even with TV Band Devices operating in the TV bands, the rules that the Commission adopted in the "white spaces" proceeding are designed to ensure that there will be one or more TV channels available for wireless microphones at most locations. Specifically, only fixed TV Band Devices may operate on channels below 21, and fixed TV Band Devices are not permitted to operate adjacent to occupied TV channels, whereas wireless microphones may do so. Thus, at any given location some TV channels cannot be used by TV Band Devices and should be available for wireless microphones. In addition, in the 13 metropolitan areas where the Private Land Mobile and Commercial Mobile Radio Services are permitted to operate on channels 14–20, TV Band Devices are not permitted to operate on the first vacant TV channel above and below channel 37, thus leaving them available for wireless microphones. The Commission seeks comment on these assumptions and whether allowing wireless microphones to operate on a non-licensed basis in the TV bands under part 15 of the rules may meet the needs of the vast majority of wireless microphone users.

5. In addition, the Commission proposes technical rules for the operation of wireless microphones as unlicensed devices under part 15 of the rules. The Commission proposes to adopt the term "Wireless Audio Devices" for such devices and to define them as intentional radiators used to transmit voice, music or other audio material over short distances. Under this proposal, transmissions would be allowed to use either analog or digital modulation techniques. To ensure that such devices are used only for their intended purpose of transmitting audio material, the Commission proposes to prohibit data transmissions except for short data strings such as recognition codes necessary to ensure the functionality of a system. The Commission also proposes to prohibit transmission of audio material to the public switched telephone network and private and commercial wireless systems and networks to prevent Wireless Audio Devices from being used for applications such as wireless headsets for use with cellular phones, cordless phones and similar devices. Devices that transmit data or operate as telephones can operate under the part 15 TV band device rules or other rule parts, *e.g.,* Section 15.247 or 15.249. The Commission seeks comment on the definition and the proposals. In particular the Commission seeks comment on whether its proposed definition of Wireless Audio Devices is overly broad and could enable a proliferation of devices in the TV bands that already have suitable provisions to operate in other bands. If so, the Commission seeks comment on whether it should specifically limit the applicability of the rules to wireless microphones and how precisely they should be defined. Additionally, the Commission seeks comment on whether any other specifications or restrictions are needed, such as limiting devices to one-way operation.

6. The Commission is not proposing to allow operation under the part 15 rules of unlicensed video devices similar in fashion to those used by motion picture and television producers as an aid in composing camera shots under the part 74 Wireless Assist Video Devices rules. No party has indicated that there is a need to permit the operation of similar devices by parties other than those eligible for licensing under part 74. Further, part 15 already allows devices to operate with sufficient bandwidth to transmit video in a number of bands, albeit at a lower power level or with different technical requirements from part 74, including the 902–928 MHz and 2400–2483.5 MHz bands. In addition, part 15 allows devices to operate in the TV bands under the TV Band Device rules. The Commission invites comment.

7. The technical rules the Commission is proposing for unlicensed Wireless Audio Devices are in many respects similar to the technical rules applicable to wireless microphones licensed under part 74 as low power auxiliary stations. The Commission is making this proposal because these part 74 rules have been used in the development of a wide variety of wireless microphones that consumers have found useful and that apparently are capable of operating in the TV bands without interference. Further, by modeling the proposed part 15 rules after the technical features of the part 74 rules, the Commission expects that most manufacturers will be able to obtain approval for equipment with few or no modifications from currently available designs. The Commission is proposing to place the technical requirements for Wireless Audio Devices in a new section in part 15, Subpart C, which contains the rules for intentional radiators (*see* proposed rules).

8. The Commission proposes to allow Wireless Audio Devices to operate in the core TV bands spectrum on channels 2–51 (excluding channel 37, which is allocated for non-broadcast purposes nationwide). The Commission proposes to prohibit operation of Wireless Audio Devices on channel 17 in Hawaii, which is allocated for non-broadcast purposes. To prevent interference to co-channel TV stations, the Commission proposes to prohibit operation of Wireless Audio Devices co-channel to operating TV stations at the following distances, which are the same separation distances required for part 74 wireless microphones.

- Channels 2–4 (54–72 MHz) and 5–6 (76–88 MHz)
  - Zone I: 105 km (65 miles)
  - Zones II and III: 129 km (80 miles)
- Channels 7–13 (174–216 MHz)
  - Zone I: 97 km (60 miles)
  - Zones II and III: 129 km (80 miles)
- Channels 14–36 (470–608 MHz) and 38–51 (614–698 MHz)
  - All zones: 113 km (70 miles)

9. The Commission proposes to permit Wireless Audio Devices to operate with a power level to the antenna of up to 50 milliwatts in both the VHF and UHF TV bands. The Commission notes that the part 74 rules permit wireless microphones to operate on VHF TV channels with a power level to the antenna of 50 milliwatts and on UHF channels with a power level of 250 milliwatts. However, most wireless microphones currently operate at a lower power level to increase battery life and because higher power is not necessary for most applications. For example, Shure has indicated that the majority of wireless microphones operate with a power level between 10 and 50 milliwatts. Therefore, the Commissions proposed power level may be appropriate for most users, particularly because the Commission expect that parties using part 15 wireless microphones will typically be entities operating in smaller venues that do not require the longer range operation that higher power allows. In this regard, the Commission note that devices authorized under part 74 as low power auxiliary stations are "intended to transmit over distances of approximately 100 meters" and may operate with a power level of 250 milliwatts. The Commission anticipates that wireless microphones operating up to 50 milliwatts would transmit over a shorter distance. The Commission seeks comment on this proposal. The Commission also seeks comment on whether the equipment certification rules should prevent component parts such as amplifiers from being attached after market to a microphone and whether the rules should specify a maximum field strength or other emission limits for equipment.

10. The Commission proposes to require Wireless Audio Devices to comply with the same channelization, frequency stability, and bandwidth requirements as permitted under the technical rules for part 74 wireless microphones. Specifically, the Commission proposes to require that operation be offset from the upper or lower channel edge by 25 kHz or an integral multiple thereof and that the operating frequency tolerance be 0.005%. The Commission also proposes to specify that one or more adjacent 25 kHz segments within a TV channel may be combined to form an operating channel with a maximum bandwidth not to exceed 200 kHz. Consistent with the measurement requirements for other part 15 transmitters, the Commission further propose to require that the frequency tolerance be maintained over a temperature variation of −20 degrees to +50 degrees C at normal supply voltage, for a variation in the supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C, and that battery operated equipment be tested using a new battery. The Commission expect that the proposed 25 kHz offset requirement would prevent wireless microphones from operating at the edge of a TV channel where they could interfere with TV stations on adjacent channels, and the proposed frequency tolerance requirement would ensure that devices do not drift from the designated frequencies. The limit on the bandwidth that a wireless microphone may occupy will leave room for multiple microphones within a channel. The Commission seeks comment on these proposals.

11. The Commission proposes to require that out-of-band emissions from Wireless Audio Devices comply with the same emission limits that apply to part 74 wireless microphones. Specifically, the Commission proposes to require that the mean power of out-of-band emissions comply with the following:

- On any frequency removed from the operating frequency by more than 50% and up to 100% of the authorized bandwidth: At least 25 dB;
- On any frequency removed from the operating frequency by more than 100% and up to 250% of the authorized bandwidth: At least 35 dB;
- On any frequency removed from the operating frequency by more than 250% of the authorized bandwidth: 43+10 log P dB where P is the mean output power in watts.

12. The Commission seeks comment on whether these out-of-band emission levels are appropriate. The Commission also seeks comment on whether it should apply the Section 15.209 limits outside the TV channel where a wireless microphone operates. Furthermore, the Commission seeks comment on whether these out-of-band emissions are adequate to protect both land mobile systems operating in the TV bands and new services operating on or within TV channel 52, 698–704 MHz, and on other frequencies in the 700 MHz Band.

13. The Commission seeks comment on whether the Commission should prohibit Wireless Audio Devices from operating on co-channel basis with land mobile stations. The Commission also seeks comment on whether the Commission should adopt any other technical rules to prevent interference to land mobile systems operating in the TV bands. In addition, the Commission seeks comment on whether the Commission needs to adopt isolation distances from the land mobile operations, similar to those proposed to protect TV stations. In addition, the Commission seeks comment on whether the Commission needs to adopt similar rules to protect new services operating on or within Channel 52 (698–704 MHz), or on other frequencies in the 700 MHz Band.

14. The Commission seeks comment on its assessment that the rules adopted for TV Band Devices are not likely to be suitable for Wireless Audio Devices. For example, TV Band Devices are required to have geolocation capability and the ability to connect to the Internet to register with a central data base. If wireless microphone "features" were to be added to these devices, it might result in a substantial increase in costs for these devices. Certain features currently required for TV Band Devices, such as periodic sensing of the airwaves for other devices, may also be incompatible with the operation of a real-time always-on device such as a wireless microphone. In addition, the Commission observes that there are similarities between the rules the Commission are proposing for wireless audio devices and the rules that were adopted for TV Band Devices. For example, the Commission allowed TV band personal/portable devices operating on an adjacent TV channel to use a power of up to 40 mW, whereas the Commission is proposing to allow wireless audio devices to use a power of up to 50 mW. These similarities mean that, from a power and spectrum sharing standpoint, one type of device should not have a significant advantage over the other. The Commission invites comment on this assessment.

15. The Commission propose to require devices that have already been certificated under the procedures established for part 74 devices and that will be marketed for operation under part 15 to obtain a new equipment authorization to ensure compliance with whatever rules the Commission may adopt in this proceeding. The nature of the filings, such as whether new test data may need to be submitted, will depend on whether the technical rules

the Commission adopt are identical to or different from part 74.

16. If the Commission were to adopt technical rules for operation under part 15 that are different from the existing part 74 rules, the Commission proposes to allow a transition period where the existing equipment could be marketed and operated under part 15 before obtaining a new equipment authorization. Typically design and manufacturing cycles take 1 to 2 years. The Commission invites comment on whether there should be a transition period and, if so, what should be the length of the transition period? The Commission also seeks comment on whether the Commission should apply the transition to the date after which a product is marketed, a date after which the product is manufactured or imported, or some other measure.

17. Finally, the Commission seeks comment on whether any other technical requirements need to be specified for Wireless Audio Devices. For example, the part 74 rules for low power auxiliary stations have additional requirements for wireless microphones including a maximum frequency deviation specification when frequency modulation is used. Additionally, part 74 states that a transmitter may be either frequency synthesized or crystal controlled. The Commission seeks comment on whether these or any other requirements should be incorporated into the part 15 rules for Wireless Audio Devices.

2. Licensed Operation Under Part 74

18. Certain users of wireless microphones that are not currently eligible for a low power auxiliary station license under part 74 may have needs that are similar to existing eligible licensees and may have a need for the interference protection that a license affords. In this section, the Commission seeks comment on whether to revise its rules and provide for a limited expansion of eligibility that would permit such users to hold a part 74 license in the TV bands. The Commission also seeks comment on whether license eligibility should be expanded to permit the use of low power auxiliary stations inside nuclear power plants. In examining whether to expand licensee eligibility, the Commission must balance the needs of the different users of the TV band spectrum.

19. The Commission seeks comment on the extent to which part 74 eligibility for licensing should be expanded, if the Commission decides to do so. For example, should such eligibility be limited to include large theaters, entertainment complexes, sporting arenas, and religious facilities, because these large venues may require multiple vacant TV channels to accommodate all of the wireless microphones needed and they may need the additional protections afforded part 74, Subpart H licensees in the TV bands? The Commission seek comment on whether to revise its rules in this manner, and how best to specify which particular entities, and under what circumstances, they should be eligible for a license. As discussed above, a number of commenters and other parties have urged the Commission to expand eligibility for part 74 licenses to varying degrees, and the Commission seek comment as well on those expanded eligibility proposals.

20. Some wireless microphone operators, such as certain producers of live professional arts, entertainment, and sporting events may require multiple vacant TV channels to accommodate all of the wireless microphones needed. Many of these events are broadcast or recorded, and thus producers of these events may already be eligible for a part 74 license. On the other hand, some of these events that rely on numerous wireless microphones are live programs that will not be broadcast or recorded, and thus producers of these live events are not currently eligible for a part 74 license, but yet may have the same wireless microphone requirements. Live programs of professional arts, entertainment, and sporting events that require multiple vacant TV channels to accommodate numerous wireless microphones may be sufficiently analogous to the uses now permitted by part 74 as to be a reasonable basis for expanding licensee eligibility. Moreover, such operations may warrant the interference protection that can only be assured under a license. For example, the Commissions provisions for TV Band Devices provide for licensed low power auxiliary stations to be registered in a data base to assure protection against harmful interference. The Commission recognize, however, that some of these live arts, entertainment, and sporting events may only require the use of a few wireless microphones and thus have greater flexibility to select TV band channels that are free of interference. Events that use only a few wireless microphones may not require the assurance of interference protection afforded by a license.

21. Certain other wireless microphone uses, such as those at services conducted by religious organizations, may also warrant provisions for licensed operation under part 74 because they bear important similarities to the uses now permitted by part 74. For example, some events at venues used for religious purposes also may require multiple vacant TV channels to accommodate all of the wireless microphones needed. While it is not clear from the record currently before us, in some cases religious organizations may already be eligible for a part 74 license if they broadcast or record events at religious venues and they hold a recognized broadcast license or qualify as television or motion picture producers under the rules. In other cases, as with theatrical productions and sporting events, some events at religious facilities are live programs that will not be broadcast or recorded, and thus producers of these live events are not currently eligible for a part 74 license, but yet have the same wireless microphone requirements. In contrast, it may be that at many religious facilities services are conducted using only a few wireless microphones and may have greater flexibility to select TV channels that are free of interference. These religious facilities may not require the assurance of interference protection afforded by a license.

22. The Commission seeks comment on whether to authorize licensed wireless microphone use by the entities discussed above, at large theaters, entertainment complexes, sporting arenas, and religious facilities, and whether there is a need by these entities for the additional protections afforded part 74, Subpart H licensees in the TV bands. In this regard, the Commission seeks comment on how the Commission could more completely and precisely define the types of additional entities eligible for licensing so that the Commission can easily implement the licensing criteria that the Commission adopts for entities that merit licensee status while also ensuring that such status is limited to only eligible entities. For example, how should the Commission define professional arts, entertainment, or sporting events or eligible religious facilities? Should the Commission, for instance, base the eligibility on the size of the venue, such as specifying a minimum seating capacity? Should the Commission base eligibility on a minimum number of wireless microphones that these entities use on a regular basis, and if so, what should that number be? Should the Commission establish criteria for determining which specific users are eligible for a license and simply leave it, for example, to the religious organization or producer of live events to determine whether they need the

interference protection of a license? What other characteristics of the entities that potentially could be licensed if eligibility is expanded should be specified in the rules? Should licensing be limited to the owner or operator of a theater or stadium or religious facility or should the Commission allow a performing group or sports team or religious organization to hold the license for a specific venue at a specific time? Should it make a difference if the use is permanently housed at the venue (*e.g.,* the home team at a specific stadium)? If the Commission were to expand license eligibility, the Commission also seeks comment on what modifications the Commission should make to the rules regarding scope of service and permissible transmissions.

23. The Commission also invites comment on the impact of expanding part 74 licensing to include additional entities on the availability of spectrum for use by TV Band Devices. Would limiting these new licensees' use to certain venues—such as large theaters, entertainment complexes, sporting arenas, and religious facilities—protect microphone use only at locations that can easily be identified and included in the TV Band Device database and only for particular dates/times and frequencies coinciding with actual use? The Commission ask that commenters address the practicability of producers of live arts, sporting events, and religious organizations providing up-to-date information on venues and times of operation to the TV Band Device database on an ongoing basis, and how best to ensure that they do so. The Commission is particularly concerned that licensees may find it impractical to maintain the database with up-to-date information and instead may call for interference protection on all channels on a continuous basis, which could completely block access by TV Band Devices and therefore may lead to less efficient use of the spectrum. The Commission invites comment on this analysis.

24. The Commission also seeks comment on whether the Commission should modify the eligibility requirements for a part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions. Do these or other additional entities need interference protection from TV Band Devices that is afforded to part 74, Subpart H licensees? Or would, instead, the operation of wireless microphones by these and other users effectively be accommodated were they to operate on an unlicensed basis under part 15, similar to the TV Band Devices? To the extent that commenters propose that these or other entities be eligible for part 74 licensing, the Commission seeks comment on which particular entities merit protection. The Commission also seek comment on how, precisely, the Commission should define any additional class of entity that should be eligible to hold a license and the protections afforded by the database. As discussed above, the Commission seeks comment on whether wireless microphone use would be protected at locations that can easily be identified and included in the TV Band Device database and only for particular dates/times and frequencies coinciding with actual use. Commenters should address the practicality of whether any additional entities would provide up-to-date information on venues and times of operation to the TV Band Device database on an ongoing basis, such that they would only have database protection at times of use and not otherwise block access to the spectrum for use by TV Band Devices, which could lead to inefficient use of the TV bands spectrum.

25. The Commission seeks to balance the needs of potential new classes of wireless microphone licensees with other users of the TV bands. The Commission note that, while some commenters have advocated for changes in the eligibility requirements to allow particular groups of users to operate wireless microphones in the TV bands, no commenter has advocated allowing anyone who desires to operate a wireless microphone to apply for or obtain a part 74 license and associated terms and conditions. If the Commission were to expand part 74, Subpart H to include all of the existing users and applications, the eligibility would be expanded so extensively that virtually anyone would be eligible for a license. The Commission is concerned that such an approach may not be viable. Because part 74 licensees have protection against interference from unlicensed part 15 devices, such a broad expansion of eligibility could seriously reduce the amount of spectrum available for unlicensed TV Band Devices. This could be particularly true in heavily populated places, where there might be significant demand for operation of TV Band Devices as well. This expansion would significantly increase the number of part 74 licensees submitting information for inclusion in the TV Band Device database, thus increasing the cost and complexity of operating the database. The Commission invites comment on this analysis and the impact of expanding eligibility on the viability of TV Band Devices.

26. The Commission notes that any expansion of the part 74 license eligibility will have an impact on the primary users of the TV bands (*e.g.,* TV broadcasting stations) as well as on unlicensed wireless microphones and TV Band Devices that will be introduced in the future. Is it practical for newly eligible users to comply with all of the part 74 requirements that apply to existing eligibles, such as the requirement to coordinate frequencies? How might an expansion of eligibility affect the viability of frequency coordination for all of the existing eligible users? Should the Commission place any additional requirements or limitations, for example, on the amount of spectrum that can be used in a given location by the newly eligible users? Consistent with the current Section 74.832(d) rule, which limits operation of low power auxiliary stations by non-broadcast entities to frequencies in the TV bands, the Commission seek comment on whether any expanded part 74 eligibility cover operations in only the TV bands and not the non-TV band frequencies listed in Section 74.802(a).

27. The Commission underscores that irrespective of whether it revises the eligibility requirements under part 74, entities that use wireless microphones would be permitted to operate wireless microphones under the Commission's proposed part 15 rules, and also under part 90 which is discussed below. In short, even if the Commission does not significantly expand eligibility under part 74, the Commission notes that users would still be able to operate wireless microphones under the Commission's proposed part 15 rules or under the part 90 rules.

28. *License Terms.* The Commission seeks comment on the length of initial and renewal license terms for authorizations issued to entities that obtain licenses under any expanded eligibility categories that the Commission adopts under part 74 of the Commission's rules. Under Section 74.15 of the rules, low power auxiliary station licensees have license terms that either run concurrently with the license of the associated broadcast station, or for a period running concurrently with the normal licensing period for broadcast stations located in the same area of operation. Broadcast or low power TV station licensees are issued low power auxiliary station licenses with a term that runs concurrently with the license term of the associated broadcast station. Broadcast network

entities, cable television system operators, motion picture producers, and television program producers have license terms that run concurrently with the normal licensing period for broadcast stations located in the same area of operation. This results in an initial term that is no more than eight years but may be substantially less than eight years, because low power auxiliary station licenses may be obtained in the middle of the license terms of broadcast stations located in the same area of operation.

29. In this FNPRM, the Commission is seeking comment on a limited expansion of the eligibility provisions for part 74, Subpart H licenses. In the event that there is an expansion in eligibility, the Commission seeks comment on whether the license terms for any new classes of eligible users of low power auxiliary stations should be the same as the license terms that currently apply to part 74, Subpart H licensees, as discussed above. The Commission also seeks comment on whether some other license term should apply to these new eligible users in the event that the Commission revises the eligibility categories. The Commission notes that if the Commission were to apply the existing rules governing license terms for low power auxiliary stations, their license terms would run concurrently with the normal licensing period for their local broadcast stations. In some cases, this would result in a license term that would be substantially less than the local broadcaster's term of eight years, because some low power auxiliary station licensees may obtain their licenses in the middle of their local broadcaster's license term. The Commission invites comment on whether some other license term should apply to parties that would be eligible under revised rules. For example, should licenses obtained by a newly eligible person or organization be issued for a term not to exceed ten years from the date of initial issuance or renewal or should some other period be adopted and, if so, what should be the length of the license term? The Commission note that the Commission's rules generally provide for a license term of ten years for wireless licenses.

30. *Nuclear Energy Institute and Utilities Telecom Council Petition for Waiver.* The Commission note that the Nuclear Energy Institute and Utilities Telecom Council (NEI/UTC) has recently petitioned the Commission for a waiver of the "allocation and licensing provisions" of the part 2 and 90 rules to permit "Power Licensees" as defined in Section 90.7 of the Commission's rules to obtain licenses under part 90 for the use of certain equipment certificated for use under Subpart H of part 74 of the rules, inside nuclear power plants. The Commission seeks comment on whether it would serve the public interest to extend the license eligibility under Subpart H of part 74 of the rules to permit the use of low power auxiliary stations inside nuclear power plants. How should the Commission define eligibility for such licenses? Are there any specific concerns associated with permitting operations under Subpart H of part 74 inside commercial nuclear power plants or any special conditions that should apply to any license for such use? To the extent the Commission may decide to expand license eligibility to include users in commercial nuclear power plants, the Commission seeks comment on the spectrum bands that should be made available for this category of users. The Commission also seeks comment on whether any other modification to the part 74 rules would be necessary to accommodate such use inside commercial nuclear power plants.

3. Marketing and Labeling Issues for Part 74 Low Power Auxiliary Stations

31. The Commission seeks comment on issues related to the marketing of part 74 low power auxiliary stations that could help ensure that entities that are not eligible to operate these devices do not purchase them. The Commission expects that some devices will be certificated to operate under only part 74 of the rules, either because the output power level exceeds the part 15 limits or simply because the manufacturer chose not to obtain a part 15 certification. In seeking comment, the Commission recognize that, under its proposed dual regulatory approach for operating wireless microphones in the TV bands, it is possible that some devices could meet the technical requirements in both parts 15 and 74 of the rules and be certificated to operate under both of those parts. Such devices could be operated by any party without a license, and by eligible parties that have obtained a part 74 license.

32. The Commission seeks comment on whether a marketing restriction should be imposed on manufacturers with respect to equipment that is certificated for use by part 74 licensees. For example, the Commission seeks comment on whether the Commission should adopt a rule requiring that the marketing of equipment certificated under part 74, Subpart H of the Commission's rules be directed solely to parties eligible to operate the equipment. The Commission also seeks comment on whether, as a part of such a rule, that the Commission provide that marketing of such equipment in any other manner may be considered grounds for revocation of the grant of certification issued for the equipment. In addition, The Commission seek comment on whether some other restriction, or additional restrictions, should be adopted, including record keeping requirements for manufacturers to track to whom their products are marketed, or to ensure that these devices are marketed in a manner that is consistent with the restrictions on their use.

33. The Commission seeks further comment on whether any rules are necessary to ensure that purchasers of low power auxiliary stations that are certificated under only part 74 of the rules are made aware of the part 74 licensing requirements. For example, should manufacturers be required to provide a label visible at the time of purchase advising of the requirement to obtain a license? Should there be a label on the device itself indicating that a license is required? Should the instruction manual contain advisory information about the licensing requirements? What labeling or advisory information should be required?

34. Similarly, the Commission seeks comment on any responsibility that manufacturers, retailers, and distributors should have to notify customers about the licensing requirements or steps they could take ensure that low power auxiliary stations are not marketed to ineligible users. Should there be some form of responsibility or accountability placed upon one or more of these entities at the point of sale and, if so, what should it be? The Commission seeks comment, for example, on whether the Commission should prohibit manufactures, retailers and distributors from selling or distributing low power auxiliary stations, including wireless microphones unless such sale is to a party that has committed in writing that the party is a bona fide reseller or a party eligible to be a low power auxiliary station licensee pursuant to part 74 of the Commission's rules. The Commission also seeks comment on whether manufacturers, importers, and retailers should be required to retain records of such written commitments for at least two years from the date of sale of the device. The Commission also seeks comment on whether manufacturers, retailers, or distributors could require a facility identification number associated with a Commission license, or some other form of identification which shows that the purchaser is a licensee. Another

alternative would be for the manufacturer, retailer, or distributor to cross-check a purchaser against information, perhaps in a database provided by the Commission, to determine whether a purchaser is an eligible user. The Commission seeks comment on whether any of these alternatives should be adopted in order to provide a sufficient level of responsibility or accountability at the point of sale, or whether some variation or some other method should be adopted instead.

4. Possible Longer-Term Solutions

35. The Commission invites comment on additional changes it should consider that could help ensure that a variety of wireless microphone uses can best be accommodated with other uses in the bands over the longer term, and that spectrum is used efficiently and effectively by wireless microphones. Efficient wireless microphone operations should increase spectrum availability for other uses, including the continued development of wireless broadband. In this FNPRM the Commission proposes to allow wireless microphones to operate on an unlicensed basis in the TV bands under part 15 of the rules. Under this proposal, wireless microphones would share spectrum with TV band devices, and the Commission seek comment on the extent to which wireless microphones can operate more efficiently in order to make spectrum available for other uses.

36. The Commission note that the majority of wireless microphones currently in use are frequency modulated analog devices that operate with a bandwidth of up to 200 kHz. For various reasons, such as the need to avoid intermodulation interference among the devices, the maximum number of wireless microphones that operate simultaneously in a 6 megahertz TV channel may be as few as six or eight. In other words, only 1.2–1.6 megahertz of the 6 megahertz TV channel may only be used while the remainder is effectively left fallow. In locations where many wireless microphones are being used simultaneously, this can result in inefficient use of valuable spectrum. The Commission seeks comment on this use of spectrum by wireless microphones, and on what steps the Commission can take to ensure that wireless microphones are using spectrum more efficiently.

37. The Commission notes that most other radio communications services have shifted from analog to digital technology to improve spectrum efficiency and resistance to interference. The Commission seeks comment on the state of technological developments that could similarly enable wireless microphones to operate more efficiently and/or improve their immunity to harmful interference, which could make more spectrum available for other users. What steps could the Commission take that would encourage the use of new digital technology or other equipment that would allow more microphones to be used in a single channel? The Commission also seeks comment on whether there are devices currently available that would provide for such operations, on the length of time it may take to transition to such technology, and on what incentives the Commission could adopt to facilitate this transition.

38. Finally, the Commission seek comment on any other steps that the Commission should take in the long term to encourage technological improvements with the goal of ensuring that the core TV spectrum, which is shared by many users, is more efficiently used and thus more available to a range of users for new and innovative products and services. Are there approaches to spectrum management, such as authorizing a band manager, that would achieve the efficient use of spectrum by these devices?

B. Licensed Operation Under Part 90

39. The Commission seeks comment on steps the Commission should take to revise the part 90 wireless microphone rules to make them more useful to wireless microphone users. In particular, the Commission seeks comment on why relatively few entities operate under the current part 90 rules. For example, are too few frequencies available under part 90? Does the narrower bandwidth permitted under part 90 (54 kHz) as compared to part 74 (200 kHz) affect the audio quality of part 90 wireless microphones? Does the part 90 eligibility or licensing requirements discourage use of part 90 wireless microphones by some parties? Are part 90 wireless microphones readily available to entities that wish to purchase them? What rule parts other than part 90 and part 74 should the Commission consider for licensing wireless microphones?

II. Procedural Matters

Initial Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this FNPRM and have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in Section V.F.2. of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register.**

A. Need for, and Objectives of, the Proposed Rules

42. The FNPRM addresses the use of wireless low power auxiliary stations, including wireless microphones, that operate on TV channels 2–51, excluding channel 37, ("the TV bands") by entities that are not eligible for a part 74 license. In light of the important functions that these types of devices provide to the public, the Commission believes that developing rules to provide for the unlicensed use of wireless low power auxiliary stations, including wireless microphones, in the TV bands would serve the public interest. While wireless microphones are available for use on an unlicensed basis in the 49 MHz, 902–928 MHz and 2.4 GHz bands and on a licensed basis by some entities under part 90 in the 170 MHz band, many entities are using wireless microphones designed for use in the TV bands on an unauthorized basis. The reasons for the use of TV band wireless microphones are varied including, for example, the amount of spectrum that is available for their use in the TV bands can accommodate multiple microphones at one venue and the sound fidelity that is achieved by TV band microphones is much higher than that of microphones that operate in other bands.

43. Certain users of wireless microphones that are not currently eligible for a low power auxiliary station

license under part 74 may have needs that are similar to existing eligible licensees and may have a need for the interference protection that a license affords. The FNPRM seeks comment on whether to revise the Commission's rules to provide for a limited expansion of eligibility that would permit such users to hold a part 74 license in the TV bands. For example, the FNPRM seeks comment on whether to expand eligibility for licensing under part 74, Subpart H of the rules to include large theaters, entertainment complexes, sporting arenas, and religious facilities. The FNPRM also seeks comment on whether the Commission should modify the eligibility requirements for a part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions.

B. Legal Basis

44. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

45. 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 proposed rules, if adopted. 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 "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 operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

46. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. 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. 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. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

47. In the Report and Order, the Commission concludes that low power auxiliary stations authorized under part 74 of the Commission's rules—including wireless microphones—will not be permitted to operate in the 700 MHz Band after the DTV transition. The Commission also concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band, effective upon the publication of a summary of the Report and Order in the **Federal Register.** Under Section 74.832 of the Commission's rules, only certain entities may be issued licenses authorizing the use of low power auxiliary stations. In particular, these entities fall within the following categories: (1) Licensees of AM, FM, TV, or International broadcast stations or low power TV stations; (2) broadcast network entities; (3) certain cable television system operators; (4) motion picture and television program producers as defined in the rules; and (5) certain entities with specified interests in Broadband Radio Service (BRS), Educational Broadcast Service (EBS) licenses, i.e., BRS licensees (formerly licensees and conditional licensees of stations in the Multipoint Distribution Service and Multi-channel Multipoint Distribution Service), or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an Educational Broadcast Service (formerly Instructional Television Fixed Service) licensee or permittee.

48. *Radio Stations.* This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources." The SBA has established a small business size standard for this category, which is: such firms having $7.0 million or less in annual receipts. According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

49. The Commission note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included. In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the Commission's estimate of small businesses may therefore be over-inclusive.

50. *Television Broadcasting.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." The SBA has created a small business size standard for Television Broadcasting entities, which is: Such firms having $14.0 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,379. In addition, according to Commission staff review of the BIA Publications, Inc.'s Master Access Television Analyzer Database on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less. The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

51. The Commission note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

52. In addition, the Commission has estimated the number of licensed

noncommercial educational (NCE) television stations to be 380. These stations are non-profit, and therefore considered to be small entities. There are also 2,295 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

53. *Cable Television Distribution Services.* 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 the Commission 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.

54. *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 fewer than 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.

55. *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. The Commission 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 the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

56. *Motion Picture and Video Producers.* This economic census category comprises "establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials." The SBA has developed a small business size standard for firms within this category, which is: firms with $27 million or less in annual receipts. According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year. Of this total, 7,685 firms had annual receipts of under $25 million and 45 firms had annual receipts of $25 million to $49,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

57. *Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service).* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In its BRS/EBS Report and Order in WT Docket No. 03–66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495–2690 MHz. In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard.

58. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which is: 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 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, under this size standard, the majority of firms can be considered small.

59. *Low Power Auxiliary Device Manufacturers: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

60. *Low Power Auxiliary Device Manufacturers: Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)." The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All

such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment below 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

61. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having $8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under $5 million, and 177 firms had sales of $5 million or more but less than $10 million. Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

62. The FNPRM seeks comment on whether to expand the eligibility to operate wireless microphones under part 74 of the rules, and to allow wireless microphones to operate in the TV bands under part 15 of the rules.

63. Parties operating low power auxiliary stations in the TV bands under part 74 of the rules are required to be licensed. Only entities that fall within the following categories are currently eligible for a part 74 license: (1) Licensees of AM, FM, TV, or International broadcast stations or low power TV stations; (2) broadcast network entities; (3) certain cable television system operators; (4) motion picture and television program producers as defined in the rules; and (5) certain entities with specified interests in Broadband Radio Service (BRS) Educational Broadcast Service (EBS) licenses, i.e., BRS licensees, or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an Educational Broadcast Service licensee or permittee. The FNPRM seeks comment on whether to revise the Commission's rules to provide for a limited expansion of eligibility that would permit such users to hold a part 74 license in the TV bands. For example, the FNPRM seeks comment on whether to expand the eligibility for licensing to allow the use of wireless microphones or other low power auxiliary audio devices in large theaters, entertainment complexes, sporting arenas, and religious facilities. The FNPRM also seeks comment on whether the Commission should modify the eligibility requirements for a part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions. If license eligibility is expanded, the additional entities eligible for licensing would have to apply for a license in the same manner as currently eligible parties.

64. Most non-licensed transmitters are required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. The FNPRM proposes to allow wireless microphones to operate in the TV bands on a non-licensed basis under part 15 of the rules, and the proposed new types of wireless microphones would be subject to the same certification requirement. Operation of part 15 wireless microphones would not be limited to a defined group of eligible entities, so parties that are not eligible to operate wireless microphones on a licensed basis under part 74 of the rules would be able to operate these devices under part 15. The proposed technical requirements for part 15 wireless microphones are very similar to those for part 74 wireless microphones, except that the proposed maximum output power for part 15 wireless microphones is lower to reduce the risk of interference. The proposed power level is 50 milliwatts, while part 74 wireless microphones are permitted to operate with 50 milliwatts in the VHF band and 250 milliwatts in the UHF band.

65. The FNPRM seeks comment on whether a marketing restriction should be imposed on manufacturers with respect to equipment that is certificated for use by part 74 licensees. For example, the FNPRM seeks comment on whether the Commission should adopt a rule requiring that the marketing of equipment certificated under part 74, Subpart H of the Commission's rules be directed solely to parties eligible to operate the equipment.

66. The FNPRM seeks further comment on whether any rules are necessary to ensure that purchasers of low power auxiliary stations that are certificated under only part 74 of the rules are made aware of the part 74 licensing requirements. For example, the FNPRM seeks comment on whether manufacturers should be required to provide a label visible at the time of purchase advising of the requirement to obtain a license? Similarly, the FNPRM seeks comment on any responsibility that manufacturers, retailers, and distributors should have to notify customers about the licensing requirements or steps they could take to ensure that low power auxiliary stations are not marketed to ineligible users. Should there be some form of responsibility or accountability placed upon one or more of these entities at the point of sale and, if so, what should it be? The FNPRM seeks comment, for example, on whether the rules should prohibit manufactures, retailers and distributors from selling or distributing low power auxiliary stations, including wireless microphones unless such sale is to a party that has committed in writing that the party is a bona fide reseller or a party eligible to be a low power auxiliary station licensee pursuant to part 74 of the Commission's rules. In addition, the FNPRM seeks comment on whether manufacturers, retailers, or distributors could require a facility identification number associated with a Commission license, or some other form of identification which shows that the purchaser is a licensee. Another alternative would be for the manufacturer, retailer, or distributor to cross-check a purchaser against information, perhaps in a database provided by the Commission, to determine whether a purchaser is an eligible user.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

67. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such 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."

68. The Commission is considering the extent to which it should expand eligibility to allow more parties to obtain a license to operate wireless microphones under part 74. It seeks comment on whether to expand eligibility to permit parties operating large theaters, entertainment complexes, sporting arenas and religious facilities to obtain part 74 licenses because these applications are similar to others which are currently permitted under part 74. The Commission also seeks comment on whether it should modify the eligibility requirements for a part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions. The Commission is considering whether the expansion should be limited, because a broad expansion in eligibility for licensing under part 74 could significantly reduce the amount of spectrum available for part 15 TV band devices, which have to protect licensed part 74 operations.

69. The Commission considered and decided to propose allowing wireless microphones to operate in the TV bands on a non-licensed basis under part 15 of the rules. The proposed technical requirements are consistent with the current part 74 technical requirements for wireless microphones, meaning that manufacturers should be able to certify equipment under part 15 with few or no changes from currently available designs, thus minimizing the economic burden on manufacturers. This proposed approach would allow parties such conference and special events centers; schools and other educational facilities; Federal State and local government agencies; tour guides; a variety of small entertainment venues, clubs and other social organizations, meeting and gathering places that are not currently eligible to operate wireless microphones in the TV bands to legally operate them. The proposed approach places part 15 wireless microphones on a more equal footing to TV band devices in terms of interference protection.

70. In seeking comment on whether any rules are necessary to ensure that purchasers of low power auxiliary stations that are certificated under only part 74 of the rules are made aware of the part 74 licensing requirements, the Commission will carefully consider alternatives that would mitigate the impact that such rules may have on small entities. Similarly, to the extent the Commission considers rules that would impose responsibilities on manufacturers, retailers, and distributors to notify customers about the licensing requirements or steps they could take to ensure that low power auxiliary stations are not marketed to ineligible users, the Commission will seek to examine alternatives that would not be burdensome on small entities. The Commission seeks comment on whether there should be some form of responsibility or accountability placed upon manufacturers, retailers, or distributors, and it is considering a number of alternatives, such as requiring that (1) Sales of equipment only be made to a party that has committed in writing that the party is a bona fide reseller or a party eligible to be a low power auxiliary station licensee pursuant to part 74 of the Commission's rules; (2) a facility identification number associated with a Commission license, or some other form of identification shows that the purchaser is a licensee be developed; and (3) requiring a manufacturer, retailer, or distributor to cross-check a purchaser against information, perhaps in a database provided by the Commission, to determine whether a purchaser is an eligible user.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

Initial Paperwork Reduction Act Analysis

71. This FNPRM does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

72. The Commission will include a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Other Procedural Matters

1. *Ex Parte* Presentations

73. The rulemaking 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.

2. Comment Filing Procedures

74. 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 on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- 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.

75. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

76. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to

fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For further information regarding the Further Notice of Proposed Rule Making, contact Paul D'Ari, Wireless Telecommunications Bureau, (202) 418–1550, e-mail *Paul.Dari@fcc.gov,* or Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov.*

III. Ordering Clauses

77. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order* and *Further Notice of Proposed Rulemaking* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

77. *It is further ordered* pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(r) and 307 that this FNPRM in WT Docket No. 08–166, WT Docket No. 08–167 and ET Docket No. 10–24 is adopted.

79. *It is further ordered* that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the FNPRM on or before 30 days after publication in the **Federal Register** and reply comments on or before 51 days after publication in the **Federal Register.**

80. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, and Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reason discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation of part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Section 15.3 is amended by adding a new paragraph (hh) to read as follows:

§ 15.3 Definitions.

* * * * *

(hh) *Wireless Audio Device.* An intentional radiator that is used to transmit voice, music or other audio material over a short distance. Transmissions may be either analog or digital. Data transmissions are not permitted except for short strings such as recognition codes necessary to ensure the functionality of a system. Transmission of audio material to the public switched telephone network and private and commercial wireless systems and networks is not permitted.

3. A new § 15.238 added to read as follows:

§ 15.238 Operation in the bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–608 MHz and 614–698 MHz.

(a) Operation under this section is limited to wireless audio devices as defined in § 15.3(hh).

(b) Operation is limited to locations removed from existing co-channel TV broadcast stations by not less than the following distances. See § 73.609 for zone definitions.

(1) 54.000–72.000 MHz and 76.000–88.000 MHz:

(i) Zone I 105 km (65 miles)

(ii) Zones II and III 129 km (80 miles)

(2) 174.000–216.000 MHz:

(i) Zone I 97 km (60 miles)

(ii) Zones II and III 129 km (80 miles)

(3) 470.000–608.000 MHz and 614.000–698.000 MHz: All zones 113 km (70 miles)

(c) Specific frequency operation is required as follows.

(1) The frequency selection shall be offset from the upper or lower band limits by 25 kHz or an integral multiple thereof.

(2) One or more adjacent 25 kHz segments within the assignable frequencies may be combined to form a channel whose maximum bandwidth shall not exceed 200 kHz. The operating bandwidth shall not exceed 200 kHz.

(3) The frequency tolerance of the carrier signal shall be maintained within +/−0.005% of the operating frequency over a temperature variation of −20 degrees to +50 degrees C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C. Battery operated equipment shall be tested using a new battery.

(d) The unmodulated carrier power at the antenna input may not exceed 50 mW.

(e) The mean power of out-of-band emissions must comply with the following:

(1) On any frequency removed from the operating frequency by more than 50% and up to 100% of the authorized bandwidth: at least 25 dB.

(2) On any frequency removed from the operating frequency by more than 100% and up to 250% of the authorized bandwidth: at least 35 dB.

(3) On any frequency removed from the operating frequency by more than 250% of the authorized bandwidth: 43+10 log P dB where P is the mean output power in watts.

[FR Doc. 2010–1149 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–194; DA 10–70]

Empowering Parents and Protecting Children in an Evolving Media Landscape

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply dates.

SUMMARY: This document extends the period of time in which to file comments and reply comments in response to the FCC's Notice of Inquiry (74 FR 61308, Nov. 24, 2009) seeking comment on how to empower parents to help their children take advantage of the opportunities offered by evolving electronic media technologies while at the same time protecting children from the risks inherent in use of these technologies.

DATES: Comments are due February 24, 2010; reply comments are due March 26, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact David Konczal, Media Bureau, Policy Division at (202) 418–2228 or at *David.Konczal@fcc.gov,* Kim Matthews, Media Bureau, Policy Division at (202) 418–2154 or at *Kim.Matthews@fcc.gov,* or Holly Saurer, Media Bureau, Policy Division at (202) 418–7283 or at *Holly.Saurer@fcc.gov.*

SUPPLEMENTARY INFORMATION: We have received two requests for an extension of time in which to file comments and reply comments in response to the

Commission's NOI. The first request was filed December 29, 2009 by the Association of National Advertisers, the American Advertising Federation, the American Association of Advertising Agencies, the Direct Marketing Association, the Interactive Advertising Bureau, and the Promotion Marketing Association. The second request for an extension of time was filed January 7, 2010 by the Children's Food and Beverage Advertising Initiative and the Children's Advertising Review Unit of the Council of Better Business Bureaus, Inc. Both filings request that the comment and reply comment dates be extended by thirty days each in order to permit preparation of full responses to the multiple issues raised in this proceeding, particularly in light of the intervening year-end holidays that fell in the middle of the current comment period. The NOI was released on October 23, 2009 and was published in the **Federal Register** on November 24, 2009. The comment date was set at 60 days after **Federal Register** publication (i.e., by January 25, 2010), and the reply comment date was set at 90 days after **Federal Register** publication *(i.e.,* by February 24, 2010).

We believe that granting the requests for extension of time will facilitate the compilation of a more complete record in this proceeding. We conclude, therefore, that doing so is in the public interest. Accordingly, parties will have until Wednesday, February 24, 2010 to file comments and until Friday, March 26, 2010 to file reply comments.

Accordingly, *it is ordered* that, pursuant to Sections 4(i), 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 155(c), and Sections 0.61, 0.283, and 1.46 of the Commission's rules, 47 CFR 0.61, 0.283, and 1.46, the date for filing comments and reply comments in response to the NOI in this proceeding are extended to February 24, 2010 and March 26, 2010, respectively.

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

[FR Doc. 2010–1212 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–23; MB Docket No. 09–204; RM–11580]

Radio Broadcasting Services, Peach Springs, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division seeks comments on a petition filed by Cochise Media Licenses, LLC, proposing the allotment of FM Channel 281C3 at Peach Springs, Arizona. The reference coordinates for Channel 281C3 at Peach Springs are 35–33–46 NL and 113–27–12 WL.

DATES: Comments must be filed on or before March 1, 2010, and reply comments on or before March 16, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve the petitioner, as follows: Susan A. Marshall, Esq., and Anne Goodwin Crump, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street – Eleventh Floor, Arlington, Virginia 22209 (Counsel for Cochise Media Licenses, LLC).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–204, adopted January 6, 2010, and released January 8, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, <http://www.bcpiweb.com>.

The proposed channel at Peach Springs is part of a hybrid application and rulemaking proceeding. In the application (File No. BNPH–20091016ADO), Cochise Media Licenses, the tentative selectee in Auction 79 and applicant for a new FM station on Channel 268C3 at Peach Springs, Arizona, proposes a minor modification from Channel 268C3 at Peach Springs to Channel 267C2 at Oatman, Arizona. To retain a first local service at Peach Springs and to accommodate a first local service at Oatman, the Notice of Proposed Rule Making proposes the allotment of Channel 281C3 at Peach Springs.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible ex parte contact. For information regarding proper filing procedures for comments, see 47 CFR 1.4125 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

Section 73.202 [Amended]

2. Section 73.202(b), the Table of FM allotments under Arizona, is amended by adding Channel 281C3 at Peach Springs.

Federal Communications Commission.

John A. Karousos,

Assistant Chief,

Audio Division,

Media Bureau.

[FR Doc. 2010–1156 Filed 1–21–10 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–57; MB Docket No. 10–21; RM–11590]

Television Broadcasting Services; Birmingham, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Alabama Educational Television Commission ("AETC"), the licensee of noncommercial educational station WBIQ (TV), channel *10, Birmingham, Alabama. AETC requests the substitution of channel *39 for channel *10 at Birmingham.

DATES: Comments must be filed on or before February 8, 2010, and reply comments on or before February 16, 2010.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Barry S. Persh, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 10–21, adopted January 5, 2010, and released January 12, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site at *http://www.BCPIWEB.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Alabama, is amended by adding channel *39 and removing channel *10 at Birmingham.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. 2010–1251 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 75, No. 14

Friday, January 22, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Fifth Dietary Guidelines Advisory Committee Meeting and Solicitation of Written Comments

AGENCY: U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services (FNCS) and Research, Education and Economics (REE); and U.S. Department of Health and Human Services (HHS), Office of Public Health and Science (OPHS).

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) (a) provide notice of the fifth meeting of the Dietary Guidelines Advisory Committee, and (b) solicit written comments pertinent to the *Dietary Guidelines for Americans.*

DATES: This Notice is provided to the public on January 22, 2010: (1) The Committee will meet on February 9, 2010, from 8 a.m.–5 p.m. E.S.T. and on February 10, 2010, from 8 a.m.–4 p.m. E.S.T. (2) Written comments pertinent to the *Dietary Guidelines for Americans* must be received by 5 p.m. E.S.T. on February 3, 2010, to ensure transmission to the Committee prior to this meeting. Written comments continue to be accepted throughout the Committee deliberation process.

ADDRESSES: The fifth meeting will be held online, via Webinar format. Details regarding how to assure that your Windows computer and browser are compatible with the Webinar format being used will be provided by e-mail following meeting registration and can also be found on the Dietary Guidelines Web site at *http://www.DietaryGuidelines.gov.* Written comments are encouraged to be submitted electronically at *http://www.DietaryGuidelines.gov.*

FOR FURTHER INFORMATION CONTACT: USDA Co-Executive Secretaries: Carole Davis, Designated Federal Officer to the Dietary Guidelines Advisory Committee (telephone 703–305–7600), Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302; or Shanthy Bowman (telephone 301–504–0619), Agricultural Research Service (ARS), Beltsville Human Nutrition Research Center, 10300 Baltimore Avenue, Building 005, Room 125, BARC–WEST, Beltsville, Maryland 20705. HHS Co-Executive Secretaries: Kathryn McMurry (telephone 240–453–8280) or Holly McPeak (telephone 240–453–8280), Office of Disease Prevention and Health Promotion, Office of Public Health and Science, 1101 Wootton Parkway, Suite LL100, Rockville, Maryland 20852. Additional information is available on the Internet at *http://www.DietaryGuidelines.gov.*

SUPPLEMENTARY INFORMATION:

Dietary Guidelines Advisory Committee: The thirteen-member Committee appointed by the Secretaries of the two Departments is chaired by Linda V. Van Horn, Ph.D., R.D., L.D., Northwestern University, Chicago, Illinois. The Vice Chair of the Committee is Naomi K. Fukagawa, M.D., Ph.D., University of Vermont, Burlington, Vermont. Other members are: Cheryl Achterberg, Ph.D., The Ohio State University, Columbus, Ohio; Lawrence J. Appel, M.D., M.P.H., Johns Hopkins Medical Institutions, Baltimore, Maryland; Roger A. Clemens, Dr.P.H, The University of Southern California, Los Angeles, California; Miriam E. Nelson, Ph.D., Tufts University, Boston, Massachusetts; Sharon M. Nickols-Richardson, Ph.D., R.D., Pennsylvania State University, University Park, Pennsylvania; Thomas A. Pearson, M.D., Ph.D., M.P.H., University of Rochester, Rochester, New York; Rafael Pérez-Escamilla, Ph.D., Yale University, New Haven, Connecticut; Xavier Pi-Sunyer, M.D., M.P.H., Columbia University College of Physicians and Surgeons, New York, New York; Eric B. Rimm, Sc.D., Harvard University, Boston, Massachusetts; Joanne L. Slavin, Ph.D., R.D., University of Minnesota, St. Paul, Minnesota; and Christine L. Williams, M.D., M.P.H., Columbia University (Retired), Healthy Directions, Inc., New York, New York.

Purpose of the Meeting: Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III) directs the Secretaries of USDA and HHS to publish the *Dietary Guidelines for Americans* at least every five years. After a thorough review of the most current scientific and applied literature and open Committee deliberations, the Committee will provide its recommendations in the form of an advisory report to the Secretaries of both Departments.

Meeting Agenda: The meeting will (a) allow individual subcommittees to provide updates on progress made within each subcommittee; and (b) allow for the continued formulation of plans for finalizing the Committee's work. The topics to be discussed will include Nutrient Adequacy; Energy Balance and Weight Management; Carbohydrates and Protein; Sodium, Potassium and Water; Fatty Acids and Cholesterol; Ethanol; and Food Safety. A draft agenda of the meeting will be posted to the *http://www.DietaryGuidelines.gov* Web site as soon as it becomes available. Specific times for topic area discussions are subject to change upon the call of the Committee Chair.

Public Participation: Members of the public are invited to attend the online Dietary Guidelines Advisory Committee meeting. There will be no opportunity for oral public comments during this online meeting. Written comments, however, are welcome throughout the development process of the 2010 *Dietary Guidelines for Americans.* These can be submitted at *http://www.DietaryGuidelines.gov.* See below for more detailed instructions for submitting written comments.

To take part in the on-line Committee meeting, individuals must pre-register at the Dietary Guidelines Web site located at *http://www.DietaryGuidelines.gov.* A link for Meeting Registration will be available to click on. Registration for the meeting is limited. Registrations will be accepted until maximum Webinar capacity is reached. A waiting list will be maintained should registrations exceed Webinar capacity. Individuals on the waiting list will be contacted as additional Webinar space for the meeting becomes available. Registration

questions may be directed to the meeting planner, Crystal Tyler, at 202–314–4701. Registration must include name, affiliation, phone number or e-mail, and days attending. Following pre-registration, individuals will receive a confirmation of registration via e-mail with instructions on how to access the Webinar and check for computer compatibility. Please call Crystal Tyler at 202–314–4701 by 5 p.m. E.S.T. on February 3, 2010 should you require assistance or any special accommodations. Members of the public who are unable to access the Internet in order to attend the Webinar may contact Crystal Tyler at 202–314–4710 by 5 p.m. E.S.T. on February 3, 2010 for assistance to the extent reasonably practicable.

Written Comments: By this notice, the Committee is soliciting submission of written comments, views, information and data pertinent to the review of the *Dietary Guidelines for Americans.* Written comments are encouraged to be submitted electronically at *http://www.DietaryGuidelines.gov.* A "submit comments" button is available for access to the public comments database. Lengthy comments (that exceed 2000 characters) or support materials can be uploaded as an attachment. Multiple attachments must be "zip-filed". Comments not submitted electronically can be mailed, faxed, or delivered to: Carole Davis, Co-Executive Secretary of the Dietary Guidelines Advisory Committee, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302, 703–305–7600 (telephone), 703–305–3300 (fax). All comments for this meeting must be received by 5 p.m. E.S.T. on February 3, 2010 and will become part of the public comments database. Comments are welcome throughout the Committee's deliberations.

Public Documents: Documents pertaining to Committee deliberations will be available for public viewing from 8:30 a.m. to 4:30 p.m. E.S.T., Monday through Friday (except Federal holidays), at the Reference Desk of the National Agricultural Library, USDA/ARS, 10301 Baltimore Avenue, Beltsville, MD 20705. The Reference Desk telephone phone number is 301–504–5755; however, no advance appointment is necessary. Meeting materials (*i.e.,* agenda, meeting minutes, and transcript), once available, can be found at *http://www.DietaryGuidelines.gov.*

Dated: December 14, 2009.

Rajen S. Anand,

Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: December 17, 2009.

Edward B. Knipling,

Administrator, Agricultural Research Service, U.S. Department of Agriculture.

Penelope Slade-Sawyer,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 2010–1206 Filed 1–21–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Nomination of Veterinary Shortage Situations for the Veterinary Medicine Loan Repayment Program (VMLRP)

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and solicitation for nominations.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is soliciting nominations for veterinary service shortage situations for the Veterinary Medicine Loan Repayment Program (VMLRP; [74 FR 32788–32798]), as authorized under the National Veterinary Medical Services Act (NVMSA), 7 U.S.C. 3151a. This Notice initiates a 45-day nomination solicitation period and prescribes the procedures and criteria to be used by State, Insular Area, DC and Federal Lands (hereafter referred to as State(s)) Animal Health Officials (SAHO) in order to nominate veterinary shortage situations. All States are eligible to submit nominations, up to the maximum indicated for each State in this notice. NIFA is conducting this solicitation of veterinary shortage situation nominations under previously approved information collection (OMB Control Number 0524–0046).

FOR FURTHER INFORMATION CONTACT: Gary Sherman; National Program Leader, Veterinary Science; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, SW.; Washington, DC 20250–2220; Voice: 202–401–4952; Fax: 202–401–6156; E-mail: *gsherman@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

In recent years, a number of studies have been conducted to investigate national veterinary workforce needs in different veterinary sectors including private practice, public practice (local, State, and Federal service), military service, research, public health, food safety and other specialty disciplines. Major studies include two National Academies of Science (NAS) reports, *Animal Health at the Crossroads: Preventing, Detecting, and Diagnosing Animal Diseases* and *Critical Needs for Research in Veterinary Science,* a third pending NAS committee report, *Assessing the Current and Future Workforce Needs in Veterinary Medicine,* which is currently under final review, and a 2009 GAO Federal Veterinary Work Force report, *VETERINARIAN WORKFORCE: Actions Are Needed to Ensure Sufficient Capacity for Protecting Public and Animal Health.* These studies, taken together with a number of smaller assessments of veterinary workforce needs conducted by various professional associations, indicate shortages of veterinarians exist in nearly all sectors and many of these shortages will worsen without enhancement of resources, facilities, incentives, and novel recruiting and educational strategies.

A landmark series of three peer-reviewed studies published in 2007 in the Journal of the American Veterinary Medical Association (JAVMA), and sponsored by the Food Supply Veterinary Medicine Coalition (*http://www.avma.org/fsvm/recognition.asp*), gave considerable attention to the growing shortage of food supply veterinarians, the causes of shortages in this sector, and the consequences to the US food safety infrastructure and to the general public if this trend continues to worsen. Food supply veterinary medicine embraces a broad array of veterinary professional activities, specialties and responsibilities, and is defined as the full range of veterinary medical practices contributing to the production of a safe and wholesome food supply and to animal, human, and environmental health. However, the privately practicing food animal veterinary practitioner population within the US is, numerically, the largest, and arguably the most important single component of the food supply veterinary medical sector. Food animal veterinarians, working closely with livestock producers and State and Federal officials, constitute the first line of defense against spread of endemic and zoonotic diseases, introduction of

high consequence foreign animal diseases, and other threats to the health and wellbeing of both animals and humans that consume animal products.

Among the most alarming findings of the Coalition-sponsored studies was objective confirmation that insufficient numbers of veterinary students are selecting food supply veterinary medical careers. This development has led both to current shortages and to projections for worsening shortages over the next 10 years. While there were many reasons students listed for opting not to choose a career in food animal practice or other food supply veterinary sectors, chief among the reasons was concern over burdensome educational debt. According to a survey of veterinary medical graduates conducted by the American Veterinary Medical Association (AVMA) in the spring of 2009, the average educational debt for students graduating from veterinary school is approximately $130,000. Such debt loads incentivize students to select other veterinary careers, such as companion animal medicine, which tend to be more financially lucrative and, therefore, enable students to more quickly repay their outstanding educational loans. Furthermore, when this issue was studied in the Coalition report from the perspective of identifying solutions to this workforce imbalance, panelists were asked to rate 18 different strategies for addressing shortages. Responses from the panelists overwhelmingly showed that student debt repayment and scholarship programs were the most important strategies in addressing future shortages (JAVMA 229:57–69).

Public Comments and Solicitation Notice Changes in Response

On July 9, 2009, NIFA published a **Federal Register** Notice [74 FR 32788–32798] with request for comment on the VMLRP Interim Rule, which included, in part, general procedures for designation of veterinary shortage situations.

NIFA invited public comment on the VMLRP Interim Rule, which included a description of the process for solicitation of nomination of veterinary shortage situations. NIFA received seven sets of comments relating to the nomination solicitation process.

Comment: Three commentors suggested that the State Animal Health Official be required to consult with the State Veterinary Association and other interested parties within the State when identifying underserved areas within a State.

NIFA Response: We strongly recommend that State Animal Health Officials involve other leading animal health experts in the nomination process as they identify underserved areas within their respective States.

Comment: One commentor expressed concern that low density agricultural areas will be regarded as less important than areas of heavily concentrated agriculture.

Comment: One commentor recommended that representatives of Federal agencies be included on an official review panel.

NIFA Response: NIFA will take these comments into consideration as it develops the solicitation for nominations for veterinarian shortage situations and implements the review panel.

Comment: One commentor urged USDA to examine the feasibility of establishing an indexing system whereby each shortage situation that is designated is awarded a weighted score for severity of shortage.

NIFA Response: As with other review processes conducted by NIFA, the review panel will evaluate the composite qualitative and quantitative arguments presented in the submitted nomination packages against criteria described elsewhere in this notice. The panel will classify each shortage situation as either "Recommended for designation" or "Not recommended for designation".

Comment: One commentor suggested that solicitation notices be published on an annual basis instead of a biennial basis. Another commentor requested clarification on the frequency of the need to apply for the designation of shortage areas and the need to reassess a designation once it is filled by a veterinarian enrolled in the VMLRP.

NIFA Response: NIFA presumes that, over time, the shortage situation priorities of a State will change due to veterinarians relocating to fill critical areas designated by the VMLRP. NIFA will also be mindful of spontaneous shifts in perceived threats to animal health in time and space. To address changing conditions, NIFA program staff will assess the relative demand for reprioritization of shortage situation distribution within the States on an annual basis. However, NIFA reserves the right to conduct this solicitation on a biennial basis to save administrative costs and to adhere to the aggressive annual program schedule and/or to respond to funding fluctuations.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by the implementation of these guidelines have been approved by OMB Control Number 0524–0046.

List of Subjects in Guidelines for Veterinary Shortage Situation Nominations

I. Preface and Authority
II. Nomination of Veterinary Shortage Situations
A. General
1. Eligible Shortage Situations
2. Authorized Respondents and Use of Consultation
3. Rationale for Capping Nominations and State Allocation Method
4. State Allocation of Nominations
5. Period Covered
6. Submission and Due Date
7. Definitions
B. Nomination Form and Description of Fields
1. Access to Nomination Form
2. Physical Location of Shortage Area or Position
3. Type I Shortage
4. Type II Shortage
5. Type III Shortage
6. Written Response Sections
C. NIFA Review of Shortage Situation Nominations
1. Review Panel Composition and Process
2. Review Criteria
Guidelines for Veterinary Shortage Situation Nominations

I. Preface and Authority

In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. In November 2005, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97) appropriated $495,000 for CSREES to implement the Veterinary Medicine Loan Repayment Program and represented the first time funds had been appropriated for this program. In February 2007, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) appropriated an additional $495,000 to CSREES for support of the program, and in December 2007, the Consolidated Appropriations Act, 2008 appropriated an additional $868,875 to CSREES for support of this program. On

March 11, 2009, the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) was enacted, providing an additional $2,950,000, for the VMLRP. In October 2009, the President signed into law, Public Law 111–80, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010, which appropriated $4,800,000 for the VMLRP. Consequently, as of the publication of this Notice, there is a cumulative total of approximately $9.6 million available for NIFA to administer this program. Funding for future years will be based on annual appropriations and balances carried forward from prior years, and may vary from year to year.

Section 7105 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent. This program is not authorized to provide repayments for any government or commercial loans incurred during the pursuit of another degree, such as an associate or bachelor degree.

The Secretary delegated the authority to carry out this program to NIFA.

Pursuant to the requirements enacted in the NVMSA of 2004 (as revised), and the implementing regulation for this Act, Part 3431 Subpart A of the VMLRP Interim Rule [74 FR 32788–32798], the National Institute of Food and Agriculture hereby implements Guidelines for the solicitation of nomination of veterinary shortage situations from authorized State Animal Health Officials:

II. Nomination of Veterinary Shortage Situations

A. General

1. Eligible Shortage Situations

Section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA), as amended and revised by Section 7105 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (FCEA) directs determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

While the NVMSA (as amended) specifies priority be given to food animal medicine shortage situations, and that consideration also be given to specialty areas such as public health, epidemiology and food safety, the Act does not identify any areas of veterinary practice as ineligible. Accordingly, all nominated veterinary shortage situations will be considered eligible for submission. However, the competitiveness of submitted nominations, upon evaluation by the review panel, will reflect the intent of Congress that priority be given to certain types of veterinary service shortage situations. NIFA therefore anticipates that in the first year, and perhaps subsequent early years of program implementation, the most competitive nominations will be those directly addressing food supply veterinary medicine shortage situations.

NIFA has adopted definitions of the practice of veterinary medicine and the practice of food supply medicine that are broadly inclusive of the critical roles veterinarians serve in both public practice and private practice situations. Nominations describing either public or private practice veterinary shortage situations will therefore be eligible for submission. However, NIFA interprets that Congressional intent is to give priority to the private practice of food animal medicine. NIFA is grateful to the Association of American Veterinary Medical Colleges (AAVMC), the American Veterinary Medical Association (AVMA), and other stakeholders for their recommendations regarding the appropriate balance of program emphasis on public and private practice shortage situations. NIFA will seek to achieve a final distribution of approximately 90 percent of nominations (and eventual agreements) that are geographic, private practice, food animal veterinary medicine shortage situations, and approximately 10 percent of nominations that reflect public practice shortage situations.

2. State Respondents and Use of Consultation

Respondents on behalf of each State include the chief State Animal Health Official (SAHO), as duly authorized by the Governor or his designee in each State. The SAHO Nominators are requested to submit to *vmlrp@nifa.usda.gov* a Form—NIFA 2009–0001, VMLRP Veterinarian Shortage Situation Nomination, which is available in the Shortage Situations section for the VMLRP on the NIFA Web site at *http://www.nifa.usda.gov/vmlrp.* One form must be submitted for each nominated shortage situation. NIFA strongly encourages the SAHO to involve leading health animal experts in the State in the identification and prioritization of shortage situation nominations.

3. Rationale for Capping Nominations and State Allocation Method

In its consideration of fair, transparent and objective approaches to solicitation of shortage area nominations, NIFA evaluated three alternative strategies before deciding on the appropriate strategy. The first option considered was to impose no limits on the number of nominations submitted. The second was to allow each State the same number of nominations. The third (eventually selected) was to differentially cap the number of nominations per State based on defensible and intuitive criteria.

The first option, providing no limits to the number of nominations per State, is fair to the extent that each State and insular area has equal opportunity to nominate as many situations as desired. However, funding for the VMLRP is limited (relative to anticipated demand) and so allowing potentially high and disproportionate submission rates of nominations could both unnecessarily burden the nominators and the reviewers with a potential avalanche of nominations and dilute highest need situations with lower-level need situations. Moreover, NIFA believes that the distribution of opportunity under this program (*i.e.,* distribution of mapped shortage situations resulting from the nomination solicitation and

review process) should roughly reflect the national distribution of veterinary service demand. By not capping nominations based on some objective criteria, it is likely there would be no correlation between the mapped pattern and density of certified shortage situations and the actual pattern and density of need. This in turn could undermine confidence in the program with Congress, the public, and other stakeholders.

The second option, limiting all States and insular areas to the same number of nominations suffers from some of the same disadvantages as option one. It has the benefit in that it controls the administrative burden on both the SAHO and the nomination review process. However, like option one, there would be no correlation between the mapped pattern of certified shortage situations and the actual pattern of need. For example, Guam and Rhode Island would be allowed to submit the same number of nominations as Texas and Nebraska, despite the large difference in the sizes of their respective animal agriculture industries and rural land areas requiring veterinary services.

The third option, to cap the number of nominations in relation to major parameters correlating with veterinary service demand, achieves the goals both of practical control over the administrative burden to the States and NIFA, and of achieving a mapped pattern of certified nominations that approximates the theoretical actual shortage distribution. In addition, this method limits dilution of highest need areas with lower-level need areas. The disadvantage of this strategy is that there is no validated, unbiased, direct measure of veterinary shortage and so it is necessary to employ robust surrogate parameters that correlate with the hypothetical cumulative relative need for each State in comparison to other States. Such parameters exist and the degree to which they are not perfect measures of veterinary need is compensated for by generously assigning nomination allowances based on State rank for each parameter.

In the absence of a validated unbiased direct measure of relative veterinary service need or risk for each State and insular area, the National Agricultural Statistics Service (NASS) provided NIFA with reliable, publically accessible, high quality, unbiased data that correlate with demand for food supply veterinary service. NIFA has consulted with NASS and determined that NASS State-level variables most strongly correlated with food supply veterinary service need are "Livestock and Livestock Products Total Sales ($)" and "Land Area" (acres). The "Livestock and Livestock Products Total Sales ($)" variable broadly predicts veterinary service need in a State because this is a normalized (to cash value) estimate of the extent of (live) animal agriculture in the State. The State "land area" variable predicts veterinary service need because there is positive correlation between State land area, percent of State area classified as rural and the percent of land devoted to actual or potential livestock production. Importantly, land area is also directly correlated with the number of veterinarians needed to provide veterinary services in a State because of the practical limitations relating to the maximum radius of a standard veterinary service area; due to fuel and other cost factors, the maximum radius a veterinarian operating a mobile veterinary service can cover is approximately 60 miles, which roughly corresponds to two or three contiguous counties of average size.

NIFA recognizes that that these two NASS variables are not perfect predictors of veterinary service demand. However, for the purpose of fairly and transparently estimating veterinary service demand, NIFA believes these two unbiased composite variables account for a significant proportion of several of the most relevant factors influencing veterinary service need and risk. To further ensure fairness and equitability, NIFA is employing these variables in a straightforward, transparent and liberal manner that ensures every State and insular area is eligible for at least one nomination and that all States receive a generous apportionment of nominations, relative to their geographic size and size of agricultural animal industries.

Following this rationale, the Secretary is specifying the maximum number of nominations per State in order to (1) assure distribution of designated shortage areas in a manner generally reflective of the differential overall demand for food supply veterinary services in different States, (2) ensure a practical balance between the number of potential awardees and the available shortage situations, (3) assure the number of shortage situation nominations submitted fosters emphasis on selection by nominators and applicants of the highest priority need areas, and (4) provide practical and proportional limitations of the administrative burden borne by SAHOs preparing nominations, and by panelists serving on the NIFA nominations review panel.

Furthermore, instituting a limit on the number of nominations is consistent with language in the Interim Rule stating, "The solicitation may specify the maximum number of nominations that may be submitted by each State animal health official."

4. State Allocation of Nominations

For any given program year, the number of designated shortage situations per State will be limited by NIFA, and this will in turn impact the number of new nominations a State may submit each time NIFA solicits shortage nominations. In the first year of the program NIFA will accept a number of nominations equivalent to the allowable number of designated shortage areas. In subsequent years, when NIFA may solicit additional nominations, the number of nominations requested from each State will be the maximum number of designated shortage situations for the State minus the number of shortage situations filled since the last solicitation for nominations. Thus, with each new solicitation, States have the opportunity to re-establish the maximum number of designated shortage situations. NIFA reserves the right in the future to proportionally adjust the maximum number of designated shortage situations per State to ensure a balance between available funds and the requirement to ensure priority is given to mitigating veterinary shortages corresponding to situations of greatest need. These Nomination Allocation tables are available under the Shortage Situations section at *http://www.nifa.usda.gov/vmlrp.*

Table I represents "Special Consideration Areas" which include any State or Insular Area not reporting data, and/or reporting less than $1,000,000 in annual Livestock and Livestock Products Total Sales ($), and/or possessing less than 500,000 Acres. One nomination is allocated to any State or Insular Area classified as a Special Consideration Area.

Table II shows how NIFA determined nomination allocation based on quartile ranks of States for two variables correlated with demand for food supply veterinary services; "Livestock and Livestock Products Total Sales ($)" (LPTS) and "Land Area (acres)" (LA). The total number of NIFA-approved/designated shortage situations per State is based on the quartile ranking of each State in terms of LPTS and LA. States for which NASS has both LPTS and LA values, and which have at least $1,000,000 LPTS and at least 500,000 acres LA (typically all States plus Puerto Rico), were independently ranked from least to greatest value for each of these two composite variables. The two ranked lists were then divided into

quartiles with quartile 1 containing the lowest variable values and quartile 4 containing the highest variable values. Each State then received the number of designated shortage situations corresponding to the number of the quartile in which the State falls. Thus a State that falls in the second quartile for LA and the third quartile for LPTS will be invited to submit up to five designated shortage situations (2 + 3). This transparent computation was made for each State thereby giving a range of 2 to 8 designated shortage situations, contingent upon each State's quartile ranking for the two variables. Should changes in future funding for the program indicate the need for an increase or decrease in the maximum number of designated shortage situations, a multiplier either greater or less than one will be applied to make a proportional adjustment to every State.

The total number of nominations a State Animal Health Official may submit on behalf of his/her State for the current solicitation is shown in Table III.

While Federal Lands are widely dispersed within States and Insular Areas across the country, they constitute a composite total land area over twice the size of Alaska. If the 200-mile limit U.S. coastal waters and associated fishery areas are added, Federal Land total acreage would exceed 1 billion. Both State and Federal Animal Health officials have responsibilities for matters relating directly or indirectly to terrestrial and aquatic food animal health on Federal Lands. An example of a food animal health problem requiring coordination between State and Federal animal health officials is the reemergence of bovine TB infection, thought to be caused in part by circulation of this pathogen in a variety of undomesticated animal reservoirs that come in contact with domestic cattle. Interaction between wildlife and domestic livestock, such as sheep and cattle, is particularly common in the plains States where significant portions of Federal lands are leased for grazing. Therefore, both SAHOs and the Chief Federal Animal Health Officer (Deputy Administrator, Animal and Plant Health Inspection Service or designee) may submit nominations to address shortage situations on or related to Federal Lands. These nominations count toward the maximum number of nominations allocated to each entity.

NIFA emphasizes that shortage nomination allocation is merely intended to broadly balance number of certified shortage situations across States prior to the applications and awards phase of the VMLRP. In the awards phase, no State will be given a preference for placement of awardees. Awards will be made based strictly on the peer review panel's assessment of the quality of the match between the knowledge, skills and abilities of the applicant and the attributes of the specific shortage situation applied for.

5. Period Covered

Each designated shortage situation shall be certified until filled, or withdrawn by the SAHO. A SAHO may request that NIFA remove a previously certified and designated shortage situation by sending an e-mail to the program manager, Dr. Gary Sherman (*gsherman@nifa.usda.gov*). The request should specifically identify the shortage situation proposed for decertification, and reason(s) for decertification should be included. The program manager will review the request, make a determination, and inform the requesting SAHO of the final action taken. Where a request for decertification leads to removal from the list of NIFA-designated shortage situations, the decertified situation may not be replaced by nomination of an alternate shortage situation until the next time NIFA releases an RFA soliciting shortage nominations for this program.

6. Submission and Due Date

Shortage situation nominations must be submitted by March 8, 2010, to the Office of Extramural Programs; National Institute of Food and Agriculture (NIFA); U.S. Department of Agriculture. The nominations must be submitted by E-mail to *vmlrp@nifa.usda.gov.*

7. Definitions

For the purpose of implementing the solicitation for veterinary shortage situations, the following definitions are applicable:

Act means the National Veterinary Medical Service Act, as amended.

Agency or NIFA means the National Institute of Food and Agriculture.

Department means the United States Department of Agriculture.

Food animal means the following species: bovine, porcine, ovine/camelid, cervid, poultry, caprine, and any other species as determined by the Secretary.

Food supply veterinary medicine means all aspects of veterinary medicine's involvement in food supply systems, from traditional agricultural production to consumption.

Insular area means the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands of the United States.

NVMSA means the National Veterinary Medicine Service Act.

Practice of food supply veterinary medicine includes corporate/private practices devoted to food animal medicine, mixed animal medicine located in a rural area (at least 30 percent of practice devoted to food animal medicine), food safety, epidemiology, public health, animal health, and other practices that contribute to the production of a safe and wholesome food supply.

Practice of veterinary medicine means: To diagnose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode; including: the prescription, dispensing, administration, or application of any drug, medicine, biologic, apparatus, anesthetic, or other therapeutic or diagnostic substance or medical or surgical technique, or the use of complementary, alternative, and integrative therapies, or the use of any manual or mechanical procedure for reproductive management, or the rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to any of the above.

Rural area means any area other than a city or town that has a population of 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved has been delegated.

Service area means geographic area in which the veterinarian will be providing veterinary medical services.

State means any one of the fifty States, the District of Columbia, and the insular areas of the United States. Also included are total "Federal Lands", defined for convenience as a single entity.

State animal health official or SAHO means the State veterinarian, or equivalent, who will be responsible for nominating and certifying veterinarian shortage situations within State, insular Area, DC or Federal Lands entities.

Veterinarian means a person who has received a professional veterinary medicine degree from a college of veterinary medicine accredited by the AVMA Council on Education.

Veterinary medicine means all branches and specialties included

within the practice of veterinary medicine.

Veterinary Medicine Loan Repayment Program or VMLRP means the Veterinary Medicine Loan Repayment Program authorized by the National Veterinary Medical Service Act.

Veterinarian shortage situation means any of the following situations in which the Secretary, in accordance with the process in Subpart A of 7 CFR part 3431, determines has a shortage of veterinarians:

(1) Geographical areas that the Secretary determines have a shortage of food supply veterinarians; and

(2) Areas of veterinary practice that the Secretary determines have a shortage of food supply veterinarians, such as food animal medicine, public health, animal health, epidemiology, and food safety.

B. Nomination Form and Description of Fields

1. Access to Nomination Form

The veterinary shortage situation nomination form is available in the Shortage Situations section at *http://www.nifa.usda.gov/vmlrp* and should be e-mailed to *vmlrp@nifa.usda.gov.*

2. Physical Location of Shortage Area or Position

Following conclusion of the nomination submission and designation process, NIFA must prepare lists and/or map(s) that include all certified shortage situations. This will require specification of a physical location representing the center of the service area (for a geographic shortage), or the location of the main office or work address for a public practice and/or specialty practice shortage. For example, if the State seeks to certify a tri-county area as a food animal veterinary service (*e.g.,* Type I) shortage situation, a road intersection approximating the center of the tri-county area would constitute a satisfactory physical location for NIFA's listing and mapping purposes. By contrast, if the State is identifying "veterinary diagnostician", a Type III nomination, as a shortage situation, then the nominator would complete this field by filling in the address of the location where the diagnostician would work (*e.g.,* State animal disease diagnostic laboratory).

3. Type I Shortage—80 Percent or Greater Private Practice Food Supply Veterinary Medicine

Check one or more boxes indicating which specie(s) constitute the veterinary shortage situation. The Type I shortage situation must entail at least an 80 percent time commitment to private practice food supply veterinary medicine. The nominator will specify the minimum percent time (between 80 and 100 percent) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. The shortage situation may be located anywhere (rural or non-rural) so long as the veterinary service shortages to be mitigated are consistent with the definition of "practice of food supply veterinary medicine." The minimum 80 percent time commitment is, in part, recognition of the fact that occasionally food animal veterinary practitioners are expected to meet the needs of other veterinary service sectors such as clientele owning companion and exotic animals. Type I nominations are intended to address those shortage situations where the nominator believes a veterinarian can operate profitably committing between 80 and 100 percent time to food animal medicine activities in the designated shortage area, given the client base and other socio-economic factors impacting viability of veterinary practices in the area. This generally corresponds to a shortage area where clients can reasonably be expected to pay for professional veterinary services and where food animal populations are sufficiently dense to support a (or another) veterinarian. The personal residence of the veterinarian (VMLRP awardee) and the address of veterinary practice employing the veterinarian may or may not fall within the geographic bounds of the designated shortage area.

4. Type II Shortage—30 Percent or Greater Private Practice Food Supply Veterinary Medicine in a Rural Area (as Defined)

Check one or more boxes indicating which specie(s) constitute the veterinary shortage situation. The shortage situation must be in an area satisfying the definition of "rural." The minimum 30 percent-time (12 hr/wk) commitment of an awardee to serve in a rural shortage situation is in recognition of the fact that there may be some remote or economically depressed rural areas in need of food animal veterinary services that are unable to support a practitioner predominately serving the food animal sector, yet the need for food animal veterinary services for an existing, relatively small, proportion of available food animal business is nevertheless great. The Type II nomination is therefore intended to address those rural shortage situations where the nominator believes there is a critical shortage of food supply veterinary services, and that a veterinarian can operate profitably committing 30 to 100 percent to food animal medicine in the designated rural shortage area. The nominator will specify the minimum percent time (between 30 and 100 percent) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. Under the Type II nomination category, the expectation is that the veterinarian may provide veterinary services to other veterinary sectors (*e.g.,* companion animal clientele) as a means of achieving financial viability. As with Type I nominations, the residence of the veterinarian (VMLRP awardee) and/or the address of veterinary practice employing the veterinarian may or may not fall within the geographic bounds of the designated shortage area. However, the awardee is required to verify the specified minimum percent time commitment (30 percent to 100 percent) to service within the specified geographic shortage area.

5. Type III Shortage—Public Practice Shortage (49%—Time or Greater Public Practice)

In the spaces provided, identify the "Employer" and the "Position Title", and check one or more of the appropriate boxes identifying the specialty/disciplinary area(s) being nominated as a shortage situation. This is a broad nomination category comprising many types of specialized veterinary training and employment areas relating to food supply veterinary workforce capacity and capability. These positions are typically located in city, county, State and Federal Government, and institutions of higher education. Examples of positions within the public practice sector include university faculty and staff, veterinary laboratory diagnostician, County Public Health Officer, State Veterinarian, State Public Health Veterinarian, State Epidemiologist, FSIS meat inspector, Animal and Plant Health Inspection Service (APHIS) Area Veterinarian in Charge (AVIC), and Federal Veterinary Medical Officer (VMO).

Veterinary shortage situations such as those listed above are eligible for consideration under Type III nomination. However, nominators should be aware that Congress has stipulated that the VMLRP must emphasize private food animal practice shortage situations. Accordingly, NIFA anticipates that loan repayments for the Public Practice sector will be limited to approximately 10 percent of total nominations and available funds.

The minimum time commitment serving under a Type III shortage

nomination is 49 percent. The nominator will specify the minimum percent time (between 49 percent and 100 percent) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. NIFA understands that some public practice employment opportunities that are shortage situations may be part-time positions. For example, a veterinarian pursuing an advanced degree (in a shortage discipline area) on a part-time basis may also be employed by the university for the balance of the veterinarian's time to provide part-time professional veterinary service(s) such as teaching, clinical service, or laboratory animal care; areas that may or may not also qualify as veterinary shortage situations. The 49 percent minimum therefore provides flexibility to nominators wishing to certify public practice shortage situations that would be ineligible under more stringent minimum percent time requirements.

6. Written Response Sections

a. Objectives of a veterinarian meeting this shortage situation.

Within the allowed word limit the nominator should clearly State overarching objectives the State hopes to achieve by placing a veterinarian in the nominated situation. Include the minimum percent time commitment (within the range of the shortage Type selected) the awardee is expected to devote to filling the specific food supply veterinary shortage situation.

b. Activities of a veterinarian meeting this shortage situation.

Within the allowed word limit the nominator should clearly State the principal day-to-day professional activities that would have to be conducted in order to achieve the objectives described in (a) above.

c. Past efforts to recruit and retain a veterinarian in the shortage situation.

Within the allowed word limit the nominator should explain any prior efforts to mitigate this veterinary service shortage, and prospects for recruiting veterinarian(s) in the future.

d. Risk of this veterinarian position not being secured or retained.

Within the allowed word limit the nominator should explain the consequences of not addressing this veterinary shortage situation.

e. Candidacy for a "service in emergency" agreement. NIFA is not requesting information in support of this type of agreements at this time.

C. NIFA Review of Shortage Situation Nominations

1. Review Panel Composition and Process

NIFA will convene a panel of food supply veterinary medicine experts from Federal and State agencies, as well as institutions receiving Animal Health and Disease Research Program funds under section 1433 of NARETPA, who will review the nominations and make recommendations to the NIFA Program Manager. NIFA explored the possibly of including experts from professional organizations for this process, but under the National Agricultural Research, Extension, and Teaching Policy Act (NARETPA) section 1409A(e), panelists for the purposes of this process are limited to Federal and State agencies and cooperating State institutions (*i.e.,* NARETPA section 1433 recipients).

The VMLRP Program Manager will then review the recommendations and designate the VMLRP shortage situations. The list of shortage situations will be published in the **Federal Register** and will be made available on the NIFA Web site at *http://www.nifa.usda.gov/vmlrp.*

2. Review Criteria

Criteria used by the shortage situation nomination review panel and NIFA for certifying a veterinary shortage situation will be consistent with the information requested in the shortage situations nomination form. NIFA understands that defining the risk landscape associated with shortages of veterinary services throughout a State is a process that may require consideration of many qualitative and quantitative factors. In addition, each shortage situation will be characterized by a different array of subjective and objective supportive information that must be developed into a cogent case identifying, characterizing, and justifying a given geographic or disciplinary area as one deficient in certain types of veterinary capacity or service. To accommodate the uniqueness of each shortage situation, the nomination form provides opportunities to present a case using both supportive metrics and narrative explanations to define and explain the proposed need. At the same time, the elements of the nomination form provide a common structure for the information collection process which will in turn facilitate fair comparison of the relative merits of each nomination by the evaluation panel.

While NIFA anticipates some arguments made in support of a given shortage situation will be qualitative, respondents are encouraged to present verifiable quantitative and qualitative evidentiary information where ever possible.

Maximum point values review panelists may award for response to each of the nomination for form elements are as follows:

20 points: Describe the objectives of a veterinarian meeting this shortage situation as well as being located in the community, area, State/insular area, or position requested above.

20 points: Describe the activities of a veterinarian meeting this shortage situation and being located in the community, area, State/insular area, or position requested above.

15 points: Describe any past efforts to recruit and retain a veterinarian in the shortage situation identified above.

25 points: Describe the risk of this veterinarian position not being secured or retained. Include the risk(s) to the production of a safe and wholesome food supply and/or to animal, human, and environmental health not only in the community but in the region, State/insular area, nation, and/or international community.

An additional 20 points will be used by review panelists to evaluate overall merit/quality of the case made for inclusion of each nomination in the list of certified veterinary shortage situations.

Prior to the panel being convened, shortage situation nominations will be evaluated and scored according to the established scoring system by a primary reviewer. When the panel convenes, the primary reviewer will present each nomination orally in summary form. After each presentation, panelists will have an opportunity, if necessary, to discuss the nomination, with the primary reviewer leading the discussion and recording comments. After the panel discussion is complete, any scoring revisions will be made by and at the discretion of the primary reviewer. The panel is then polled to recommend, or not recommend, the shortage situation designation. Nominations scoring 70 or higher by the primary reviewer (on a scale of 0 to 100), and receiving a simple majority vote in support of designation as a shortage situation will be "recommended for designation as a shortage situation." Nominations scoring below 70 by the primary reviewer, and failure to achieve a simple majority vote in support of designation will be "not recommended for designation as a shortage situation." In the event of a discrepancy between the primary reviewer's scoring and the panel poll results, the VMLRP program manager will be authorized to make the final

determination on the nomination's designation.

Done at Washington, DC, January 15, 2010.

Roger Beachy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2010–1114 Filed 1–21–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Secrecy and License To Export

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 23, 2010.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include "0651–0034 Secrecy and License to Export collection comment" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Brian Hanlon, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone 571–272–5047; or by e-mail to *Brian.Hanlon@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. Whenever publication or disclosure by the publication of an application, in the opinion of the head of the interested Government agency, is determined to be detrimental to national security, the Commissioner for Patents at the United States Patent and Trademark Office (USPTO) must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. If a secrecy order is applied to an international application, the application will not be forwarded to the International Bureau as long as the secrecy order is in effect. The USPTO collects information to determine whether the patent laws and rules have been complied with and to grant or revoke licenses to file abroad when appropriate. This collection of information is required by 35 U.S.C.181–188 and administered through 37 CFR 5.1–5.33.

There are no forms associated with this collection of information.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when the applicant or agent files a patent application with the USPTO, submits subsequent papers during the prosecution of the application to the USPTO, or submits a request for a foreign filing license for a patent application to be filed abroad before the filing of a U.S. patent application.

III. Data

OMB Number: 0651–0034.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profits; not-for-profit institutions.

Estimated Number of Respondents: 1,794 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take between 30 minutes (0.5 hours) to 4 hours to gather, prepare and submit this information, depending upon the complexity of the situation.

Estimated Total Annual Respondent Burden Hours: 1,538 hours per year.

Estimated Total Annual Respondent Cost Burden: $499,850. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional hourly rate of $325 for attorneys in private firms, the USPTO estimates that this collection will have a total respondent cost burden of $499,850 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Petition for rescission of secrecy order	3 hours	6	18
Petition to disclose or modification of secrecy order	2 hours	3	6
Petition for general and group permits	1 hour	1	1
Petition for expedited handling of license (no corresponding application)	30 minutes	1,347	674
Petition for expedited handling of license (corresponding U.S. application)	30 minutes	259	130
Petition for changing the scope of a license	30 minutes	1	1
Petition for retroactive license	4 hours	177	708
Totals		1,794	1,538

Estimated Total Annual Non-Hour Respondent Cost Burden: $356,879. There are no capital start-up, maintenance, or record keeping costs associated with this information collection. There are, however, filing fees and postage costs.

This collection has a total of $356,800 in associated filing fees, as shown in the accompanying table.

Item	Responses	Filing fee	Total filing fees
Petition for rescission of secrecy order	6	$0.00	$0.00
Petition to disclose or modification of secrecy order	3	0.00	0.00
Petition for general and group permits	1	0.00	0.00

Item	Responses	Filing fee	Total filing fees
Petition for expedited handling of license (no corresponding application)	1,347	200.00	269,400.00
Petition for expedited handling of license (corresponding U.S. application)	259	200.00	51,800.00
Petition for changing the scope of a license	1	200.00	200.00
Petition for retroactive license	177	200.00	35,400.00
Totals	1,794		356,800.00

The USPTO estimates that 90 percent (90%) of the petitions in this collection are submitted to the USPTO by facsimile or hand carried because of the quick turnaround required. For the 10 percent (10%) of the public that chooses to submit the petitions in this collection to the USPTO by mail through the United States Postal Service, the USPTO estimates that the average first class postage cost for a mailed submission will be 44 cents. Therefore, the USPTO estimates that up to 179 submissions per year may be mailed to the USPTO at an average first class postage cost of 44 cents, for a total postage cost of $79.

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of filing fees ($356,800) and postage costs ($79) amounts to $356,879.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 14, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–1161 Filed 1–21–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–2010]

Foreign-Trade Zone 113—Ellis County, TX Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Ellis County Trade Zone Corporation (formerly Midlothian Trade Zone Corporation), grantee of FTZ 113, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 14, 2010.

The grantee's proposed service area under the ASF would be Ellis County, Texas. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Dallas-Fort Worth Customs and Border Protection port of entry.

FTZ 113 was approved by the FTZ Board on December 21, 1984 (Board Order 283, 50 FR 300, 1/2/85). The applicant is requesting to include the following current site in the reorganized zone as a "magnet" site: *Proposed Site 1* (551 acres)—MidTexas International Center, 1500 North Service Road, U.S. Highway 67, Midlothian. The applicant proposes that Site 1 be exempt from "sunset" time limits that otherwise apply to sites under the ASF. No usage-driven sites are being proposed at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 23, 2010 Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 7, 2010).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., via *www.trade.gov/ftz.* For further information, contact Camille Evans at Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: January 14, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–1241 Filed 1–21–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2010]

Foreign-Trade Zone 201—Holyoke, MA; Application for Subzone; Yankee Candle Corporation (Candles and Gift Sets); Whately and South Deerfield, MA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Holyoke Economic Development and Industrial Corporation, grantee of FTZ 201, requesting special-purpose subzone status for the candle and gift set manufacturing facility of Yankee Candle Corporation (Yankee Candle), located in Whately and South Deerfield, Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as

amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 13, 2010.

The Yankee Candle facilities (1,516 employees, 20,000,000 kg annual candle capacity, 3,200,000 unit annual gift set capacity) consist of four sites on 95 acres: *Site 1* (44 acres) manufacturing and kitting facility located at 102 Christian Lane, Whately; *Site 2* (31 acres) distribution facility located at 27 Yankee Candle Way, South Deerfield; *Site 3* (10.5 acres) distribution and kitting facility located at 1 Plain Road, South Deerfield; and *Site 4* (9.6 acres) warehousing facility located at 14 Industrial Drive West, South Deerfield. The facilities are used for the manufacturing and kitting of candles and gift sets. Components and materials sourced from abroad (representing 3–5% of the value of the finished candles and 25–30% of the value of the finished gift sets) include: metal lids, glass candle toppers and tart warmers (duty rate ranges from 2.6 to 30%).

FTZ procedures could exempt Yankee Candle from customs duty payments on the foreign components used in export production. The company anticipates that some 10 percent of the plant's shipments will be exported. On its domestic sales, Yankee Candle would be able to choose the duty rates during customs entry procedures that apply to the finished candles (duty-free) and gift sets (duty rate ranges from 6 to 7.2%) for the foreign inputs noted above. FTZ designation would further allow Yankee Candle to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 23, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 7, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: January 13, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–1244 Filed 1–21–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT64

Intent to Prepare a Supplemental Environmental Impact Statement on the Exxon Valdez Oil Spill Trustee Council's Restoration Efforts

AGENCY: National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement; request for comments.

SUMMARY: NOAA, as a member of the *Exxon Valdez* Oil Spill Trustee Council (Council), announces the intent of the Council to prepare a supplement to the existing environmental impact statement (EIS) on the Council's restoration efforts, in accordance with the National Environmental Policy Act of 1969, (NEPA). This supplemental EIS (SEIS) is necessary to respond to significant new circumstances bearing on the Council's restoration efforts as assessed in the original EIS. Specifically, as the restoration funds remaining from the Exxon Valdez settlement diminish, the Council seeks a more discrete and efficient funding mechanism by which to direct the remaining funds. The SEIS would assess the environmental impacts of the Council's proposal to narrow and refine the scope of the Council's restoration efforts to five defined restoration categories: herring; lingering oil; long-term monitoring of marine conditions; harbor protection and marine restoration; and habitat acquisition and protection. Cooperating agencies are the Alaska Departments of Law, Environmental Conservation, and Fish and Game, and the U.S. Forest Service, U.S. Department of Agriculture, Office of the Secretary, U.S. Department of the Interior.

DATES: Written comments on the intent to prepare and the scope of a SEIS will be accepted on or before April 1, 2010. A draft SEIS will be released for public comment by spring 2010. Specific dates and times for future events will be publicized on the EVOSTC website, *http://www.evostc.state.ak.us*, when scheduled.

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Laurel Jennings, *Exxon Valdez* Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, AK 99501. Emailed comments will be received at *dfg.evos.nepacomments@alaska.gov*.

FOR FURTHER INFORMATION CONTACT: Laurel Jennings (888.654.EVOS).

SUPPLEMENTARY INFORMATION:

Background

In 1992, the *Exxon Valdez* Oil Spill Trustee Council was formed by six trustees, three State of Alaska trustees and three federal trustees, to oversee restoration of the natural resources and ecosystem damaged by the 1989 oil spill. The *Exxon Valdez* Oil Spill Trustee Council was funded by settlement of civil claims brought against Exxon Companies by the State of Alaska and the United States. The Council initiated an extensive public process to begin the work of restoration using these joint trust funds and, in 1994, adopted a Restoration Plan to guide restoration through research and monitoring, habitat protection and general restoration. The Restoration Plan also established a Restoration Reserve recognizing that recovery from the spill would not occur for decades.

As part of this effort, the Council also adopted an official list of resources and services injured by the spill. When the 1994 Plan was drafted, the distinction between the effects of the spill and those of other natural or human-caused stressors on injured resources or services was not clearly understood. Through the hundreds of studies conducted over the last twenty years, the Council has come to recognize that ecosystem restoration is not easily addressed. The interactions between a changing environment and the injured resources and services are only beginning to be understood, and, as time passes, the ability to distinguish the effects of the oil from other factors affecting fish and wildlife populations becomes more difficult. These complexities and the difficulties in measuring the continuing impacts from the spill result in some inherent

uncertainty in defining the status of a resource or service through a specific list.

The 1994 Plan also outlined an ecosystem approach to restoration, a more integrated view that has become increasingly recognized as essential. Even before the Plan was final, the Council began efforts to better understand the marine ecosystem. This approach has provided and continues to provide an abundance of information on fish, marine birds, and mammals.

Meetings Times and Dates

Preliminary public scoping meetings are scheduled as follows; updates or changes to the meeting times or dates, due to weather or other factors, can be found at *http://www.evostc.state.ak.us*:
1. February 16, 2010 from 6:00 p.m. to 8:00 p.m. at the Alaska Islands and Oceans Visitor Center, 95 Sterling Highway, Homer, AK 99603.
2. February 17, 2010 from 6:00 p.m. to 8:00 p.m. at Dena´ina Civic & Convention Center, 600 West Seventh Avenue, Anchorage, AK 99501.
3. February 18, 2010 from 7:00 p.m. to 9:00 p.m. at the Cordova Public Library, 622 First Street, Cordova, AK 99574.
4. March 16, 2010 from 6:00 p.m. to 8:00 p.m. at the K.M. Rae Building, 125 Third Avenue, Seward, AK 99664.
5. March 17, 2010 from 6:00 p.m. to 8:00 p.m. at the Valdez City Council Chambers, 206 Pioneer Drive, Valdez, AK 99686.
6. March 18, 2010 from 6:00 p.m. to 8:00 p.m. at the Kodiak Refuge Visitor Center, 402 Center Street, Kodiak AK 99615.

Proposed Action

Of the approximately $780 million of joint trust funds initially funding the Council, over $180 million has been used for research, monitoring and general restoration and over $375 million has funded habitat protection. Council annual program development, implementation and administration have cost over $45 million dollars. Approximately $76 million remains available for research, monitoring and general restoration and $24 million remains available for habitat acquisition and protection. Recognizing that funding for future restoration is limited and that it is becoming increasingly difficult to distinguish between spill impacts and other effects in measuring recovery, the Council is considering an organized and strategic transition to a modest program which would focus the remaining funds on a few specific programs and habitat protection.

Long-term management of species and resources initially injured by the spill lies with the agencies and entities that have the mandate and resources to pursue these long-term goals. To support natural restoration and to enable management consistent with this long-term restoration, the Council has increasingly directed funds toward research that provides information that is critical to monitor and support the healthy functioning of the spill ecosystem.

Building on its past efforts, the Council has identified five areas of focus for its remaining work: (1) herring; (2) lingering oil; (3) long-term monitoring of marine conditions; (4) harbor protection and marine restoration; and (5) habitat acquisition and protection. The following paragraphs elaborate on the details of each of these proposed areas of focus.

1. Herring

The Council has classified the Prince William Sound (PWS) population of Pacific herring (*Clupea pallasi*) as a resource that has not recovered from the effects of the 1989 oil spill. The PWS herring population was increasing prior to 1989 with record harvests reported just before the spill. The 1989 year class was one of the smallest cohorts of spawning adults recorded and by 1993 the fishery had collapsed with only 25% of the expected adults returning to spawn. The PWS fishery was closed from 1993 to 1996, but reopened in 1997 and 1998, based on an increasing population. Numbers again declined in 1999, and the fishery remains closed today. The 1993 collapse can be explained by several competing hypothesis; however, data uncertainty makes it unlikely that the reasons will be known.

The Council recognizes the uncertainty with regard to the role of the 1989 spill and the current depressed state of the PWS herring population. However, herring are considered a keystone species in the marine ecosystem and play a vital role in the food chain of many injured species. Thus, rebuilding the herring population has the potential to support the restoration of these injured species. In addition, supporting a healthy herring population may compensate for some of the losses in fishing opportunities that resulted from the spill and its damage to salmon and species other than herring. In April 2006, prompted by public comments about the continuing impacts to communities and commercial fishermen from herring losses, the Council convened scientists and researchers, commercial and subsistence fishermen, and natural resource managers for a herring workshop. One of the most important outcomes of the workshop was the consensus that a long-term strategic herring restoration program was needed if viable herring recovery activities were to be implemented. From 2006 to 2008, Council representatives met with natural resource managers, commercial fishers, scientists, the Public Advisory Committee (PAC) and Alaska Native residents of spill-area communities to gain sufficient input to draft a cost-efficient, scientifically credible, and coordinated program. This effort produced the first draft of the Integrated Herring Restoration Program (IHRP) in December 2008.

The goal of the IHRP is to determine what, if anything, can be done to successfully restore PWS herring; to determine what steps can be taken to examine the reasons for the continued decline of herring in the Sound; to identify and evaluate potential recovery options; and to recommend a course of action for restoration. The document is currently being reviewed and updated with new information and will serve as a general road map for the Council's herring-related funding decisions. The Council has proposed to fund $20 million for research in this area over a twenty-year period.

2. Lingering Oil

One of the most surprising revelations from two decades of research and restoration efforts since the 1989 spill is the persistence of subsurface oil in a relatively un-weathered state. This oil, estimated to be around 97.2 metric tons (or 23,000 gallons), is contained in discontinuous patches across beaches that were initially impacted by the spill. The patches cannot be visually identified on the beach surface, but their presence may be a source for continued exposure to oil of sea otters and birds that seek food in sediments where the oil persists and remains a concern and a perception of contamination by subsistence users. The survey work completed to date indicates that the oil is decreasing at a rate of zero to four percent per year, with only a five percent chance that the rate is as high as four percent. As a result, it may persist for decades.

Passive and subsistence uses were significantly impacted by the spill and this has affected the overall health of the communities in Prince William Sound. The lingering oil has also impacted the public's perception of the spill area as the pristine environment that was present before the spill occurred. This perception has continued to preclude full recovery for some passive and subsistence uses. It may require

additional resources to evaluate, monitor, and redress the impact of lingering oil on these uses in the spill-area. An important function of this information gathering would be to pass this information back to the communities and the general public.

In an effort to address the issue of lingering oil, the governments developed a restoration plan under the terms of the Reopener provision in the Consent Decree with Exxon (*http://www.evostc.state.ak.us/facts/reopener.cfm*). Efforts to date include the development of a spatial probability model to identify beach segments with a high likelihood of persistent oil, and investigations of the reasons for the persistence of oil as a means to consider options that may accelerate the oil degradation. Under the lingering oil initiative, the Council envisions completion of the studies underway to reach a decision point on further efforts for active remediation. Upon receiving additional lingering oil information from these current lingering oil studies and the resolution of the Reopener, the Council will evaluate the need for restoration of related services and thus no prospective funding amount has been proposed.

3. Long-term Monitoring of Marine Conditions

In the twenty years since the *Exxon Valdez* oil spill, it has become apparent that the ocean ecosystem can undergo profound changes and such changes likely preclude a return to pre-spill conditions. The 1994 Restoration Plan (Plan) recognized that recovery from the spill would likely take decades. A Restoration Reserve was created from the Plan in part to provide for long-term observation of injured resources and services and provide for appropriate restoration actions into the future. To further this effort, in 1999 the Council also supported the development of a long-term research and monitoring program.

Long-term monitoring has two components: monitoring the recovery of resources from the initial injury and monitoring how factors other than oil may inhibit full recovery or adversely impact recovered resources. This second type of monitoring collects data on environmental factors that drive ecosystem-level changes. The information that is produced from such monitoring may be used to manage individual injured species and resources. However, such data is increasingly valuable in illuminating the larger ecosystem shifts that impact and influence a broad variety of species and resources injured by the spill.

By monitoring these changes, agencies and interested parties may be able to adjust their own activities and management strategies to adapt to what may lie ahead and to further support injured resources in these quickly-shifting marine ecosystems. The Council has a history of supporting oceanographic monitoring by helping to establish and fund long-term data collections. In this initiative, the Council envisions seeking partnerships with scientific entities or consortiums able to maintain those collections and that can demonstrate an ability to leverage this support and develop science-based products to inform the public of changes in the environment and the impacts of these changes on injured resources and services. The Council proposes to fund this effort with approximately $25 million, to be spent over a twenty-year period.

4. Harbor Protection and Marine Restoration

a. Storm Water, Wastewater, and Harbor Projects

Many coastal communities in the spill area have a limited ability to collect and properly dispose of waste, such as oily bilge water, used engine oil, paints, solvents, and lead-acid batteries. Improper disposal of these wastes in landfills adversely affects the quality of nearby marine waters through runoff and leaching. In some cases, these wastes are discharged directly into marine waters. Chronic marine pollution stresses fish and wildlife resources, possibly delaying recovery of resources injured by the oil spill. For example, with regard to the worldwide mortality of seabirds, the effects of chronic marine pollution are believed to be at least as important as those of large-scale spills.

The Council has approved the funding of several projects to prepare waste management plans and has contributed to their implementation. These projects resulted in the acquisition of waste oil management equipment and the construction of environmental operating stations for the drop-off of used oil, household hazardous waste and recyclable solid waste in Cordova, Valdez, Chenega Bay, Tatitlek and Whittier, Kodiak and lower Cook Inlet. The Council seeks to further reduce pollution in the marine environment to contribute to the recovery of injured natural resources or services and is considering funding this effort with $10 million.

b. Marine Debris Removal

Marine debris is an issue in the marine and near-shore environment in Alaska, where it is likely that thousands of tons of marine debris exist within three nautical miles of the Alaska coastline. Marine fish and wildlife become entangled in and ingest debris from foreign and domestic sources that may be a day or decades old and that range from small plastic items to very large fishing nets. Approximately 175 metric tons of debris was collected from Alaska coasts by citizen cleanup projects in 2007. Marine debris removal projects can result in an immediate improvement to the coastal habitat.

Coastal communities are effective in marine debris cleanups due to their intimate knowledge of the locations of debris accumulation. In addition, when communities participate in marine debris cleanups, they often alter the common practices that led to marine debris as their awareness of the effects of the debris on their coastline and the fisheries upon which they depend increases. Marine debris removal reduces marine pollution affecting injured resources and services and thus further supports natural restoration. The Council proposes to fund marine debris removal with approximately $3 million.

c. Response, Damage Assessment and Restoration Implications

Damage to natural resources occurs not only with an initial oil spill, but additional damage can also be caused by spill response efforts. Damage assessment from the 1989 spill has yielded information that can assist in mitigating damage from spill response activities in future spills. Skilled damage assessment also quantifies the extent of injury and allows for the accurate monitoring and measurement of restoration after a spill. Organizing, preserving, and passing on such information will help responders and those conducting future damage assessments. These efforts ensure that restoration efforts are truly effective. Outreach efforts could include a conference or series of papers sharing information to be used by future responders, including natural resource assessment, the long-term costs of high-pressure washing, use of dispersants in the near-shore, sub-arctic environment, and the effects of potential burning scenarios. The Council proposes to fund this effort with $1 million.

5. Habitat Acquisition and Protection

The protection of habitat is an important component of the Exxon Valdez oil spill restoration program. The

acquisition of private lands or partial interests in private lands promotes the natural recovery of spill-injured resources and associated services by removing the threat posed by additional development impacts. The program is implemented by state and federal resource agencies, often in partnership with non-governmental organizations. The habitat program has protected approximately 650,000 acres of valuable habitat through a variety of purchases of various property rights, ranging from fee simple acquisition to conservation and timber easements. The goals of the habitat protection program remain viable. Resource and land management agencies, such as the Alaska Department of Natural Resources, Alaska Department of Fish and Game, U.S. Fish and Wildlife Service, National Park Service and U.S. Forest Service, continue to receive parcel nominations for Council consideration. Approximately $24 million remains within the habitat subaccount for future habitat protection efforts. The Council is considering alternatives for allocation of these funds. For example, half of the funds remaining may be allocated to the purchase of large parcels within a period of two to three years, and the remaining half to a program spanning a 12-year period focused on the protection of small parcels less than 1,000 acres or $1 million in price. The Council proposes to utilize the approximately $24 million remaining to continue the habitat program. A variety of administrative options, funding allocations, time frames, and management strategies will be considered.

Public Involvement

Scoping is an early and open process for determining the scope of issues to be addressed in a SEIS and for identifying if there are significant environmental effects or issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable alternatives that will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. Through this Notice, the Council notifies the public that a NEPA analysis and decision-making process has been initiated so that interested or affected people may participate and contribute to the final decision.

Through this scoping process, the Council is seeking input and feedback on the areas, issues and projects proposed above, as well as possible alternatives to these proposals. The Council seeks public involvement in the development of the SEIS and encourages members of the public to submit comments in writing at the address shown above (see **ADDRESSES**). Written comments should be as specific as possible to be the most helpful. Written comments received during the scoping process, including the names and addresses of those submitting them, will be considered part of the public record on this proposal and will be available for public inspection.

The Council also invites the public to participate in the scoping meetings shown above (see **DATES**). When the lead federal agency considers a change to a proposed action analyzed in an environmental impact statement (EIS), or new information relevant to the action becomes available, the federal agency must determine whether a supplement to the EIS (also referred to as a "supplemental EIS") or a new EIS is appropriate. In this instance, NOAA, as the lead agency, has determined that a SEIS is appropriate and will be prepared under the authority and in accordance with the requirements of NEPA, Council on Environmental Quality Regulations (40 CFR parts 1500–1508), other applicable federal laws and regulations, and NOAA's established policies and procedures for compliance with those regulations. A SEIS must consider all reasonable alternatives, including the preferred action and the no action alternative. Even the most straightforward actions may have alternatives, often considered and rejected in early stages of project development that should be discussed. Opportunities for public comment are provided through public review and comment on documents contained in the Administrative Record as well as on the Public Review Document, Draft and Final Environmental Impact Statement when prepared.

In compliance with 15 CFR 990.45, the Council will prepare an Administrative Record (Record). The Record will include documents that the Council relied upon during the development of the SEIS. After preparation, the Record will be on file at the *Exxon Valdez* Oil Spill Trustee Council office in Anchorage, AK and duplicate copies will be maintained at the following website: *http://www.evostc.state.ak.us.*

Dated: January 15, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–1201 Filed 1–21–10; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent To Conduct Restoration Planning (Pursuant to 15 CFR 990.44)—Discharge of Oil From the MIV CASCO BUSAN Into San Francisco Bay, November 7, 2007

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Intent to conduct restoration planning (pursuant to 15 CFR 990.44)—Discharge of Oil from the *MIV CASCO BUSAN* into San Francisco Bay, November 7, 2007.

SUMMARY: On or about November 7, 2007, the privately owned cargo carrier MlV CASCO BUSAN struck a portion of the fendering system for the San Francisco-Oakland Bay Bridge's Delta Tower. This ruptured one or more of the vessel's fuel tanks, allowing a portion of the vessel's bunker oil to be discharged into the San Francisco Bay. The estimated discharge amounted to approximately 53,000 gallons of IFO 380, a heavy fuel oil used primarily to propel ships. This discharge affected natural resources in the area. All of the foregoing is referred to as the "Incident."

Pursuant to section 1006 of the Oil Pollution Act ("OPA"), 33 U.S.C. 2701, *et seq.,* federal and state trustees for natural resources are authorized to: (1) Assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities, and (2) Develop and implement a plan for restoration of such injured resources. The federal trustees are designated pursuant to the National Contingency Plan, 40 CFR Section 300.600 and Executive Order 12777. State trustees for California are designated pursuant to the National Contingency Plan, 40 CFR Section 300.605 and the *Governor's Designation of State Natural Resource Trustees under the Comprehensive Environmental Response, Compensation and Liability Act of 1980,* the *Oil Pollution Act of 1990, and California Health and Safety Code section 25352(c),* dated October 5, 2007. The natural resources trustees ("Trustees") under OPA for this Incident are the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration ("NOAA"); the United States Department of the Interior ("DOl"), acting through the National Park Service ("NPS"), the U.S. Fish and Wildlife Service ("FWS"), and the Bureau of Land Management

("BLM"); and the California Department of Fish and Game ("CDFG"). The California State Lands Commission ("CSLC") is participating as a Trustee for this Incident pursuant to its jurisdiction under California state law over all state sovereign lands, including ungranted tidelands and submerged lands.

The Responsible Parties ("RPs") for this Incident are Regal Stone Limited and Fleet Management Limited. The United States and the People of the State of California ex reI. CDFG *et al.,* currently have filed lawsuits against the RPs pursuant to OPA and other federal and state environmental statutes. The Trustees have coordinated with representatives of the RPs on Natural Resource Damage Assessment ("NRDA") activities.

The Trustees began the Preassessment Phase of the NRDA in accordance with 15 CFR 990.40, to determine if they had jurisdiction to pursue restoration under OPA, and, if so, whether it was appropriate to do so. During the Preassessment Phase, the Trustees collected and analyzed the following: (1) Data reasonably expected to be necessary to make a determination of jurisdiction or a determination to conduct restoration planning, (2) Ephemeral data, and/or (3) Information needed to design or implement anticipated emergency restoration and/or assessment as part of the Restoration Planning Phase.

The NRDA Regulations under OPA, 15 CFR part 990 ("NRDA regulations"), provide that the Trustees are to prepare a Notice of Intent to Conduct Restoration Planning (Notice) if they determine certain conditions have been met, and if they decide to quantify the injuries to natural resources and to develop a restoration plan.

This Notice is to announce, pursuant to 15 CFR 990.44, that the Trustees, having collected and analyzed data, intend to proceed with restoration planning actions to address injuries to natural resources resulting from the Incident. The purpose of this restoration planning effort is to further evaluate injuries to natural resources and services and to use that information to determine the need for, type of, and scale of restoration actions.

FOR FURTHER INFORMATION CONTACT: For further information contact one or more of the following Trustee representatives: Steve Hampton (CDFG) at *shampton@ospr.dfg.ca.gov;* Greg Baker (NOAA): *greg.baker@noaa.gov;* or Janet Whitlock (FWS): *janecwhitlock@fws.gov.*

Opportunity to Comment: Pursuant to 15 CFR 990.14(d), the Trustees seek public involvement in restoration planning for this Incident through public review of, and comment on, documents contained in the Record. The Trustees also intend to seek public comment on a draft Damage Assessment and Restoration Plan after it has been prepared. Comments should be sent to one or more of the Trustee representatives listed above.

SUPPLEMENTARY INFORMATION:

Determination of Jurisdiction

The Trustees have made the following findings pursuant to 15 CFR 990.41:

1. The impact of the MIV CASCO BUSAN with the Bay Bridge on November 7, 2007, resulted in a discharge of oil into and upon navigable waters of the United States, including the San Francisco Bay and Pacific Ocean, as well as adjoining shorelines. Such occurrence constitutes an "Incident" within the meaning of 15 CFR 930.30.

2. The Incident was not permitted pursuant to Federal, State, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

3. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident. The bunker oil discharged from the MIV CASCO BUSAN is harmful to certain aquatic organisms, birds, wildlife, and vegetation that were exposed to the oil. Accordingly, the discharged oil and the response activities to address the discharge have had an adverse effect on the natural resources of San Francisco Bay, the Pacific Ocean, and their adjoining shorelines, and impaired the services which those resources provide. Documents in the Administrative Record contain more information regarding the specific studies, observations, *etc.,* by which the Trustees reached this determination. As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under the OPA.

Determination To Conduct Restoration Planning

The Trustees have determined, pursuant to 15 CFR 990.42(a), that:

1. Observations and data collected pursuant to 15 CFR 990.43 (including dead and live oiled birds, information regarding marshes, beaches, eelgrass beds, and other oiled habitats) demonstrate that injuries to natural resources have resulted from the Incident; however, the extent of such injuries has not been fully determined at this time. Immediately following the Incident, the Trustees, in cooperation with the RPs, identified several categories of impacted and potentially impacted resources, including birds, shoreline habitats, marine mammals, fish, and eelgrass, as well as effects to human use resulting from the impacts on the resources. They then began conducting activities, in cooperation with the RPs, to evaluate injuries and potential injuries within these categories. More information on these resource categories is available in the Administrative Record, including information gathered during the pre-assessment. The full nature and extent of injuries will be determined during the injury assessment phase of restoration 4 planning.

2. The response actions did not address all injuries resulting from the Incident to the extent that restoration would not be necessary. Although response actions were initiated soon after the spill, the nature and location of the discharge prevented recovery of all of the oil and precluded prevention of injuries to some natural resources. In addition, certain response efforts, such as scrubbing of oiled rocks and rip rap and the removal of wrack from beaches, caused additional injuries to natural resources. It is anticipated that injured natural resources will eventually return to baseline levels (the condition they would have been in had it not been for the Incident), but interim losses have occurred or have likely occurred and will continue until a return to baseline is achieved. In addition, there were lost and diminished human uses of the resources resulting from the impacts to the natural resources and from the response actions themselves.

3. Feasible primary and compensatory restoration actions exist to address injuries and lost human uses resulting from the Incident. In preparation for restoration planning, the Trustees have begun to compile a list of restoration projects that could potentially be implemented to compensate for interim losses resulting from the incident. The Trustees have also sought suggestions from the public on potential restoration projects to compensate for the services and functions provided by natural resources. In addition, assessment procedures such as Habitat Equivalency Analysis and Resource Equivalency Analysis are available to scale the appropriate amount of compensatory restoration required to offset ecological service losses resulting from this Incident. To quantify lost human uses resulting from the Incident, the Trustees, partially in cooperation with the RPs, have gathered data regarding visitor use of impacted sites and associated activities. To value those lost

uses the Trustees are using a Travel Cost Model and are employing the Benefits Transfer Method. To compensate for the lost and diminished human uses arising from the Incident, the Trustees intend to solicit project ideas from local, regional, State, and Federal managers of parks and other recreational areas, as well as from the general public. The Trustees will then select restoration actions using a value to cost approach, by which the cost of the restoration actions are scaled to the monetary value of lost and diminished human uses.

During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Damage Assessment and Restoration Plan for public review and comment. Based upon information in the Administrative Record and the foregoing determinations, the Trustees intend to proceed with restoration planning for this Incident.

Administrative Record

The Trustees have opened an Administrative Record ("Record") in compliance with 15 CFR 990.45. The Record will include documents considered by the Trustees during the preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the Incident. The Record will be augmented with additional information over the course of the NRDA process. The Record is available at the following locations:

San Francisco Main Library, 100 Larkin Street (at Grove Street), Civic Center, San Francisco, CA 94102, (415) 557–4400.

The Library is open seven days a week. Please check its Web site for hours and directions: *http://sfpl.org/librarylocations/mainimain.htm.* and at:

Water Resources Center Archives, 410 O'Brien Hall, University of California, Berkeley, CA 94720–1718, (510) 642–2666.

The Center is generally open Monday through Friday. However, please check its Web site for hours that may be different during academic vacations and for directions: *http://www.lib.berkeley.edul WRCNinfo.htm1#hours.*

The Index of the Administrative Record and selected documents may also be viewed at the following Web site(s): *http://www.dfg.ca.gov/osprispillInrda/nrda_cosco-busan.html; http://www.darrp.noaa.gov/southwest/coscolindex.html;* and *http://www.fws.gov/contaminants/Issues/OilSpill.cfm.*

Dated: January 11, 2010.

David G. Westerholm,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–1117 Filed 1–21–10; 8:45 am]

BILLING CODE 3S10–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 0907081108–91430–02]

RIN 0648–XP68

Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 12–month Determination on How to Proceed with a Petition to Revise Designated Critical Habitat for Elkhorn and Staghorn Corals

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

ACTION: Notice of 12–month determination.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce our 12–month determination on how to proceed with a petition to revise the critical habitat designation for elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals pursuant to section 4(b)(3)(D)(ii) of the Endangered Species Act (ESA) of 1973, as amended. Elkhorn and staghorn corals are listed as threatened throughout their ranges and have designated critical habitat consisting of substrate of suitable quality and availability to support successful larval settlement and recruitment, and successful reattachment and recruitment of asexual fragments in water depths shallower than 30 meters in four areas in Florida, Puerto Rico, and the U.S. Virgin Islands. The petition seeks to extend the northern boundary of designated critical habitat in the Florida area to the Lake Worth Inlet, which is approximately 15.5 miles (25 km) north of the current boundary at Boynton Beach Inlet, based on the discovery of staghorn corals north of the existing critical habitat boundary. We have evaluated the available scientific information and have decided, based on the adequacy of the existing, recent designation to meet the corals' conservation needs, the relatively low benefit the requested revision would provide, the protections afforded to the species from the recent ESA section 4(d) regulations, and our need to complete higher priority conservation activities for these and other coral species, to deny the petitioned action.

DATES: The finding announced in this document was made on January 22, 2010.

ADDRESSES: Interested persons may obtain more information about critical habitat designated for elkhorn and staghorn corals online at the NMFS Southeast Regional Office website: *http://sero.nmfs.noaa.gov/pr/esa/acropora.htm.*

FOR FURTHER INFORMATION CONTACT: Jennifer Moore by phone 727–824–5312, fax 727–824–5309, or e-mail *jennifer.moore@noaa.gov*; or Marta Nammack by phone 301–713–1401 or e-mail *marta.nammack@noaa.gov*.

SUPPLEMENTARY INFORMATION: On January 6, 2009, NOAA received a petition from Palm Beach County Reef Rescue (the Petitioner) to revise the designated critical habitat of elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals (PBCRR, 2009). On July 27, 2009, we issued a positive 90–day finding that the petition presented substantial scientific information indicating the revision may be warranted and initiated a 30–day information solicitation period (74 FR 36995). Section 4(a)(3)(A)(i) of the ESA (16 U.S.C. §§ 1533 *et seq.*) requires generally that critical habitat shall be initially designated at the time of listing a species as threatened or endangered. The ESA also provides that NMFS may revise critical habitat from time-to-time as appropriate (section 4(a)(3)(A)(ii)). For any petition to revise a designated critical habitat that presents substantial scientific and commercial information, section 4(b)(3)(D)(ii) of the ESA provides only that, "the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the **Federal Register**." The statute says nothing more about options or considerations regarding the Secretary's 12–month determination. We have fully considered all information received in response to our 90–day finding and determined that the most appropriate action to take in response is to deny the petition.

Background

On November 26, 2008, we published a final rule designating critical habitat for elkhorn and staghorn corals (73 FR 72210). On January 6, 2009, we received a petition from Palm Beach County Reef Rescue (the Petitioner) to revise elkhorn and staghorn corals' critical habitat

designation (PBCRR, 2009). Currently, designated critical habitat consists of substrate of suitable quality and availability to support larval settlement and recruitment, and the reattachment and recruitment of asexual fragments in water depths shallower than 30 meters in four areas covering 2,959 square miles (7663 sq km) of the species' ranges in Florida, Puerto Rico, and the U.S. Virgin Islands (73 FR 72210; November 26, 2008). The Petitioner requests that we extend the northern boundary of the Florida area to the Lake Worth Inlet, approximately 15.5 miles (25 km) north of the current boundary at Boynton Beach Inlet. This extension would result in an expansion of the 1,329 square mile (3442 sq km) Florida area by approximately 45 square miles (116.5 sq km).

Section 4(b)(3)(D)(i) of the ESA requires us to make a 90–day finding as to whether a petition to revise critical habitat presents substantial scientific information indicating that the revision may be warranted. Our implementing regulations (50 CFR § 424.14) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Our regulations further provide that in making a 90–day finding on a petition to revise critical habitat, the "substantial information" determination is made based upon considering whether a petition contains: (i) information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species; or (ii) information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species (50 CFR § 424.14(c)).

The petition contains information on the location of a few staghorn coral colonies north of Boynton Beach Inlet. During the process of designating the current critical habitat areas, available information conflicted as to whether staghorn coral was established this far north. The petition also includes information about the geology of the Florida Reef Tract, suggesting that the feature essential to elkhorn and staghorn corals on which the existing designation is based is present in the petitioned area north of Boynton Beach Inlet. That essential feature is substrate of suitable quality and availability to support larval settlement and recruitment, and reattachment and recruitment of asexual fragments. "Substrate of suitable quality and availability" is defined in the designation as natural consolidated hard substrate or dead coral skeleton that is free from fleshy or turf macroalgae cover and sediment cover. The petition also contains information on the genetic diversity of staghorn coral. Finally, the Petitioner suggests that the waters of Palm Beach County represent a potential thermal refuge for staghorn coral. The petition does not discuss whether the hard substrate features in the petitioned area may require special management considerations or protections, but we judged it reasonable to assume the same management considerations and needs for protection applicable to the feature south of Boynton Beach Inlet would also apply to the feature within the petitioned area.

Based on the information in the petition and information readily available in our files at the time, and pursuant to criteria specified in 50 CFR section 424.14(c), we made a 90–day finding that the petition presents substantial scientific information indicating that the requested revision to designated critical habitat for elkhorn and staghorn corals may be warranted (74 FR 36995; July 27, 2009).

In response to our 90–day finding we received additional information on the presence of staghorn coral colonies within the general location identified in the petition. We also received a report verifying the presence of staghorn corals within the general vicinity reported by the petitioner, at about 8 miles (13 km) north of the current boundary of the Florida critical habitat area (Coastal Eco-Group, 2009). The report documented 51 colonies of staghorn coral, of which 21 were unattached fragments, comprising 2 percent cover of the surveyed reef. The report stated only seven percent of the colonies were larger than 9.8 in (25 cm), indicating relatively recent colonization of the reef by staghorn coral. There were no colonies less than 1.9 in (5 cm) in diameter, indicating no recent sexual reproduction. Reconnaissance of adjacent reefs reported only one additional staghorn colony approximately 1,000 ft (304 m) away from the main site. The report also provided a description of the geology of the area indicating that natural unconsolidated hard substrate may be present; however, it suggested this feature represented relatively low cover and availability for staghorn coral settlement on the reef due to the high abundance of octocorals. Additionally, very little staghorn rubble was observed, indicating the reef has not recently been dominated by staghorn corals. No information was presented suggesting the elkhorn coral's range is further north than described in the existing critical habitat designation.

As indicated above, the ESA provides us with broad discretion respecting revision of designated critical habitat, allowing us to determine when revision is appropriate, and affording us wide latitude to determine how to respond to a petition to revise critical habitat designations. The few past petitions requesting revisions to critical habitat designations have been received for designations that were completed many years prior to the petition, and in most of those cases extensive new information highlighted the inadequacy of the existing designation to meet the species' conservation needs. In those instances we have accepted the petition and initiated revisions of critical habitat. Unlike those circumstances, we completed the existing critical habitat designation for the corals less than 2 months prior to receiving the current petition, the designation encompasses virtually all of the species' current and historical occupied ranges in the United States, and the designation protects all of the substrate essential feature in these ranges, which we determined was sufficiently abundant to provide for these species' conservation. As discussed below, the requested revision would provide at most a very small conservation benefit to one of these coral species.

On November 26, 2008, we designated critical habitat for staghorn and elkhorn corals throughout their occupied U.S. ranges (73 FR 72210). Because these species' historic ranges have not contracted, we determined that there were no unoccupied areas of critical habitat that might be essential to their conservation. Critical habitat is defined in relevant part as specific areas within the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the ESA, and on which are found those physical or biological features: (i) essential to the conservation of the species; and (ii) which may require special management considerations or protection. We identified the key conservation objective for the critical habitat designation as facilitating increased incidence of successful sexual and asexual reproduction of the corals, and the essential feature to facilitate this objective as substrate of suitable quality and availability to support successful larval settlement and recruitment, and successful reattachment and recruitment of asexual fragments. The designation includes all the hard substrate that meets the definition of the essential

feature within the species' U.S. ranges, with the exception of some areas of hard substrate where these species have not been observed and where it was determined larvae and fragments were unlikely to settle or attach. Given these species' reduced abundances, and because the total surface area of the essential feature is far larger than the surface area currently occupied by the corals, we determined the current designation would maximize the potential for successful recruitment and population growth and is sufficient to provide for the conservation of these coral species. Section 7 consultations on the actions of Federal agencies that may affect the designated critical habitat will assist in ensuring the availability of the essential feature for the corals' colonization and population growth.

In addition to the existing critical habitat designation, the species are protected by the recent ESA section 4(d) regulations that, with few exceptions for research and restoration activities, extend all the ESA section 9 prohibitions to them (73 FR 64264; October 29, 2008). We determined that the section 4(d) regulations are necessary and advisable to provide for the conservation of the species. The section 4(d) regulations apply regardless of whether the species are within designated critical habitat. Thus, the newly discovered staghorn corals are protected even though they occur north of the existing critical habitat designation.

The requested revision would encompass all the suitable substrate feature in an approximately 45 square mile (116.5 sq km) area based on extending the northern boundary of the Florida area approximately 15.5 miles (25 km). However, the new information on the potential northern expansion of staghorn coral's range has been confirmed at approximately 8 miles (13 km) north of Boynton Beach Inlet, or about half of the petitioned expansion. In addition, because the identified natural unconsolidated hard substrate feature is typically patchily distributed and does not uniformly cover the entire area, the actual area that would be available for settlement and recruitment in the petitioned area is likely much smaller, assuming that conditions within the entire area are conducive to coral settlement, recruitment, and survival everywhere the feature is present. The available information indicates the staghorn colonies are present on only one reef, approximately one mile (1.7 km) offshore in 57 ft (17.3 m) of water, and the substrate feature potentially available for future colonization by staghorn coral is present only in low abundance. Further, given the available data about staghorn corals' historic range, we believe it is still a question of scientific debate whether the petitioned area represents a true northward expansion of the species' range, as opposed to a temporary opportunistic occupation of the area by broken, storm-transported fragments outside of their natural range. Similar to a few colonies of elkhorn coral recently discovered at Flower Garden Banks National Marine Sanctuary, the staghorn corals in the petitioned area require monitoring and evaluation to determine whether this is an actual range expansion at this point in geologic history. The existing designation includes all of the suitable substrate throughout both corals' ranges, with the exception of the substrate in the petitioned area. As we described in the existing designation, both species have precipitously declined in abundance and are sparsely distributed throughout their ranges. The essential substrate feature included in the existing designation is much more abundant than the corals, and we have determined there is sufficient substrate protected by the designation that is available for coral settlement, reattachment, recruitment, and population growth.

As noted above, we received the current petition to revise critical habitat less than 2 months after we finalized the existing designation. Designating critical habitat in accordance with the provisions of the ESA is a significant undertaking. The process of designating the current critical habitat for elkhorn and staghorn corals consumed significant personnel resources (i.e., 1.5 full-time employees) for the better part of a 2–year period. Were we to undertake a revision of the recently designated critical habitat, our limited resources would again be diverted from other work, which in turn would delay the completion of other priorities, yet would only realize a very small change (offering limited benefits) in the critical habitat area for one of the coral species. At this time, we believe that a greater conservation benefit for both species of coral, and the appropriate course of action, lie in the completion and implementation of a recovery plan that is currently under development, and that will address all threats inhibiting the conservation and recovery of these species throughout their ranges. We also note that we are currently working to implement our mandatory obligations under the statute regarding a recently received petition to list 83 species of corals as endangered or threatened, 8 of which co-occur in the Atlantic and Caribbean Oceans with staghorn and elkhorn corals, and to designate critical habitat for these species.

Petition Determination

Based on the information above, pursuant to the provisions of the ESA respecting revision of critical habitat and petitions for revision, we have determined it is not timely and appropriate to revise the recently designated critical habitat for elkhorn and staghorn corals, and we therefore deny the petitioned action.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 15, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–1204 Filed 1–21–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No.: 100111018–0020–01]

Meeting With Interested Public on Offsets in Defense Trade

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this notice to announce that the agency will hold a meeting on February 3, 2010 for organizations interested in learning about the changes in the reporting requirement for U.S. firms engaged in offsets in defense trade, pursuant to Title 15 of the Code of Federal Regulations, part 701, as provided under the rule BIS published in the **Federal Register** on December 23, 2009. U.S. Government officials will provide information at this meeting on the changes in the reporting requirements for offset agreements and transactions. This meeting is open to the public.

DATES: The meeting will be held on February 3, 2010, 1:30 p.m. e.s.t.

ADDRESSES: If you wish to attend the meeting, please provide your name and company or organizational affiliation to fax number (202) 482–5650, Attn: Offset Briefing, or call (202) 482–3755. If you are a foreign national wishing to attend the meeting, you are required to provide additional information for entry to the U.S. Department of Commerce facility. Please contact Ron DeMarines at (202) 482–3755 in advance of the meeting for more information on the entry requirements for foreign nationals. The

meeting will be held at the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Room 4830, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Ronald DeMarines at BIS on (202) 482–3755 or (202) 482–4506.

SUPPLEMENTARY INFORMATION: On December 23, 2009, BIS published a Final Rule in the **Federal Register** that updates and provides clarification with regard to the information U.S. firms are required to submit each year to BIS to support BIS's preparation of its annual report to Congress on offsets in defense trade. As set forth in the December 23, 2009 rule, the revised amendments will provide more consistency and less ambiguity in defining the scope of the offset-related activities that respondents report to BIS. Further, the rule responded to a recommendation made by the Government Accountability Office to BIS regarding the collection of more precise information on the industry sectors in which offset activity occurs. The full text of the rule is available at 74 FR 68136. In order to provide more information on the changes to the offset-related reporting requirement, BIS will hold a meeting on February 3, 2010. This meeting is open to the public. In order to prepare for those who plan to attend the meeting, please submit your name and company or organizational affiliation to BIS via fax or phone number provided in the **ADDRESSES** section.

Dated: January 19, 2010.

Karen H. Nies-Vogel,

Acting Director, Office of Strategic Industry and Economic Security.

[FR Doc. 2010–1207 Filed 1–21–10; 8:45 am]

BILLING CODE 3510–JT–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List a product and a service to be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 2/22/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product and service will be required to provide the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide a product and a service to the Government.

2. If approved, the action will result in authorizing small entities to provide a product and a service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with a product and a service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and service are proposed for addition to Procurement List provided by the nonprofit agencies listed:

Product

NSN: 8105–00–NIB–1300—Grain Bag.
NPA: Mississippi Industries for the Blind, Jackson, MS.
Contracting Activity: Department of Agriculture, Animal and Plant Health Inspection Service, Minneapolis, MN.
Coverage: C–List for the requirements of the Department of Agriculture, Animal and Plant Health Inspection Service, Minneapolis, MN.

Service

Service Type/Location: Dining Facility Attendant Service and Cook Support, Fort Lewis and McChord AFB, WA.
NPA: Lakeview Center, Pensacola, FL.
Contracting Activity: Mission & Installation Contracting Command Center-Fort Knox (MICC CEN-FTK), Ft Knox, KY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–1211 Filed 1–21–10; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0004]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to delete DWHS P08 systems of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 22, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of

records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the contact under **FOR FURTHER INFORMATION CONTACT.**

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

DWHS P08.

SYSTEM NAME:

Worker's Compensation-On-The-Job Injuries Report File (February 22, 1993; 58 FR 10227).

REASON:

Based on a recent review of DWHS P08, it was determined that this system of records is covered under the Government-wide SORN, DOL–Govt/1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). DWHS P08 is duplicative and can therefore be deleted.

[FR Doc. 2010–1171 Filed 1–21–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Basing F–35a Operational Aircraft

AGENCY: United States Air Force, Air Combat Command and Air National Guard, DOD.

ACTION: Revised notice of intent.

SUMMARY: The United States Air Force published a Notice of Intent to prepare an EIS in the **Federal Register** (Vol. 74, No. 249, page 69080) on Dec. 30, 2009. Due to scheduling conflicts, scoping meetings originally proposed to be held January 11–14, 2010 in Idaho will now be held February 16–19, 2010. The Brunswick, Georgia meeting will be held during the week of February 8–12, 2010. Meeting locations remain the same. All other meeting dates remain the same. The original Notice of Intent identified that potential environmental impacts at Shaw AFB/McEntire JNGB would be analyzed for no action and in increments of 24 primary assigned aircraft (PAA), up to a total of 72 PAA. The revised description of the alternative is as follows, "Shaw AFB/McEntire JNGB would be analyzed for no action and in increments of 24 PAA, up to a total of 96 PAA." This revised Notice of Intent has been prepared to notify the public of these changes.

DATES: The Air Force intends to hold scoping meetings in the following communities: January 19–22, 2010 Ogden, Layton, Callao Utah; Wendover Nevada; January 25–28, 2010 Winooski, Vermont; Littleton, New Hampshire; Watertown, New York; February 1–4, 2010 Sumter, Eastover, and Kingstree, South Carolina; and Augusta, Georgia; February 8–12, 2010 Brunswick, Georgia; Jacksonville, Avon Park, Lake Wales and Palatka Florida; February 16–19, 2010 Grand View, Twin Falls, Boise, and Mt. Home, Idaho. The scheduled dates, times, locations and addresses for the meetings will be published in local media a minimum of 15 days prior to the scoping meetings. All meetings will be held from 6 p.m. to 8 p.m.

Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl Parker, HQ ACC/A7PS, 129 Andrews Street Suite 337, Langley AFB, VA 23665–2769, telephone 757/764–9334.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–1163 Filed 1–21–10; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 19, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: IEPS Language Resource Center (LRC) Customer Surveys.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 416.

Burden Hours: 194.

Abstract: The purpose of this assessment is to assess the impact of the LRC program in enhancing the foreign language capacity of the United States. Three surveys will be conducted: A survey of LRC Project Directors; a survey of all members of the National

Association of District Supervisors of Foreign Languages; and a survey of LRC Summer workshop participants. Results from the three surveys will inform the writing of a final report determining the impact of the LRC program.

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 by clicking on link number 4172. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–1198 Filed 1–21–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 5, 2010. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 23, 2010.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, or by e-mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 15, 2010.

Angela C. Arrington,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Emergency.

Title: Open Innovation Web Portal.

Abstract: The U.S. Department of Education's (ED) Office of Innovation and Improvement (OII) has developed a web-based platform, the Open Innovation Web Portal (Portal), to support communication and collaboration among a wide range of key education stakeholders, including practitioners, funders, and the general public. Once this platform goes on-line, it will allow geographically dispersed but like-minded entities to discover each other and work together to address some of the most intractable challenges in education.

OII plans to promote this platform as a tool for use with the Investing in Innovation grant program (i3), which was established as the "Innovation Fund" in the "American Recovery and Reinvestment Act of 2009" (ARRA), signed into law by the President on February 17, 2009. Since passage of ARRA, the Department has worked with all possible speed to develop the i3 program, which will conduct three separate competitions. This new program will provide $650,000,000 in competitive grants to Local Education Agencies (LEAs), non-profit organizations working in collaboration with LEAs, or non-profit organizations working in collaboration with a consortium of schools. The Department must obligate funds to i3 grantees before the end of fiscal year 2010, September 30, 2010. The Department requests emergency approval under the Paperwork Reduction Act of 1995 (PRA) of the information collection request (ICR) for the Portal so that prospective applicants to the i3 competitions may use the Portal to identify partners, find matching funding, and improve the quality of their applications.

Additional Information: Part of our intent in implementing the i3 program is to identify innovative new approaches proposed by individuals and organizations that have previously had limited experience in obtaining grants in the education sector yet have promising evidence-based ideas for improving American education. These applicants in particular face challenges in identifying schools or LEAs with which to partner given their limited experience in the field. Further, organizations without existing relationships in education may find it difficult to secure the private sector matching funds required of all grantees under ARRA. Receiving OMB's approval on an emergency basis is thus essential to launching the Portal and supporting improved student achievement through school improvement and reform, one of the primary objectives of ARRA. Failure to approve this emergency request

would cause substantial harm to precisely the applicants that the i3 program hopes to entice and as a direct result would negatively impact the schools and students who would benefit most from new and improved approaches to education.

Frequency: On Occasion.

Affected Public: Business or other for-profits; Federal Government; Individuals or households; Not-for-profit-institutions; Private Sector; State, Local or Tribal Governments.

Reporting and Recordkeeping Hour Burden:

Responses: 4,850.

Burden Hours: 63,050.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4204. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–1199 Filed 1–21–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: United States (U.S.)-Brazil Higher Education Consortia Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116M.

Dates:

Applications Available: January 22, 2010.

Deadline for Transmittal of Applications: March 25, 2010.

Deadline for Intergovernmental Review: May 25, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas in postsecondary education or approaches to improve postsecondary education.

Priorities: This competition includes one absolute priority and one invitational priority.

Absolute Priority: This priority is from the notice of final priorities for this program, published in the **Federal Register** on December 11, 2009 (74 FR 65764). For FY 2010 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

U.S.-Brazil Higher Education Consortia Program (84.116M).

This priority supports the formation of educational consortia of U.S. and Brazilian institutions. To meet this priority, the applicant must propose a project that supports cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities between the U.S. and Brazil. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution and the applicant in Brazil must be a Brazilian institution. Brazilian institutions participating in any consortium proposal under this priority may apply to the Coordination of Improvement of Personnel of Superior Level (CAPES), Brazilian Ministry of Education, for additional funding under a separate but parallel Brazilian competition.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that support exchanges between Brazilian universities and U.S. minority-serving institutions to increase the participation of underrepresented minorities in the program.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $490,000.

Estimated Range of Awards: $30,000–$35,000 for the first year. $210,000–$250,000 for the four-year duration of the grant.

Estimated Average Size of Awards: $240,000 for the four-year duration of the grant.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Sarah T. Beaton, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7621.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate

your application. You must limit the application narrative (Part III) to no more than 20 pages, using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit only applies to the application narrative (Part III). It does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances, certifications and survey forms. In addition, the page limit does not apply to the one-page abstract, appendices, line item budget, or table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the application narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: January 22, 2010.

Deadline for Transmittal of Applications: March 25, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 25, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the U.S.-Brazil Higher Education Consortia Program—CFDA Number 84.116M-must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sarah T. Beaton, U.S. Department of Education, 1990 K Street, NW., Room 6145, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.116M, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is whether the application demonstrates a bilateral, innovative U.S.-Brazilian approach to training and education.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial

information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following two performance measures will be used by the Department in assessing the success of the FIPSE— Special Focus Competition: U.S.-Brazil Higher Education Consortia Program:

(1) The extent to which funded projects are being replicated (i.e., adopted or adapted by others).

(2) The manner in which projects are being institutionalized and continued after funding.

If funded, you will be asked to collect and report data from your project on steps taken toward achieving the outcomes evaluated by these performance measures (i.e., institutionalization and replication). Consequently, applicants are advised to include these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Institutionalization and replication are important outcomes that ensure the ultimate success of international consortia funded through this program.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sarah T. Beaton, Fund for the Improvement of Postsecondary Education, U.S.-Brazil Higher Education Consortia Program, 1990 K Street, NW., Room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7621.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: January 15, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–1232 Filed 1–21–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Environmental Management; Environmental Management Advisory Board Charter Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board will be renewed for a two-year period beginning January 23, 2010.

The Board provides the Assistant Secretary for Environmental Management (EM) with information and strategic advice on a broad range of corporate issues affecting the EM program. These corporate issues include, but are not limited to, project management and oversight activities, cost/benefit analyses, program performance, human capital development, and contracts and acquisition strategies. Recommendations to the Department of Energy (DOE) on the programmatic resolution of numerous difficult issues will help achieve DOE's objective of the safe and efficient cleanup of its contaminated sites.

Additionally, the renewal of the Environmental Management Advisory Board has been determined to be essential to conduct DOE's business and to be in the public interest in connection with the performance of duties imposed on DOE by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

Further information regarding this Advisory Board may be obtained from Ms. Terri Lamb, Designated Federal Officer, at (202) 586–9007.

Issued in Washington, DC on January 19, 2010.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. 2010–1208 Filed 1–21–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3218–046]

City of Orrville, OH; Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

January 14, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* 3218–046.

c. *Date Filed:* December 28, 2009.

d. *Applicant:* City of Orrville, Ohio.

e. *Name of Project:* Pike Island Hydroelectric Project.

f. *Location:* The unconstructed project was to be located at the U.S. Army Corps of Engineers' Pike Island Locks and Dam on the Ohio River in Ohio County, West Virginia, and Belmont County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* City of Orrville, Ohio, Attn: Daniel R. Lutz, Law Director, 100 N. Vine Street, Orrville, OH 44667; telephone (330) 684–5010, and e-mail: *dlutz@orrville.com;* or City of Orrville, Ohio, Attn: Dave Handwerk, Mayor, 207 N. Main Street, Orrville, OH 44667, telephone (330) 684–5001, and e-mail: *dhandwerk@orrville.com.*

i. *FERC Contact:* Diane M. Murray, Telephone (202) 502–8835 and e-mail: *diane.murray@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: February 16, 2010. Comments, motions to intervene, and protests may be filed electronically via the Internet. *See* 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

k. *Description of Request:* The licensee filed an application to surrender its license for the unconstructed Pike Island Hydroelectric Project. The Licensee has not commenced construction of the project. No ground disturbing activities have occurred.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—All filings must (1) bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1190 Filed 1–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 14, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–30–000.

Applicants: Trans Bay Cable LLC.

Description: Supplemental Filing to Application of Trans Bay Cable LLC.

Filed Date: 01/13/2010.

Accession Number: 20100113–5112.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–947–008; ER08–1297–004; ER02–2559–010; ER01–1071–015; ER02–669–009; ER02–2018–010; ER01–2074–009; ER08–1293–004; ER08–1294–004; ER05–222–006; ER00–2391–010; ER98–2494–013; ER97–3359–015; ER06–9–010; ER09–902–002; ER00–3068–009; ER05–487–006; ER04–127–007; ER03–34–014; ER98–3511–013; ER02–1903–011; ER99–2917–011; ER06–1261–009; ER03–179–008; ER03–1104–011; ER03–1105–011; ER03–1332–005; ER09–138–002; ER08–197–008; ER03–1333–006; ER03–1103–006; ER01–838–009; ER98–3563–013; ER98–3564–014; ER03–1025–005; ER02–2120–007; ER05–714–004; ER01–1972–009; ER98–2076–017; ER03–155–009; ER03–623–009; ER09–1462–001; ER08–250–005; ER07–1157–005; ER04–290–005; ER02–256–002; ER09–988–003; ER09–832–002; ER09–989–003; ER09–990–002; ER05–236–007; ER04–187–007; ER09–1297–001; ER07–174–009; ER08–1296–004; ER07–875–004; ER02–2166–009; ER09–901–002; ER01–2139–013; ER08–1300–004; ER09–900–002; ER03–1375–006.

Applicants: POSDEF Power Company, LP; Ashtabula Wind, LLC; Backbone Mountain Windpower LLC; Badger Windpower LLC; Bayswater Peaking Facility, LLC; Blythe Energy, LLC; Calhoun Power Company LLC; Crystal Lake Wind, LLC; Crystal Lake Wind II, LLC; Diablo Winds, LLC; Doswell Limited Partnership; ESI Vansycle Partners LP; Florida Power & Light Company; FPL Energy Burleigh County Wind, LLC; FPL Energy Cape, LLC; FPL Energy Cabazon Wind, LLC; FPL Energy Green Power Wind, LLC; FPL Energy Hancock County Wind, LLC; FPLE Maine Hydro, LLC; FPL Energy Marcus Hook, L.P.; FPL Energy MH50, LP; FPL Energy Mower County, LLC; FPL Energy New Mexico Wind, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy Oklahoma Wind, LLC; FPL Energy Oliver Wind I, LLC; FPL Energy Oliver Wind II, LLC; FPL Energy Sooner Wind, LLC; FPL Energy South Dakota Wind, LLC; FPL Energy Vansycle LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV LLC; FPL Energy Wyoming, LLC; FPLE Rhode Island State Energy, LP; Gexa Energy LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners LLC; High Winds, LLC ; Jamaica Bay Peaking Facility, LLC; Lake Benton Power Partners II, LLC; Langdon Wind, LLC; Logan Wind Energy LLC; Meyersdale Windpower, LLC; Mill Run Windpower, LLC; NextEra Energy Power Marketing, LLC; NextEra Energy Duane Arnold, LLC; NextEra Energy Point Beach, LLC; NextEra Energy SeaBrook, LLC; Northeast Energy Associates, LP; North Jersey Energy Associates, a L.P.; Northern Colorado Wind Energy, LLC; Osceola Windpower, LLC; Osceola Windpower II, LLC; Peetz Table Wind Energy, LLC; Pennsylvania Windfarms, Inc.; Sky River LLC; Somerset Windpower, LLC; Story Wind, LLC; Victory Garden Phase IV, LLC; Waymart Wind Farm L.P.

Description: Amendment to October 30, 2009 Site Control Quarterly Filing of FPL Group Companies.

Filed Date: 01/13/2010.

Accession Number: 20100113–5086.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 03, 2010.

Docket Numbers: ER08–1360–002.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Notice of Cancellation for Rate Schedule FERC 279 with Utah Municipal Power Agency.

Filed Date: 01/13/2010.

Accession Number: 20100113–0206.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 03, 2010.

Docket Numbers: ER10–385–001.
Applicants: Castleton Energy Services, LLC.
Description: Castleton Energy Services, LLC submits amended application for market based rate authority, associated waivers, blanket approvals, notification of price reporting status and request for category 1 seller determination.
Filed Date: 01/13/2010.
Accession Number: 20100113–0207.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 03, 2010.

Docket Numbers: ER10–425–001.
Applicants: Oceanside Power LLC.
Description: Oceanside Power LLC submits Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: 01/13/2010.
Accession Number: 20100113–0212.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 03, 2010

Docket Numbers: ER10–461–000.
Applicants: Aquilon Power Ltd.
Description: Aquilon Power Ltd. submits an application for authorization to market-based sales of energy and capacity at wholesale.
Filed Date: 01/11/2010.
Accession Number: 20100111–0234.
Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: ER10–472–001.
Applicants: Katahdin Paper Company LLC.
Description: Katahdin Paper Company LLC submits a Notice of Cancellation re the market based rate authority.
Filed Date: 01/13/2010.
Accession Number: 20100113–0213.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 03, 2010.

Docket Numbers: ER10–584–000.
Applicants: American Transmission Company LLC.
Description: American Transmission Company LLC submits an executed Distribution-Transmission Interconnection Agreement with Pardeeville Electric Utility.
Filed Date: 01/12/2010.
Accession Number: 20100112–0208.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 02, 2010.

Docket Numbers: ER10–585–000.
Applicants: ColumbiaGrid.
Description: Avista Corporation submits amendments to the ColumbiaGrid Planning and Expansion Functional Agreement.
Filed Date: 01/12/2010.
Accession Number: 20100112–0204.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 02, 2010.

Docket Numbers: ER10–586–000.
Applicants: Xcel Energy Services Inc.
Description: Xcel Energy Services Inc submits Comanche 3 Test Energy Letter Agreement as a supplement to Public Service Company of Colorado, Second Revised Rate Schedule 52.
Filed Date: 01/12/2010.
Accession Number: 20100112–0205.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 02, 2010.

Docket Numbers: ER10–587–000.
Applicants: BNP Paribas Energy Trading GP.
Description: BNP Paribas Energy Trading GP submits a Tariff Amendment and Notice of Succession.
Filed Date: 01/12/2010.
Accession Number: 20100112–0206.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 02, 2010.

Docket Numbers: ER10–588–000.
Applicants: ISO New England Inc., New England Power Pool
Description: ISO New England Inc *et al.* submits a new Section III.13.1.4.10 to market Rule 1.
Filed Date: 01/12/2010.
Accession Number: 20100112–0207.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 02, 2010.

Docket Numbers: ER10–591–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submit Notice of Cancellation of an Amended and Restated Electric Service Agreement, First Revised Service Agreement No 93 with The Orlando Public Works Authority.
Filed Date: 01/13/2010.
Accession Number: 20100113–0214.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 03, 2010.

Docket Numbers: ER10–592–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submit amended and restated electric service agreement.
Filed Date: 01/13/2010.
Accession Number: 20100113–0215.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 03, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR07–14–006; RR08–6–006; RR09–9–002.
Applicants: North American Electric Reliability Corp.
Description: Partial Compliance Filing of the North American Electric Reliability Corp in Response to Paragraph 36 of October 15 2009 Order on 2010 Business Plans Nad Budgets.
Filed Date: 01/11/2010.
Accession Number: 20100111–5142.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–1109 Filed 1–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC10–43–000]

Longhorn Partners Pipeline L.P.; Notice of Filing

January 14, 2010.

Take notice that on January 6, 2010, Longhorn Partners Pipeline L.P. submitted a request for the waiver of the requirement to file the 2009 FERC Form No. 6 Annual Report from January 1, 2009 through July 29, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 3, 2010.

Kimberly Bose,

Secretary.

[FR Doc. 2010–1191 Filed 1–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC10–42–000]

Longhorn Partners Pipeline L.P.; Notice of Filing

January 14, 2010.

Take notice that on January 6, 2010, Longhorn Partners Pipeline L.P. submitted a request for the waiver of the requirement to file the third quarter 2009 FERC Form No. 6–Q from July 1, 2009 through July 29, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 3, 2010.

Kimberly Bose,

Secretary.

[FR Doc. 2010–1192 Filed 1–21–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0982, EPA–HQ–OAR–2009–0983, and EPA–HQ–OAR–2009–0981; FRL–9105–2]

Agency Information Collection Activities; Proposed Collections; Comment Requests; Information Requirements for Importation of Nonconforming Vehicles; EPA ICR No. 0010.12, OMB Control No. 2060–0095; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program, EPA ICR No. 116.09, OMB Control No. 2060–0060; and Motor Vehicle and Engine Compliance Program Fees, EPA ICR 2080.04, OMB Control No. 2060–0545

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew three existing approved Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). These ICRs are scheduled to expire on July 31, 2010 (Importation of Nonconforming Vehicles and Fees) or August 31, 2010 (Aftermarket Part Certification). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

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

ADDRESSES: Submit your comments, identified by the Docket ID numbers provided for each item in the text, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket Center,(EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments identified by the Docket ID numbers provided for each item in the text. EPA's

policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number 734–214–4869; e-mail address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for each of the ICRs identified in this document (*see* the Docket ID numbers for each ICR that are provided in the text) which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Is the Next Step in the Process for These ICRs?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

What Information Collection Activities or ICRs Does This Apply To?

Docket ID No. EPA–HQ–OAR–2009–0982

Affected entities: Importers (including Independent Commercial Importers) of light duty vehicles or engines, light duty trucks or engines, and highway motorcycles or engines.

Title: Information Collection Request Renewal for Importation of Nonconforming Vehicles.

ICR numbers: EPA ICR No. 0010.12, OMB Control No. 2060–0095.

ICR status: This ICR is currently scheduled to expire on July 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Importers into the U.S. of light duty vehicles, light duty trucks, and on road motorcycles, or the corresponding engines, are required to report and keep records regarding the imports. The collection of this information is mandatory to insure compliance with Federal emissions

requirements. Joint EPA and U.S. Customs Service regulations at 40 CFR 85.1501 *et seq.,* 19 CFR 1273, and 19 CFR 1774, promulgated under the authority of Clean Air Act sections 203 and 208, give authority for the collection of this information. The information is used by program personnel to ensure that all Federal emissions requirements are met, and by State regulatory agencies, businesses, and individuals to verify whether vehicles are in compliance. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2), and the public is not permitted access to information containing personal or organizational identifiers.

Burden Statement: The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 12,005.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 9,526 hours.

Estimated total annual costs: $541,662. This includes an estimated burden cost of $376,711 and an estimated cost of $164,951 for capital investment or maintenance and operational costs.

Docket ID No. EPA–HQ–OAR–2009–0983

Affected entities: Manufacturers or builders of automotive aftermarket parts who seek voluntary EPA certification of an aftermarket part or parts.

Title: Information Collection Request Renewal for Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program.

ICR numbers: EPA ICR No. 0116.09, OMB Control No. 2060–0060.

ICR status: This ICR is currently scheduled to expire on August 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under Section 206(a) of the Clean Air Act (42 U.S.C. 7521), on-highway engine and vehicle manufacturers may not legally introduce their products into US commerce unless EPA has certified that their production complies with applicable emission standards. Per section 207(a), original vehicle manufacturers must warrant that vehicles are free from defects in materials and workmanship that would cause the vehicle not to comply with emission regulations during its useful life. Section 207(a) directs EPA to provide certification to those manufacturers or builders of automotive aftermarket parts that demonstrate that the installation and use of their products will not cause failure of the engine or vehicle to comply with emission standards. An aftermarket part is any part offered for sale for installation in or on a motor vehicle after such vehicle has left the vehicle manufacturer's production line (40 CFR 85.2113(b)). Participation in the aftermarket certification program is voluntary. Aftermarket part manufacturers or builders (manufacturers) electing to participate conduct emission and durability testing as described in 40 CFR part 85, subpart V, and submit data about their products and testing procedures.

Burden Statement: The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 547.

Estimated total annual costs: $19,063. This includes an estimated burden cost of $17,108 and an estimated cost of $1,955 for capital investment or maintenance and operational costs.

Docket ID No. EPA–HQ–OAR–2009–0981

Affected entities: Manufacturers or importers of passenger cars, motorcycles, light trucks, heavy duty truck engines, non-road vehicles or engines, and evaporative emissions components required to receive a certificate of conformity from EPA prior to selling or introducing these products into commerce in the U.S.

Title: Information Collection Request Renewal for Motor Vehicle and Engine Compliance Program Fees.

ICR numbers: EPA ICR No. 2080.04, OMB Control No. 2060–0545.

Affected entities: Manufacturers or importers of passenger cars, motorcycles, light trucks, heavy duty truck engines, non-road vehicles or engines, and evaporative components required to receive a certificate of conformity from EPA prior to selling or introducing these products into commerce in the U.S.

Title: Information Collection Request Renewal for Motor Vehicle and Engine Compliance Program Fees.

ICR numbers: EPA ICR No. 2080.04, OMB Control No. 2060–0545.

ICR status: This ICR is currently scheduled to expire on July 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: As required by the Clean Air Act, EPA has regulations establishing emission standards and other requirements for various classes of vehicles, engines, and evaporative emissions components. These regulations require that compliance be demonstrated prior to EPA granting a "Certificate of Conformity". EPA charges fees for administering this certification program. In 2004 the fees program was expanded to include non-road categories of vehicles and engines, such as several categories of marine engines, locomotives, non-road recreational vehicles, and many non-road compression-ignition and spark-ignition engines. In 2008 the fees program was further expanded to include fees for certification of evaporative system components (primarily fuel lines and fuel tanks). Manufacturers and importers of covered vehicles, engines and components are required to pay the applicable certification fees prior to their certification applications being reviewed. This ICR estimates the paperwork burden of complying with this fees requirement.

Burden Statement: The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 495.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 7.87.

Estimated total annual burden hours: 1,207 hours.

Estimated total annual costs: $100,577. This includes an estimated burden cost of $80,837 and an estimated cost of $19,739 for maintenance and operational costs.

Dated: January 14, 2010.

Karl Simon,

Director, Compliance and Innovative Strategies Division.

[FR Doc. 2010–1185 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2009–0318, FRL–9105–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Land Disposal Restrictions 'No-Migration' Variances (Renewal), EPA ICR Number 1353.09, OMB Control Number 2050–0062

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 22, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2009–0318, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov*, or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Office of Resource Conservation and Recovery (mailcode 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; e-mail address: *vyas.peggy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 22, 2009 (74 FR 48263), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No EPA–HQ–RCRA–2009–0318, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Land Disposal Restrictions 'No-Migration' Variances (Renewal).

ICR numbers: EPA ICR No. 1353.09, OMB Control No. 2050–0062.

ICR Status: This ICR is scheduled to expire on January 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: To receive a variance from the hazardous waste land disposal prohibitions, owner/operators of hazardous waste storage or disposal facilities may petition the Environmental Protection Agency to allow land disposal of a specific restricted waste at a specific site. The EPA Regional Offices will review the petitions and determine if they successfully demonstrate "no migration." The applicant must demonstrate that hazardous wastes can be managed safely in a particular land disposal unit, so that "no migration" of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. If EPA grants the variance, the waste is no longer prohibited from land disposal in that particular unit. If the owner/operator fails to make this demonstration, or chooses not to petition for the variance, best demonstrated available technology (BDAT) requirements of 40 CFR 268.40 must be met before the hazardous wastes are placed in a land disposal unit. This ICR will be merged with ICR No. 1442.19, the Land Disposal Restrictions ICR, when it is renewed next year.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,168 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this ICR are business or other for-profit.

Estimated Number of Respondents: 1.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 3,168 hours.

Estimated Total Annual Cost: $214,314, includes $214,193 annualized labor costs and $121 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: January 15, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–1187 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0427; FRL–9105–6; EPA ICR Number 2046.05, OMB Control Number 2060–0542]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Mercury Cell Chlor-Alkali Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before February 22, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2009–0427, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0427, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Mercury Cell Chlor-Alkali Plants.

ICR Numbers: EPA ICR Number 2046.05, OMB Control Number 2060–0542.

ICR Status: This ICR is scheduled to expire on February 28, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury Cell Chlor-Alkali Plants at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart IIIII.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 808.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Mercury cell chlor-alkali plants.

Estimated Number of Respondents: 9.

Frequency of Response: Occasionally and semiannually.

Estimated Total Annual Hour Burden: 14,553.

Estimated Total Annual Cost: $1,491,712, including $1,417,912 in labor costs, $0 in capital/startup costs, and $73,800 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease of 5 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the adjustment of number of responses associated with the recordkeeping for mass of virgin mercury added to cells. The decrease in Agency burden resulted from an adjustment to the number of initial compliance status and performance test reports requiring review. Since these reports are only one-time burdens, and there are no new sources anticipated in the next three years, the only Agency activity associated with this ICR is to review the semi-annual compliance reports. The burden hours and dollars associated with reviewing the one-time activities were removed from the Agency burden.

Dated: January 15, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–1188 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0428; FRL–9105–5; EPA ICR Number 2050.04, OMB Control Number 2060–0538]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Taconite Iron Ore Processing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before February 22, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0428, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0428, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Taconite Iron Ore Processing (Renewal).

ICR Numbers: EPA ICR Number 2050.04, OMB Control Number 2060–0538.

ICR Status: This ICR is scheduled to expire on February 28, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emissions Standards for Hazardous Air Pollutants (NESHAP) were proposed on December 18, 2002 and promulgated on October 30, 2006. The affected entities are subject to the General Provisions of the NESHAP (40 CFR part 63, subpart A), and any changes, or additions, to the General Provisions specified at 40 CFR part 63, subpart RRRRR.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 22.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain,

or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Taconite iron ore processing plants.

Estimated Number of Respondents: 8.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 651.

Estimated Total Annual Cost: $1,012,546, which includes $754,946 in labor costs, no capital/startup costs, and $257,600 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase of 243 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is not due to any program changes. The change in the burden and cost estimates occurred due to an incorrect calculation of the number of responses in the previous ICR. The existing eight respondents are subject to performance testing twice every five years, or 3.2 respondents per year and was changed from 1.6 respondents per year. The increase in labor costs was also due to an increase in labor rates.

Dated: January 15, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–1189 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8987–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)© of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/.*

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register.**

Draft EISs

EIS No. 20090381, ERP No. D–IBR–K65382–CA, New Melones Lakes Area Resource Management Plan, Implementation, Tuolumne and Calaveras Counties, CA.

Summary: While EPA has no objections to the project as proposed, we requested additional information on impervious surfaces, mine-based pollution and working with Lower Stanislaus River stakeholders to address downstream water quality impairment, and funding. Rating LO.

EIS No. 20090403, ERP No. D–IBW–G29001–TX, Presidio Flood Control Project, Flood Control Improvements and Partial Levee Relocation, Presidio, TX.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20090405, ERP No. D–AFS–J65550–SD, Norbeck Wildlife Project, Proposing to Manage Vegetation to Benefit Game Animals and Bird, Black Hills National Forest, Custer and Pennington Counties, SD.

Summary: EPA has environmental concerns about this project's potential air quality impacts, and recommended additional information and analysis regarding potential air quality impacts and mitigation be included in the FEIS. Rating EC1.

EIS No. 20090408, ERP No. D–AFS–J65551–CO, Rio de los Pinos Vegetation Management Project, Proposes to Salvage Engelmann Spruce Trees that have been Killed by, or are Infested with, Spruce Beetle, Conejos Peak Ranger District, Rio Grande National Forest, Conejos, Rio Grande and Archuleta Counties, CO.

Summary: EPA does not object to the proposed project. Rating LO.

Final EISs

EIS No. 20090383, ERP No. F–BLM–K67058–NV, Bald Mountain Mine North Operations Area Project, Proposes to Expand Current Mining Operations at several Existing Pits, Rock Disposal Areas, Heap Leach Pads, Processing Facilities, and Interpit Area, Combining the Bald Mountain Mine Plan of Operations Boundary and the Mooney Basin Operation Area Boundary, White Pine County, NV.

Summary: EPA continues to have environmental concerns about ground and surface water impacts from contaminated leachate. EPA requested that the ROD include an Adaptive Waste Rock Management Plan and a Water Monitoring and Mitigation Plan.

EIS No. 20090409, ERP No. F–FHW–K40264–CA, Partially Revised Tier 1—Placer Parkway Corridor Preservation Project, Select and Preserve a Corridor for the Future Construction from CA–70/99 to CA 65, Placer and Sutter Counties, CA.

Summary: EPA continues to have environmental concerns about hydrology, floodplain, and air quality impacts.

EIS No. 20090412, ERP No. F–AFS–K65358–CA, Stanislaus National Forest Motorized Travel Management (17305) Plan, Implementation, Stanislaus National Forest, CA.

Summary: EPA continues to have environmental concerns about the travel management planning process, the conversion of closed routes to open, and the enforceability of the new transportation system. In addition, EPA is also concerned that the decision to eliminate wet weather closures and reduce season-of-use limitations would impact forest resources.

EIS No. 20090413, ERP No. F–AFS–K65353–NV, Martin Basin Rangeland Project, Reauthorizing Grazing on Eight Existing Cattle and Horse Allotments: Bradshaw, Buffalo, Buttermilk, Granite Peak, Indian, Martin Basin, Rebel Creek, and West Side Flat Creek, Santa Rosa Ranger District, Humboldt-Toiyabe National Forest, NV.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20090431, ERP No. F–FHW–H40195–MO, East Columbia Transportation Project, To Improve the Transportation Network in Eastern Columbia/Boone *County by:* (1) Extending Route 740 from its Terminus at US–63, along a new Alignment, to I–70 at the existing St. Charles Road Interchange, (2) Improving existing Broadway (Route WW) to Olivet Road and (3) Extending Ballenger Lane, from Future Route 740 to Clark Lane, City of Columbia, Boone County, MO.

Summary: EPA does not object to the proposed project.

Dated: January 19, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–1193 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8987–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 01/11/2010 through 01/15/2010 Pursuant to 40 CFR 1506.9.

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html*. Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100005, Draft Supplement, FHWA, WI, WI–23 Highway Project, Transportation Improve between Fond du Lac and Plymouth, Fond du Lac and Sheboygan Counties, WI, Comment Period Ends: 03/12/2010, Contact: David D. Platz, P.E., 608–829–7500.

EIS No. 20100006, Final EIS, USAF, 00, Rogue River-Siskiyou National Forest, Motorized Vehicle Use, To Enact the Travel Management Rule, Implementation, Douglas, Klamath, Jackson, Curry, Coos and Josephine Counties, OR and Del Norte and Siskiyou Counties, CA, Wait Period Ends: 02/22/2010, Contact: Steve Johnson, 541–552–2900.

EIS No. 20100007, Final EIS, NOAA, 00, Amendment 3 to the Northeast Skate Complex Fishery Management Plan, Implementation of New Management Measures to Rebuild Overfished Skate Stocks, End Overfishing of Skate Fisheries, Gulf of Maine (GOM), Georges Bank (GB), South New England and Mid-Atlantic Regions, Wait Period Ends: 02/22/2010, Contact: Patricia A. Kurkul, 978–281–9250.

EIS No. 20100008, Draft EIS, GSA, 00, International Falls Land Port of Entry Improvements Study, Proposes to Replace the Existing Land Port of Entry, Minnesota along the US and Canada Border, Comment Period Ends: 03/08/2010, Contact: Glen Wittman, 312–353–6871.

EIS No. 20100009, Draft Supplement, BLM, NV, Upper Las Vegas Wash Conservation Transfer Area (CTA), Propose to Establish a Final Boundary, Clark County, NV, Comment Period Ends: 03/22/2010, Contact: Gayle Marrs-Smith, 702–515–5156.

EIS No. 20100010, Draft EIS, USACE, NC, Surf City and North Topsail Beach Project, To Evaluate Coastal Storm Damage Reduction, Topsail Island, Pender and Onslow Counties, NC, Comment Period Ends: 03/08/2010, Contact: Doug Piatkowski, 910–251–4908.

EIS No. 20100011, Final EIS, USFS, CA, Eddy Gulch Late-Successional Reserve Fuels/Habitat Protection Project, To Protect Late-Successional Habitat used by the Northern Spotted Owl and Other Late-Successional-Dependent Species, Salmon River and Scott River Ranger District, Klamath National Forest, Siskiyou County, CA, Wait Period Ends: 02/22/2010, Contact: Connie Hendryx, 530–468–1281.

EIS No. 20100012, Final Supplement, USFS, CA, Pilgrim Vegetation Management Project, Updated Information to Address and Respond to the Specific Issues Identified in the Court Ruling. Implementation, Shasta-Trinity National Forest, Siskiyou County, CA, Wait Period Ends: 02/22/2010, Contact: Emelia H. Barnum, 530–926–9600.

EIS No. 20100013, Draft EIS, BOP, 00, District of Columbia—III Project, Proposal for Contractor-Owned/Operated Facility to House Felons and Criminal Aliens, Possible Sites: Winton Site, Hertford County, NC and Princess Anne Site, Somerset County, MD, Comment Period Ends: 03/08/2010, Contact: Richard Cohn, 202–514–6470.

EIS No. 20100014, Draft Supplement, FHWA, WA, WA–520, I–5 to Medina Bridge Replacement and HOV Project, To Improve Mobility for People and Goods across Lake Washington, in Seattle, King County, WA, Comment Period Ends: 03/08/2010, Contact: Paul Krueger, 206–381–6432.

EIS No. 20100015, Final EIS, USA, 00, PROGRAMMATIC—Louisiana Coastal Area (LCA) Beneficial Use of Dredged Material (BUDMAT) Program Study, To Establish the Structure and Management Architecture of the BUDMAT Program, Implementation, MS, TX and LA, Wait Period Ends: 02/22/2010, Contact: Elizabeth McCasland, 504–862–2021.

EIS No. 20100016, Draft EIS, USN, CA, Silver Strand Training Complex (SSTC) Project, Proposed Naval Training Activities, Cities of Coronado and Imperial Beach, San Diego County, CA, Comment Period Ends: 03/08/2010, Contact: Kent Randall, 619–845–9339.

Dated: January 19, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–1195 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9105–3]

Good Neighbor Environmental Board; Notification of Public Advisory Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee Teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will hold a public teleconference on February 4, 2010 from 1 p.m. to 3 p.m. Eastern Standard Time.

The meeting is open to the public. For further information regarding the teleconference and background materials, please contact Dolores Wesson at the number listed below.

Background: GNEB is a Federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico. *Purpose of Meeting:* The purpose of this teleconference is to discuss and approve the Good Neighbor Environmental Board's Thirteenth Report.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Dolores Wesson at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Dolores Wesson at (202) 564–1351 or e-mail at *wesson.dolores@epa.gov.* To request accommodation of a disability, please contact Dolores Wesson at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: January 12, 2010.

Dolores Wesson,

Designated Federal Officer.

[FR Doc. 2010–1186 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9104–3]

Proposed Issuance of a General NPDES Permit for Small Suction Dredging—Permit Number IDG–37–0000

AGENCY: Environmental Protection Agency.

ACTION: Proposed issuance of a general permit.

SUMMARY: EPA proposes to issue a National Pollutant Discharge Elimination System (NPDES) general permit to placer mining operations in Idaho for small suction dredges (intake nozzle size of 5 inches in diameter or less and with equipment rated at 15 horsepower or less). When issued, the permit will establish effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines, the State of Idaho's Water Quality Standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit is given in the Fact Sheet. This is also notice of the draft section 401 Certification provided by the State of Idaho.

DATES: Interested persons may submit comments on the proposed issuance of the general permit to EPA, Region 10 at the address below. Comments must be postmarked by March 8, 2010. Public Informational Workshops are scheduled in Grangeville, Boise, Salmon and Idaho Falls. The Grangeville workshop will be held on February 22, 2010, from 4 pm until 7 pm. The Boise workshop will be held on February 23, 2010, from 2 pm until 5 pm. The Salmon workshop will be held February 24, 2010, from 4 pm until 7 pm. The Idaho Falls workshop will be held February 25 from 3 pm until 6 pm.

ADDRESSES: Comments on the proposed general permit should be sent to Director, Office of Water and Watersheds; USEPA Region 10; 1200 Sixth Avenue Suite 900, OWW–130; Seattle, Washington 98101. Comments may also be submitted by fax to (206) 553–0165 or electronically to *godsey.cindi@epa.gov.* The Grangeville workshop will be held at the Nez Perce National Forest Service Office, 104 Airport Road. The Boise workshop will be held at Idaho Department of Environmental Quality Officer, Conference Room C, 1410 N. Hilton. The Salmon workshop will be held at the Salmon-Challis National Forest Service Office, 1206 S. Challis Street. The Idaho Falls workshop will be held at the Idaho Department of Fish and Game, 4279 Commerce Circle.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed general permit and Fact Sheet are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov.* These documents may also be found on the EPA Region 10 Web site at *http://yosemite.epa.gov/R10/water.nsf/NPDES+Permits/Permits+Homepage* then click on "Current public comment opportunities."

SUPPLEMENTARY INFORMATION:

EXECUTIVE ORDER 12866: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis "for any proposed rule" for which the agency "is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities." EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that this general permit, as issued, will not have a significant economic impact on a substantial number of small entities.

Dated: January 11, 2010.

Christine Psyk,

Associate Director, Office of Water & Watersheds, Region 10.

[FR Doc. 2010–830 Filed 1–21–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

January 15, 2010.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to

further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 22, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov;* and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov.*). Include in the e-mail the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below, or if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail, contact he person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is seeking emergency processing of this information collection by February 12, 2010.

OMB Control Number: 3060–XXXX.

Title: Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations (Wireless Microphones).

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions and State, local or Tribal government.

Number of Respondents: 7,200 respondents; 129,600 responses.

Estimated Time per Response: .25 hours (15 minutes)—.50 hours (30 minutes).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337.

Total Annual Burden: 32,925 hours.

Total Annual Cost: $1,625,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this new information collection (IC) to the OMB under their emergency processing provisions in 5 CFR 1320.13. The Commission is requesting OMB approval by February 12, 2010 so that the information can go into effect as soon as possible.

The Commission is requesting OMB approval for notice, disclosure and labeling requirements to allow the Commission to implement important disclosure requirements in order to clear the 700 MHz band of wireless microphones and provide them a home in the core TV spectrum, where many wireless microphones are already operating.

First, it is essential for the early clearing mechanism to be available as soon as possible so that public safety and commercial licensees in the 700 MHz band can avoid harmful interference from wireless microphone users still operating in that band. The potential for public harm is particularly apparent in the case of public safety licensees such as police and fire departments. Some public safety licensees are already operating in the 700 MHz band, and more are expected to commence operation soon. Interference from wireless microphones could affect the ability of these officials to communicate during an emergency and therefore could create a serious threat to public health and safety.

Second, the point-of-sale disclosure requirement is also essential for a successful transition of wireless microphones out of the 700 MHz band. The Commission anticipates that many wireless microphone users currently operating in the 700 MHz band will have to purchase or lease new equipment capable of operating in the core TV spectrum. The point-of-sale disclosure requirement will help these consumers make an educated decision as they obtain new microphones, and it will help them operate in the core TV spectrum without causing interference to other services in that spectrum.

Third, a label on 700 MHz band wireless microphones bound for export will help to ensure that these wireless microphones do not continue to be made available for use in the United States, in contravention of our efforts to remove them from the band.

The effective date proposed by the Commission provides for these early clearing and consumer disclosure measures to commence as early as possible. Due to the limited period of time for which two of the requirements (the early clearing mechanism and the point-of-sale disclosure requirements) will be in effect, and the urgent need to ensure that wireless microphone users transition out of the 700 MHz band, we find there is good cause to obtain emergency OMB approval for these requirements, so that the requirements may take effect as soon as practicable thereafter.

Marlene F. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–1152 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 10–35]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the "Bureau") gives notice of Mr. Leonard Douglas LaDuron's suspension from the schools and libraries universal service support mechanism (or "E-Rate Program"). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. LaDuron, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by February 22, 2010. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or February 22, 2010, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

ADDRESSES: Federal Communications Commission, Enforcement Bureau,

Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 10–35, which was mailed to Mr. LaDuron and released on January 12, 2010. The complete text of the notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The suspension letter follows:

January 12, 2010.

DA 10–35

Via Certified Mail Return Receipt Requested and e-mail *(jmorris@bowse-law.com) and facsimile (913) 649–9399*

Mr. Leonard Douglas LaDuron, c/o Jeffrey D. Morris, Berkowitz Oliver Williams Shaw & Eisenbrandt, LLP, 4200 Somerset, Suite #150, Prairie Village, KS 66208–5213.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–10–IH–0108

Dear Mr. LaDuron: The Federal Communications Commission ("FCC" or "Commission") has received notice of your guilty plea for conspiracy to commit mail fraud, wire fraud and making false statements in violation of 18 U.S.C. 2, 371, 1341, 1343 and 1001 in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[3] On June 29, 2009, you, Leonard Douglas LaDuron,[4] pleaded guilty to conspiracy to commit mail fraud, wire fraud, and making false statements in connection with your participation in the E-Rate program.[5] Specifically, between 1999 and 2003, you held yourself out as an E-Rate consultant and salesperson for the purpose of defrauding the E-Rate Program.[6] You admitted that you and others devised a scheme to defraud school districts and the E-Rate program by steering contracts to various companies that directly benefited you, your conspirators, and your companies, primarily Elephantine Corporation, Serious ISP, Inc., and Myco Technologies, Inc.[7] In furtherance of the scheme, you submitted fraudulent and false documents to the Universal Service Administrative Company ("USAC") claiming schools were paid or would pay their co-pay, submitted other materially false and fraudulent documents, and concealed your true identities, ownerships, and relationships from the school districts to induce schools to select your companies as service providers in violation of E-Rate Program rules.[8] Ultimately, your scheme induced at least ten schools, in seven different states, to award contracts to your companies.[9]

On December 23, 2009, you were sentenced to serve fifty-seven months in federal prison, to be followed by thirty-six months of supervised release for your role in the scheme to defraud the E-Rate program. You were also ordered to pay $238,609 in restitution for your role in the scheme.[10]

Pursuant to section 54.8 of the Commission's rules, your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries support mechanism.[11]

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[1] Any further reference in this letter to "your conviction" refers to your guilty plea and subsequent conviction of counts one and three for conspiracy to commit mail fraud, wire fraud and making false statements. *United States* v. *Leonard Douglas LaDuron,* Criminal Docket No. 2:08CR20055–001–KHV, Petition to Enter Plea (D. Kan. filed June 29, 2009 and entered June 30, 2009) ("*Leonard LaDuron Plea*"); *United States* v. *Leonard Douglas LaDuron,* Criminal Docket No. 2:08CR20055–001–KHV, Judgment (D. Kan. filed and entered Dec. 23, 2009) ("*Leonard LaDuron Judgment*"). *See also United States* v. *Leonard Douglas* "*Doug*" *LaDuron,* Criminal Docket No. 2:08CR20055–001–KHV, Indictment, 1–10, 11–14 (D. Kan. filed Apr. 24, 2009 and entered Apr. 25, 2009) (Counts 1 and 3) ("*LaDuron Indictment*").

[2] 47 CFR § 54.8. *See also* 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("*Second Report and Order*") (adopting section 54.521 of the Commission's rules to suspend and debar parties from the E-Rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (Program Management Order) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized." 47 CFR 54.8(a)(6).

[4] Also known as Doug LaDuron. *See Leonard LaDuron Indictment.*

[5] *See supra* note 1. *See Leonard LaDuron Plea. See also* Department of Justice Press Release (Dec. 16, 2009), *available at http://kansascity.fbi.gov/dojpressrel/pressrel09/kc121609a.htm* (*DOJ December 2009 Press Release*).

[6] *LaDuron Indictment* at 4–5.

[7] *LaDuron Indictment* at 4; *Leonard LaDuron Plea* at 1–2.

[8] *LaDuron Indictment* at 4–10, 11–12; Leonard LaDuron Plea at 1–3.

[9] *LaDuron Indictment* at 8. *See also DOJ December 2009 Press Release* at 1

[10] *See Leonard LaDuron Judgment* at 1–3, 5 (ordering $238,609 for your role in the schemes; $217,771 in restitution to USAC and $20,838). *See also DOJ December 2009 Press Release* at 1.

[11] 47 CFR 54.8(b)–(e); *see also* 47 CFR 54.8(a)(4). *See* also *Second Report and Order,* 18 FCC Rcd at 9225–27, ¶¶ 67–74.

Such activities include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[12]

Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**, pending the Bureau's final debarment determination.[13] In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation.[14] Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[15] Such requests, however, will not ordinarily be granted.[16] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[17] The Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[18]

II. Initiation of Debarment Proceedings

Your guilty plea and conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[19] Therefore, pursuant to section 54.8 of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.[20]

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[21] Absent extraordinary circumstances, the Bureau will debar you.[22] The Bureau will decide any request for reversal or limitation of debarment within 90 days of receipt of such request.[23] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[24]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[25] The Bureau may, if necessary to protect the public interest, extend the debarment period.[26]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4–C330, Washington, DC 20554, with a copy to Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Michele.Berlove@fcc.gov.*

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov.*

Sincerely,
Hillary S. DeNigro,
Chief, Investigations & Hearings Division, Enforcement Bureau.

[FR Doc. 2010–1219 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

[12] 47 CFR 54.8(a)(1); *see also* 47 CFR 54.8(a)(3).

[13] 47 CFR 54.8(a)(7), (e)(1); *see also Second Report and Order,* 18 FCC Rcd at 9226, ¶ 69.

[14] 47 CFR 54.8(e)(4).

[15] *Id.*

[16] *Id.*

[17] 47 CFR 54.8(e)(5).

[18] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5), (f).

[19] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanism." 47 CFR 54.8(a)(1).

[20] *See* 47 CFR 54.8(b), (c).

[21] *See* 47 CFR 54.8(e)(3), (e)(5); *see also Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[22] 47 CFR 54.8(e)(5); *see also Second Report and Order,* 18 FCC Rcd at 9227, ¶ 74.

[23] *See* 47 CFR 54.8(e)(5), (f); *see also Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[24] 47 CFR 54.8(e)(5). The Commission may reverse a debarment or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[25] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.8(d), (g).

[26] 47 CFR 54.8(g).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

2009 HHS Poverty Guidelines Extended Until March 1, 2010

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice advises that, pursuant to section 1012 of the Department of Defense Appropriations Act, 2010, the 2009 Department of Health and Human Services (HHS) poverty guidelines will remain in effect until updated 2010 poverty guidelines are published, which shall not take place before March 1, 2010.

DATES: *Effective Date:* Date of publication.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, State, or local office that is responsible for that program. For information about poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, contact

Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 690–7507—or visit *http://aspe.hhs.gov/poverty/*.

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I–864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1–800–375–5283.

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), contact the Office of the Director, Division of Facilities Compliance and Recovery, Health Resources and Services Administration, HHS, Room 10–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. To speak to a staff member, please call (301) 443–5656. To receive a Hill-Burton information package, call 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland). You also may visit *http://www.hrsa.gov/hillburton/default.htm*.

For information about the number of people in poverty, visit the Poverty section of the Census Bureau's Web site at *http://www.census.gov/hhes/www/poverty/poverty.html* or contact the Census Bureau's Demographic Call Center Staff at (301) 763–2422 or 1–866–758–1060 (toll-free).

SUPPLEMENTARY INFORMATION: Under authority of section 1012 of the Department of Defense Appropriations Act, 2010 (Pub. L. 111–118), the HHS poverty guidelines that were published in the **Federal Register** (74 FR 4199) on January 23, 2009, shall remain in effect until the Secretary of Health and Human Services publishes updated poverty guidelines for 2010, which shall not take place before March 1, 2010. The 2009 poverty guideline figures which shall remain in effect are given below.

2009 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family	Poverty guideline
1	$10,830
2	14,570
3	18,310
4	22,050
5	25,790
6	29,530
7	33,270
8	37,010

For families with more than 8 persons, add $3,740 for each additional person.

2009 POVERTY GUIDELINES FOR ALASKA

Persons in family	Poverty guideline
1	$13,530
2	18,210
3	22,890
4	27,570
5	32,250
6	36,930
7	41,610
8	46,290

For families with more than 8 persons, add $4,680 for each additional person.

2009 POVERTY GUIDELINES FOR HAWAII

Persons in family	Poverty guideline
1	$12,460
2	16,760
3	21,060
4	25,360
5	29,660
6	33,960
7	38,260
8	42,560

For families with more than 8 persons, add $4,300 for each additional person.

Dated: January 19, 2010.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2010–1234 Filed 1–21–10; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0511]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medicated Feed Mill License Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 22, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0337. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medicated Feed Mill License Application—(OMB Control No. 0910–0337)—Extension

The Animal Drug Availability Act (ADAA) of October 9, 1996, amended section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b) to replace the system for the approval of specific medicated feed with a general licensing system for feed mills. Before passage of the ADAA, medicated feed manufacturers were required to obtain approval of Medicated Feed Applications (MFAs), in order to manufacture certain types of medicated feeds. An individual approved MFA was required for each and every applicable medicated feed. The ADAA streamlined the paperwork process for gaining approval to manufacture medicated feeds by replacing the MFA system with a facility license for each medicated feed manufacturing facility.

In the **Federal Register** of October 28, 2009 (74 FR 55556), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
515.10(b)	20	1	20	0.25	5
515.11(b)	75	1	75	0.25	18.75
515.23	40	1	40	0.25	10
515.30(c)	0.15	1	0.15	24	3.6
Total Burden Hours					37.35

[1] There are no capital costs or maintenance costs associated with this information collection.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
510.305	1,000	1	1,000	0.03	30

[1] There are no capital costs or maintenance costs associated with this information collection.

The estimated annual reporting burden on industry is 37.35 hours as shown in table 1 of this document. Industry estimates it takes about 1/4 hour to submit the application. We estimate 135 original and supplemental applications, and voluntary revocations for a total of 33.75 hours (135 submissions x 1/4 hour). An additional 3.6 hours is added for the rare notice of opportunity for a hearing to not approve or revoke an application. Finally, we estimate 30 hours for maintaining and retrieving labels as required by 21 CFR 510.305 and shown in table 2 of this document. We estimated .03 hours for each of approximately 1,000 licensees. Thus, the total annual burden for reporting and recordkeeping requirements is estimated be 67.35 hours.

Dated: January 15, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1154 Filed 1–21–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0017]

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

Application for Training (OMB No. 0920–0017 Exp. 3/31/2010)—Extension—Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

OWCD requests an additional three years to continue CDC's and the Agency for Toxic Substances and Disease Registry's (ATSDR's) use of the training application forms 32.1 and 36.5 (50,000 students × 5 minutes for form 32.1, and 24,000 students × 5 minutes for form 36.5). These instruments have served and are proposed to continue serving as official training applications forms used for training activities conducted by the Centers for Disease Control and Prevention (CDC).

CDC offers public health training activities to professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, State and Federal agencies, and State and local health departments apply for training to learn up-to-date public health practices. CDC's training activities include laboratory training, classroom study, online training, and distance learning.

CDC uses training application forms to collect information necessary to manage and conduct training pertinent to the agency's mission. This information allows CDC to send confirmation of registration to participants, provide certificates of attendance or continuing education credits as proof of participants' attendance, and generate management reports to identify training needs, design courses, select location for courses, and evaluate programs.

Since the previous approval, there have been no changes to the information collection instruments; however, the number of annual responses has increased, simultaneously increasing burden hours.

There are no costs to the respondents other than their time. The total estimated annualized burden is 6,167 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Type of forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Laboratorians	Form 32.1	50,000	1	5/60
Nurses	Form 36.5	12,000	1	5/60
Doctors	Form 36.5	12,000	1	5/60

Dated: January 18, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1165 Filed 1–21–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0222]

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 requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. 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

Questionnaire Design Research Laboratory (QDRL) 2010–2012, (OMB No. 0920–0222 exp. 2/28/2010)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data to support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

The Questionnaire Design Research Laboratory (QDRL) conducts questionnaire pre-testing and evaluation activities for CDC surveys (such as the NCHS National Health Interview Survey, OMB No. 0920–0214) and other federally sponsored surveys. NCHS is requesting 3 years approval of OMB for this extension.

The QDRL conducts cognitive interviews, focus groups, mini field-pretests, and experimental research in laboratory and field settings, both for applied questionnaire evaluation and more basic research on response errors in surveys.

The most common questionnaire evaluation method is the cognitive interview. In a cognitive interview, a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, but also probes the participant in depth about interpretations of questions, recall processes used to answer them, and adequacy of response categories to express answers, while noting points of confusion and errors in responding. Interviews are generally conducted in small rounds of 20–30 interviews.

Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. There are no costs to respondents other than their time. The total estimated annualized burden hours are 625 hours.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents per year	Number of responses per respondent	Average burden per response (in hours)
Test respondents	500	1	1.25

Dated: January 15, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1166 Filed 1–21–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0612]

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

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting

System (OMB #0920–0612, exp. 1/31/2010)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cardiovascular disease (CVD), which includes heart disease, myocardial infarction, and stroke, is the leading cause of death for women in the United States, and is largely preventable. The WISEWOMAN program (Well-Integrated Screening and Evaluation for Women Across the Nation), administered by the Centers for Disease Control and Prevention (CDC), was established to examine ways of improving the delivery of services for women who have limited access to health care and elevated risk factors for CVD. The program focuses on reducing CVD risk factors and provides screening services for select risk factors such as elevated blood cholesterol, hypertension and abnormal blood glucose levels. The program also provides lifestyle interventions and medical referrals. The WISEWOMAN program serves women who are participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), also administered by CDC.

CDC requests OMB approval to continue collecting information from WISEWOMAN grantees for three years, with changes. There will be a net decrease in the total annualized burden hours. Although the number of funded grantees will increase from 15 to 21, the burden per respondent will decrease due to changes in the data collection plan and schedule. The collection of cost information will be discontinued and the Progress Report will be collected semi-annually instead of quarterly.

Twice per year, each grantee will electronically transmit a Minimum Data Elements (MDE) dataset that contains information about the women served through the WISEWOMAN program, including their demographics, health status, CVD risk factors, referrals and participation in lifestyle interventions. In addition, each grantee will submit two written progress reports per year. The progress reports provide a narrative summary of grantee activities, as well as a discussion of each grantee's progress toward meeting stated programmatic objectives. The information collected from grantees is used to assess the impact of the WISEWOMAN program. The overall program evaluation is designed to demonstrate how WISEWOMAN can obtain more complete health data on vulnerable populations, promote public education about disease incidence and risk-factors, improve the availability of screening and diagnostic services for under-served women, ensure the quality of services provided to under-served women, and develop strategies for improved interventions.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,680.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
WISEWOMAN Grantees	Screening and Assessment MDEs	21	2	16
	Intervention MDEs	21	2	8
	Progress Report	21	2	16

Dated: January 15, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1167 Filed 1–21–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0246]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 22, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0509. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile (OMB Control Number 0910–0509)—Extension

As a direct result of discussions that have been adjunct to the U.S./Chile Free Trade Agreement, Chile has recognized FDA as the competent U.S. food safety authority and has accepted the U.S. regulatory system for dairy inspections. Chile has concluded that it will not require individual inspections of U.S. firms by Chile as a prerequisite for trade, but will accept firms identified by FDA as eligible to export to Chile. Therefore, in the **Federal Register** of June 22, 2005 (70 FR 36190), FDA announced the availability of a revised guidance document entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile." The guidance can be found at *http://www.cfsan.fda.gov/guidance.html*. The guidance document explains that FDA has established a list that is provided to the government of Chile and posted on *http://*

www.cfsan.fda.gov/~comm/expcllst.html, which identifies U.S. dairy product manufacturers/processors that have expressed interest to FDA in exporting dairy products to Chile, are subject to FDA jurisdiction, and are not the subject of a pending judicial enforcement action (i.e., an injunction or seizure) or a pending warning letter. The term "dairy products," for purposes of this list, is not intended to cover the raw agricultural commodity raw milk. Application for inclusion on the list is voluntary. However, Chile has advised that dairy products from firms not on this list could be delayed or prevented by Chilean authorities from entering commerce in Chile. The guidance explains what information firms should submit to FDA in order to be considered for inclusion on the list and what criteria FDA intends to use to determine eligibility for placement on the list. The document also explains how FDA intends to update the list and how FDA intends to communicate any new information to Chile. Finally, the guidance notes that FDA considers the information on this list, which is provided voluntarily with the understanding that it will be posted on FDA's Web site and communicated to, and possibly further disseminated by, Chile, to be information that is not protected from disclosure under 5 U.S.C. 552(b)(4). Under the guidance, FDA recommends that U.S. firms that want to be placed on the list send the following information to FDA: (1) Name and address of the firm and the manufacturing plant; (2) name, telephone number, and e-mail address (if available) of the contact person; (3) a list of products presently shipped and expected to be shipped in the next 3 years; (4) identities of agencies that inspect the plant and the date of last inspection; (5) plant number and copy of last inspection notice; and (6) if other than an FDA inspection, copy of last inspection report. FDA requests that this information be updated every 2 years.

In the **Federal Register** of June 4, 2009 (74 FR 26867), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two letters in response, each containing one or more comments. The comments were outside the scope of the comment request in the notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
New written requests to be placed on the list	15	1	15	1.5	23
Biannual update	88	1	88	1.0	88
Occasional updates	25	1	25	0.5	13
Total					124

[1] There are no capital or operating and maintenance costs associated with this collection of information.

The estimate of the number of firms that will submit new written requests to be placed on the list, biannual updates and occasional updates is based on the FDA's experience maintaining the list over the past 4 years. The estimate of the number of hours that it will take a firm to gather the information needed to be placed on the list or update its information is based on FDA's experience with firms submitting similar requests. FDA believes that the information to be submitted will be readily available to the firms.

To date, over 175 producers have sought to be included on the list. FDA estimates that, each year, approximately 15 new firms will apply to be added to the list. We estimate that a firm will require 1.5 hours to read the guidance, gather the information needed, and to prepare a communication to FDA that contains the information and requests that the firm be placed on the list for a total of 22.5 hours, rounded to 23. Under the guidance, every 2 years each producer on the list must provide updated information in order to remain on the list. FDA estimates that each year approximately half of the firms on the list, 88 firms (175 x 0.5 = 87.5, rounded to 88), will resubmit the information to remain on the list. We estimate that a firm already on the list will require 1.0 hours to biannually update and resubmit the information to FDA, including time reviewing the information and corresponding with FDA, for a total of 88 hours. In addition, FDA expects that, each year, approximately 25 firms will need to submit an occasional update and each firm will require 0.5 hours to prepare a communication to FDA reporting the change, for a total of 12.5 hours, rounded to 13.

Dated: January 15, 2010.

David Dorsey

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1153 Filed 1–21–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Advanced Education Nursing Traineeship (AENT) and Nurse Anesthetist Traineeship (NAT) (OMB No. 0915–0305) [Extension]

The Health Resources and Services Administration (HRSA) provides training grants to educational institutions to increase the number of advanced education nurses through the Advanced Education Nursing Traineeship (AENT) Program and the Nurse Anesthetist Traineeship (NAT) Program.

HRSA developed the AENT and NAT tables for the application guidances and the Nurse Traineeship Database for the two nursing traineeship programs. The AENT and NAT tables are used annually by grant applicants that are applying for AENT and NAT funding. The funds appropriated for the AENT and NAT programs are distributed among eligible institutions based on a formula. Award amounts are based on enrollment and graduate data reported on the tables and two funding factors (Statutory Funding Preference and Statutory Special Consideration).

The AENT and NAT tables include information on program participants such as the number of enrollees, projected data on enrollees and graduates for the following academic year, number of trainees supported, number of graduates, number of graduates supported and the types of programs they are enrolling into and/or from which they are graduating. AENT and NAT applicants will have a single access point to submit their grant applications including the tables. Applications are submitted in two phases: Grants.gov (Phase 1) and the HRSA Electronic Handbooks (Phase 2). These tables will be available electronically through the HRSA Electronic Handbooks (Phase 2) for applicants to submit their AENT and/or NAT grant application(s). The tables are also used in the Nurse Traineeship Database which is used by Division of Nursing staff and not the applicants.

Data from the tables will be used in the award determination and validation process. Additionally, the data will be used to ensure programmatic compliance, report to Congress and policymakers on the program accomplishments, and formulate and justify future budgets for these activities submitted to OMB and Congress.

The burden estimate for this project is as follows: AENT increased from 1 hour to 1.5 hours due to the revisions of AENT Tables 1, 2, 3 and 4 to capture comprehensive data to provide for more detailed data analysis of the AENT Program. NAT burden estimate is increased from 1 hour to 1.5 hours in fiscal year 2011 due to the additional data collection.

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
AENT	500	1	500	1.5	750
NAT	100	1	100	1.5	150
Total	600	.....	600	.....	900

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: January 14, 2010.

Sahira Rafiullah,

Deputy Director, Division of Policy Review and Coordination.

[FR Doc. 2010–1173 Filed 1–21–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational Research Center in Behavioral Science.

Date: February 19, 2010.

Time: 12 p.m. to 4 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: Serena P. Chu, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609. 301–443–0004. *sechu@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Identification and Characterization of Sensitive Periods for Neurodevelopment in Studies of Mental Illness. *Date:* February 22–23, 2010. *Time:* 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Seasons Hotel DTRS Washington, LLC, 2800 Pennsylvania Avenue, NW., Washington, DC 20007.

Contact Person: Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609. 301–402–6807. *libbeym@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Eating Disorders.

Date: February 23, 2010.

Time: 1:30 p.m. to 4 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: Serena P. Chu, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609. 301–443–0004. *sechu@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1221 Filed 1–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Repository for Mouse Models for Cytogenetic Disorders.

Date: February 16, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304. (301) 435–6680. *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1222 Filed 1–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: March 3–4, 2010.

Open: March 3, 2010, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Closed: March 3, 2010, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Closed: March 4, 2010, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: March 3–4, 2010.

Open: March 3, 2010, 5 p.m. to 5:30 p.m.

Agenda: To review procedures and discuss policies.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: March 3, 2010, 5:30 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: March 4, 2010, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: March 10–11, 2010.

Open: March 10, 2010, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: The Westin Hotel, 400 Courthouse Square, Alexandria, VA 22314.

Closed: March 10, 2010, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Hotel, 400 Courthouse Square, Alexandria, VA 22314.

Closed: March 11, 2010, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Hotel, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1252 Filed 1–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, ARRA STRB FEB MTG.

Date: February 16–19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, 6701 Democracy Blvd. Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, 301–435–0806, *nelsonbj@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel.

Date: February 17–18, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: Hilton Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mohan Viswanathan, PhD, Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1084, MSC 4874, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov.*

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

Date: February 18, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville, 1750 Rockville Pike, Rockville, MD.

Contact Person: Bonnie B. Dunn, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1074, MSC 4874, Bethesda, MD 20892–4874, 301–435–0824, *dunnbo@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel.

Date: February 23–24, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Guo Zhang, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1064, MSC 4874, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: January 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1227 Filed 1–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7017–N2]

Medicare Program; Meeting of the Advisory Panel on Medicare Education; Cancellation of the February 3, 2010 Meeting and Announcement of the March 31, 2010 Meeting

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

ACTION: Notice of meeting.

SUMMARY: This notice announces the cancellation of the meeting of the Advisory Panel on Medicare Education (the Panel) that was published in the December 18, 2009 **Federal Register** (74 FR 67240–67241). This notice also announces a public meeting on March 31, 2010. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: *Meeting Date:* Wednesday, March 31, 2010 from 8:30 a.m. to 3 p.m., eastern daylight time (e.d.t.).

Deadline for Meeting Registration, Presentations and Comments: Wednesday, March 24, 2010, 5 p.m., e.d.t.

Deadline for Requesting Special Accommodations: Wednesday, March 17, 2010, 5 p.m., e.d.t.

ADDRESSES: *Meeting Location:* Hilton Washington Hotel Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036, (202) 265–6800.

Meeting Registration, Presentations, and Written Comments: Cindy Falconi, Acting Designated Federal Official, Division of Forum and Conference Development, Office of External Affairs, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–13–05, Baltimore, MD 21244–1850 or contact Ms. Falconi via e-mail at *Cindy.Falconi@cms.hhs.gov*.

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the Acting Designated Federal Official at the address listed in the "**ADDRESSES**" section of this notice or by telephone at the number listed in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice by the date listed in the "**DATES**" section of this notice.

FOR FURTHER INFORMATION CONTACT: Cindy Falconi, 410–786–6452. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/FACA/04_APME.asp*) for additional information and updates on committee activities. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is "in the public interest in connection with the performance of duties imposed * * * by law." Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for "activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options."

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1311(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on January 21, 2009 (74 FR 13442, March 27, 2009). The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

• To provide recommendations on the development and implementation of a national Medicare education program that describes benefit options under Medicare.

• To enhance the Federal government's effectiveness in informing the Medicare consumer.

• To make recommendations on how to expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.

• To assemble an information base of best practices for helping consumers evaluate benefit options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Gwendolyn T. Bronson, SHINE/SHIP Counselor, Massachusetts SHINE Program; Dr. Yanira Cruz, President and Chief Executive Officer, National Hispanic Council on Aging; Stephen L. Fera, Vice President, Social Mission Programs, Independence Blue Cross; Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Nan Kirsten-Forté, Executive Vice President, Consumer Services, WebMD; Richard Frank, M.D., Director Cancer Research, Whittingham Cancer Center at Norwalk Hospital; Dr. Carmen R. Green, Director, Pain Research Division, Associate Professor, Anesthesiology, University of Michigan Health System; Dr. Jessie C. Gruman, President and Chief Executive Officer, Center for the Advancement of Health; Cindy Hounsell, J.D., President, Women's Institute for a Secure Retirement; Kathy Hughes, Vice Chairwoman, Oneida Nation; Gail Hunt, President and Chief Executive Officer, National Alliance for Caregiving; Deeanna Jang, Policy Director, Asian and Pacific Islander American Health Forum; Warren Jones, M.D., Executive Director, Mississippi Institute for Improvement of Geographic Minority Health; Dr. Andrew M. Kramer, Professor of Medicine, University of Colorado, Denver; John Lui, Ph.D., Executive Director, Stout Vocational Rehabilitation Institute; Sandy Markwood, Chief Executive Officer, National Area Agencies on Aging; David Roberts, M.P.A., Vice President, Government Relations, Healthcare Information and Management Systems Society; Julie Bodën Schmidt, Associate Vice President, Training and Technical Assistance Department, National Association of Community Health Centers; Rebecca Snead, Executive Vice President and Chief Executive Officer, National Alliance of State Pharmacy Associations; Donna Yee, Ph.D., Chief Executive Officer, Asian Community Center of Sacramento Valley.

The agenda for the March 31, 2010 meeting will include the following:

• Recap of the previous (October 20, 2009) meeting.

• Subgroup Committee Work Summary.

• Medicare Outreach and Education Strategies.

• Public Comment.

• Listening Session with CMS Leadership.

• Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the Acting Designated Federal Official at the address listed in the "**ADDRESSES**" section of this notice by the date listed in the "**DATES**" section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to the Acting Designated Federal Official at the address listed in the "**ADDRESSES**" section of this notice by the date listed in the "**DATES**" section of this notice.

Individuals requiring sign language interpretation or other special accommodations should contact the Acting Designated Federal Official at the address listed in the "**ADDRESSES**" section of this notice by the date listed in the "**DATES**" section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Public Law 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 20, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–1334 Filed 1–21–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1566–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council, March 8, 2010

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

ACTION: Notice.

SUMMARY: This notice announces a quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Council will meet to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary of Health and Human Services. This meeting is open to the public.

DATES: *Meeting Date:* Monday, March 8, 2010, from 8:30 a.m. to 5 p.m., eastern standard time (e.s.t.).

Deadline for Registration without Oral Presentation: Thursday, March 4, 2010, 12 noon, e.s.t.

Deadline for Registration of Oral Presentations: Friday, February 19, 2010, 12 noon, e.s.t.

Deadline for Submission of Oral Remarks and Written Comments: Wednesday, February 24, 2010, 12 noon, e.s.t.

Deadline for Requesting Special Accommodations: Tuesday, March 2, 2010, 12 noon, e.s.t.

ADDRESSES: *Meeting Location:* The meeting will be held in the Multipurpose Room, at the CMS Single Site campus, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Testimony: Testimonies should be mailed to Kelly Buchanan, Designated Federal Official (DFO), Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop C4–13–07, Baltimore, MD 21244–1850, or contact the DFO via e-mail at *PPAC_hhs@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Kelly Buchanan, DFO, (410) 786–6132, or e-mail *PPAC_hhs@cms.hhs.gov.* News media representatives must contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free), (410) 786–9379 local) or the Internet at *http://www.cms.hhs.gov/home/regsguidance.asp* for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Secretary of Health and Human Services (the Secretary) is mandated by section 1868(a)(1) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain

proposed changes in regulations and manual instructions related to physician services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the Council's consultation must occur before **Federal Register** publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) not later than December 31 of each year.

The Council consists of 15 physicians, including the Chair. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms.

Section 1868(a)(2) of the Act requires that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Section 1868(a)(3) of the Act provides for payment of expenses and per diem for Council members in the same manner as members of other advisory committees appointed by the Secretary. In addition to making these payments, the Department of Health and Human Services and CMS provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs in a manner to ensure appropriate balance of the Council's membership.

The Council held its first meeting on May 11, 1992. The current members are: Chiledum A. Ahaghotu, M.D.; John E. Arradondo, M.D., MPH; Vincent J. Bufalino, M.D., Chairperson; Joseph A. Giaimo, D.O.; Pamela A. Howard, M.D.; Roger L. Jordan, O.D.; Janice A. Kirsch, M.D.; Tye J. Ouzounian, M.D.; Jeffrey A. Ross, DPM, M.D.; Jonathan E. Siff, M.D., MBA; Fredrica E. Smith, M.D.; Richard E. Smith, M.D.; Arthur D. Snow, Jr., M.D.; Christopher J. Standaert, M.D.; and Karen S. Williams, M.D.

II. Meeting Format and Agenda

The meeting will commence with the Council's Executive Director providing a status report, and the CMS responses to the recommendations made by the Council at the December 7, 2009 meeting, as well as prior meeting recommendations. Additionally, an update will be provided on the Physician Regulatory Issues Team. In accordance with the Council charter, we are requesting assistance with the following agenda topics:

- Provider Enrollment and Chain Ownership System (PECOS) Update.
- Fraud and Abuse Update.
- Electronic Health Records (EHR) Update.

For additional information and clarification on these topics, contact the DFO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to present a 5-minute oral testimony on agenda issues must register with the DFO by the date listed in the **DATES** section of this notice. Testimony is limited to agenda topics only. The number of oral testimonies may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to the DFO for distribution to Council members for review before the meeting by the date listed in the **DATES** section of this notice. Physicians and medical organizations not scheduled to speak may also submit written comments to the DFO for distribution by the date listed in the **DATES** section of this notice.

III. Meeting Registration and Security Information

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

Since this meeting will be held in a Federal Government Building, the Hubert H. Humphrey Building, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. To gain access to the building, participants will be required to show a government-issued photo identification (for example, driver's license, or passport), and must be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will not be permitted into the Hubert H. Humphrey Building and will not be permitted to attend the Council meeting.

All persons entering the building must pass through a metal detector. In addition, all items brought to the Hubert H. Humphrey Building, whether personal or for the purpose of 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 the purpose of presentation.

Individuals requiring sign language interpretation or other special accommodations must contact the DFO via the contact information specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date listed in the **DATES** section of this notice.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)).)

Dated: January 14, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–1333 Filed 1–21–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its sixty-fourth meeting.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: February 17, 2010, 1 p.m.–5 p.m.

February 18, 2010, 9 a.m.–5 p.m.

February 19, 2010, 9 a.m.–10:30 a.m.

Place: The Sofitel Lafayette Square, 806 15th Street, NW., Washington, DC, 20005, Phone: 202–730–8800.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Wednesday afternoon, February 17, at 1 p.m., the meeting will be called to order by the Chairperson of the Committee, the Honorable David Beasley and the Vice Chairperson, the Honorable Larry Otis. The Chair will open with a review of the Committee's 2010 Report to the Secretary and a vote on the approval of that report. The meeting will then focus on the Committee's

work for the 2011 report, which will focus on the implications of health system change in rural communities. The meeting will include an address by HRSA Administrator

Dr. Mary Wakefield as well as presentations by experts in the fields of hospital and health care delivery as well as workforce. Committee discussion on the issues and an overview of rest of the meeting will follow. The Wednesday meeting will close at 5 p.m.

Thursday morning, February 18, at 9 a.m., the Committee will open with presentations by experts in the area of human service delivery and will be followed by another presentation by a speaker from the Rural Policy Research Institute. This will be followed by Committee discussion and overview from staff to the Committee. Following these presentations, Subcommittees will be selected and meet for small group discussions. There will be a review of the Subcommittee meetings and action items will be developed for the Committee members and staff. The formal meeting for Thursday will close at 5 p.m.

The final session will be convened Friday morning, February 19, at 9 a.m. The Committee will hear additional presentations on emerging rural policy issues from both internal and external experts. This will be followed by Committee discussion on the Report format and an overview of the Work Plan. The Committee will draft the letter to the Secretary and discuss the June meeting. The meeting will be adjourned at 10:30 a.m.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Thomas F. Morris, MPA, Acting Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–42, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray Gibson, Office of Rural Health Policy (ORHP), Telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov.*

Dated: January 14, 2010.

Sahira Rafiullah,

Deputy Director, Division of Policy Review and Coordination.

[FR Doc. 2010–1178 Filed 1–21–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NIH Consensus Development Conference on Vaginal Birth After Cesarean: New Insights; Notice

Notice is hereby given by the National Institutes of Health (NIH) of the "NIH Consensus Development Conference on Vaginal Birth After Cesarean: New Insights" to be held March 8–10, 2010, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on March 8 and 9 and at 9 a.m. on March 10, and it will be open to the public.

Vaginal birth after cesarean (VBAC) is the delivery of a baby through the vagina after a previous cesarean delivery. For most of the 20th century, once a woman had undergone a cesarean (the delivery of a baby through an incision made in the abdominal wall and uterus), many clinicians believed that all of her future pregnancies required delivery by cesarean as well. However, in 1980, an NIH Consensus Development Conference panel questioned the necessity of routine repeat cesarean deliveries and outlined situations in which VBAC could be considered. The option for a woman with a previous cesarean delivery to try to labor and deliver vaginally rather than plan a cesarean delivery was thus offered and exercised more often from the 1980s through the early 1990s. Since 1996, however, VBAC rates in the United States have consistently declined, while cesarean delivery rates have been steadily rising.

The exact causes of these shifts are not entirely understood. A frequently cited concern about VBAC is the possibility of uterine rupture during labor because a cesarean delivery leaves a scar in the wall of the uterus at the incision site, which is weaker than other uterine tissue. Attempted VBAC may also be associated with endometritis (infection of the lining of the uterus), the need for a hysterectomy (removal of the uterus) or blood transfusion, as well as neurologic injury to the baby. However, repeat cesarean delivery may also carry a risk of bleeding or hysterectomy, uterine infections, and respiratory problems for the newborn. Having multiple cesarean deliveries may also be associated with placental problems in future pregnancies. Other important considerations that may influence decisionmaking include the number of previous cesarean deliveries a woman has experienced, the surgical incision used during previous cesarean delivery, the reason for the previous surgical delivery, her age, how far along the pregnancy is relative to her due date, and the size and position of her baby. Given the complexity of this issue, a thorough examination of the relative balance of benefits and harms to mother and baby will be of immediate utility to practitioners and pregnant mothers in deciding upon a planned mode of delivery.

A number of nonclinical factors are involved in this decision as well and may be influencing the decline in VBAC rates. Some individual practitioners and hospitals in the U.S. have decreased or eliminated their use of VBAC. Professional society guidelines may influence utilization rates because some medical centers do not offer the recommended supporting services for a trial of labor after cesarean (*e.g.,* immediate availability of a surgeon who can perform a cesarean delivery and on-site anesthesiologists). Information related to complications of an unsuccessful attempt at VBAC, medico-legal concerns, personal preferences of patients and clinicians, and insurance policies and economic considerations may all play a role in changing practice patterns. Improved understanding of the clinical risks and benefits and how they interact with legal, ethical, and economic forces to shape provider and patient choices about VBAC may have important implications for health services planning.

To advance understanding of these important issues, the Eunice Kennedy Shriver National Institute of Child Health and Human Development and the Office of Medical Applications of Research of the NIH will convene a Consensus Development Conference from March 8 to 10, 2010. The conference will address the following key questions:

- What are the rates and patterns of utilization of trial of labor after prior cesarean, vaginal birth after cesarean, and repeat cesarean delivery in the United States?
- Among women who attempt a trial of labor after prior cesarean, what are the vaginal delivery rate and the factors that influence it?
- What are the short- and long-term benefits and harms to the mother of attempting trial of labor after prior cesarean versus elective repeat cesarean delivery, and what factors influence benefits and harms?
- What are the short- and long-term benefits and harms to the baby of maternal attempt at trial of labor after prior cesarean versus elective repeat cesarean delivery, and what factors influence benefits and harms?
- What are the nonmedical factors that influence the patterns and utilization of trial of labor after prior cesarean?
- What are the critical gaps in the evidence for decision-making, and what are the priority investigations needed to address these gaps?

An impartial, independent panel will be charged with reviewing the available published literature in advance of the

conference, including a systematic literature review commissioned through the Agency for Healthcare Research and Quality. The first day and a half of the conference will consist of presentations by expert researchers and practitioners and open public discussions. On Wednesday, March 10, the panel will present a statement of its collective assessment of the evidence to answer each of the questions above. The panel will also hold a press telebriefing to address questions from the media. The draft statement will be published online later that day, and the final version will be released approximately six weeks later. The primary sponsors of this meeting are the NIH Eunice Kennedy Shriver National Institute of Child Health and Human Development and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from the NIH Consensus Development Program Information Center by calling 888–644–2667 or by sending e-mail to *consensus@mail.nih.gov.* The Information Center's mailing address is P.O. Box 2577, Kensington, Maryland 20891. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov.*

Please Note: The NIH has instituted security measures to ensure the safety of NIH employees, guests, and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm.*

Dated: January 11, 2010.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 2010–859 Filed 1–21–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Part C Early Intervention Services (EIS) Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Non-competitive Replacement Award.

SUMMARY: The Health Resources and Services Administration (HRSA) is issuing a non-competitive replacement award to the Orange County Health Department, Orlando, Florida, that will ensure continuity of Part C, Early Intervention Services (EIS), HIV/AIDS care and treatment services to women, infants, and children without disruption from Orlando Health Incorporated's HUG–ME Program, in Orange County and the surrounding areas.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Orange County Health Department, Orlando, Florida.

Amount of the Award: $303,018.00.

Period of Support: The period of the supplemental support is from October 1, 2009, through March 31, 2010.

Authority: This activity is under the authority of the Public Health Service Act as amended, Section 2651 and 2693 of the Public Health Service Act, as amended (2 USC 300ff–51 and 42 USC 300ff–121). The authority for the exception to competition is HHS Grants Policy Directive 2.04, Awarding Grants.

Catalogue of Federal Domestic Assistance Number: 93.918.

Justification for the Exception to Competition: Critical funding for HIV/AIDS care and treatment to the target populations in Orange County, Orlando, Florida, and surrounding areas will be continued through a temporary, non-competitive replacement award to the Orange County Health Department as the new recipient. This temporary award is needed because the former grantee, Orlando Health, Incorporated, has relinquished, effective September 30, 2009, the HUG ME Program and the HRSA Grant award supporting it (original Project Period April 1, 2008, through March 31, 2010). The Orange County Health Department is known Statewide as an exceptional site for HIV/AIDS care and treatment services. It has administered its own HRSA Ryan White HIV/AIDS Program Part C EIS Grant for the past 9 years and is well suited to undertake operations of the HUG–ME Program under the previously approved scope of project activities. Additionally, this organization has a thorough understanding of the characteristics and needs of HIV/AIDS-infected populations. The HIV/AIDS Bureau (HAB) and its Division of Community Based Programs are not aware of any other organization that could provide good quality care and treatment services to the impacted service populations without additional time and resources being devoted to bringing that organization's service capacity up to the level needed under the project scope of this award. This non-competitive replacement award will permit the new recipient to ensure continuity of services to the HIV/AIDS-infected populations. The supplemental funding will provide support for 6 months. Additional funding beyond March 31, 2010, will be provided through a limited service area competition that will be announced in the future.

FOR FURTHER INFORMATION CONTACT: Deborah Parham Hopson, Associate Administrator, HRSA/HAB, 5600 Fishers Lane, Rockville, Maryland 20857; phone 301–443–1993; *DParham@hrsa.gov.*

Dated: January 13, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–1179 Filed 1–21–10; 8:45 am]

BILLING CODE 4165–15–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment for the Department of the Navy for the Disposition of Historic Vessels

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Intent to issue program comments for the Department of the Navy for the disposition of historic vessels.

SUMMARY: The Advisory Council on Historic Preservation is considering issuing a Program Comment for the Department of the Navy setting forth the way in which it will comply with Section 106 of the National Historic Preservation Act with regard to the determination of National Register of Historic Places eligibility of its vessels and the treatment of adverse effects that may result from their disposition.

DATES: Submit comments on or before February 12, 2010.

ADDRESSES: Address all comments concerning this proposed Program Comment to Dr. Tom McCulloch, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004. Fax (202) 606–8647. You may submit electronic comments to: *tmcculloch@achp.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Tom McCulloch, (202) 606–8554, *tmcculloch@achp.gov.*

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on

Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular aspects of those undertakings by taking into account ACHP's Program Comment and following the steps set forth in that comment.

I. Background

The ACHP is now considering issuing a Program Comment to the Department of the Navy (Navy) that would set forth the way in which it will comply with Section 106 of the National Historic Preservation Act with regard to the determination of National Register of Historic Places (National Register) eligibility of its vessels and the treatment of adverse effects that may result from their disposition.

As explained in the Program Comment itself, naval vessels are the ships and service craft built by and for the Navy, used in furthering the Navy's military mission, and listed in the Naval Vessel Register (NVR). Naval vessels are an unusual type of historic property. They are mobile assets that are put into harm's way and remain in active service for typically less than fifty years. Because naval vessels have a limited useful life, the Chief of Naval Operations undertakes a Ship Disposition Review (SDR) each year to determine whether any vessels should be decommissioned from active service. The total number of vessels to be decommissioned varies from year to year, but currently averages eight per year.

Upon the decommissioning of a vessel, the Secretary of the Navy is authorized to strike the vessel from the NVR. By the authority of the Secretary of the Navy, stricken Navy vessels may be: (1) Sold; (2) dismantled; (3) transferred, by gift or otherwise, to any State, Commonwealth, or possession of the U.S., the District of Columbia, or non-profit entity; (4) used for experimental purposes, including Navy sink exercises (SINKEXes); (5) transferred, by gift or otherwise, to any State, Commonwealth or possession of the U.S. for use as an artificial reef; or (6) disposed to a foreign nation by sale, lease, grant, loan, barter, transfer or otherwise. These six methods of final disposition, which are "undertakings" under Section 106, are available to the Navy because it is neither cost effective nor consistent with the Navy's mission to retain vessels that have surpassed their useful life.

Under the Program Comment, the Navy would apply the National Register criteria to vessels in active service and decommissioned vessels. That process would include input from the public and various historic preservation stakeholders. The Program Comment would establish a type of treatment that would begin immediately from the time a vessel is determined eligible, and thus, well before a Navy decision to dispose of the vessel. Finally, the Program Comment would clarify that the Navy will not need to conduct Section 106 reviews regarding effects to active vessels.

Once the public comments resulting from this notice are considered, and edits are incorporated as deemed appropriate, the ACHP will decide whether to issue the Program Comment. The ACHP expects to make that decision at its upcoming quarterly meeting currently scheduled on February 24, 2010 in Washington, DC, or shortly thereafter.

II. Text of the Proposed Program Comment

The following is the text of the proposed Program Comment, without the Guideline appendices: PROGRAM COMMENT PURSUANT TO 36 CFR 800.14(e) IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR THE EVALUATION OF VESSELS FOR ELIGIBILITY FOR LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES AND THE TREATMENT OF ELIGIBLE VESSELS TO RESOLVE ADVERSE EFFECTS THAT MAY RESULT FROM CERTAIN METHODS OF FINAL DISPOSITION.

I. Introduction

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to "take into account the effect of [an] undertaking on any . . . structure . . . eligible for inclusion in the National Register" and to "afford the Advisory Council on Historic Preservation . . . a reasonable opportunity to comment with regard to such undertaking." Regulations promulgated by the Advisory Council on Historic Preservation (ACHP) and codified at 36 C.F.R. Part 800 describe the procedures Federal agencies must follow to meet their Section 106 obligations. Under 36 C.F.R. § 800.14, the ACHP provides Federal agencies with "a variety of alternative methods . . . to meet their Section 106 obligations," thereby allowing agencies "to tailor the Section 106 process to their needs" (65 FR 77698–01)

The following Program Comment was proposed by the Navy, and issued by the ACHP on (date to be determined), pursuant to 36 C.F.R. § 800.14(e). The Program Comment benefits the Navy and the historic preservation stakeholders by providing the Navy with a process for evaluating vessels to determine eligibility for listing in the National Register of Historic Places (NRHP) for Section 106 and Section 110 purposes. The Program Comment also provides a Section 106 method of treatment of eligible vessels to resolve adverse effects that result from certain methods of final disposition. The Program Comment will enable Navy decision-makers to apply the eligibility criteria as defined by the National Park Service (NPS) at 36 C.F.R. Part 60 to vessels in active service and decommissioned vessels. Furthermore, the Program Comment will give the public and various historic preservation stakeholders opportunities to provide input regarding a vessel's eligibility for listing in the NRHP. The Program Comment will establish a type of treatment (i.e., collecting documentation in accordance with Section IV of this Program) that will begin immediately from the time a vessel is determined eligible, and thus, well before a Navy decision to dispose of the vessel. Finally, the Program Comment will clarify that the Navy will not need to conduct Section 106 reviews regarding effects to active vessels.

By implementing the Program Comment, the Navy will no longer be required to follow the standard Section 106 process for each final disposition decision affecting inactive vessels. In addition to satisfying the Navy's obligations under Section 106 of the NHPA for vessels, the Program Comment enables the Navy to fulfill its responsibility under Section 110 of the NHPA to manage and maintain vessels that may be eligible for listing in the NRHP in a way that considers the preservation of their historic value.

II. Background

Naval vessels are the ships and service craft built by and for the Navy, used in furthering the Navy's military mission, and listed in the Naval Vessel Register (NVR). Naval vessels are an unusual type of historic property. They are mobile assets that are put into harm's way and remain in active service for typically less than fifty years. Because naval vessels have a limited useful life, the Chief of Naval Operations undertakes a Ship Disposition Review (SDR) each year to determine whether any vessels should be decommissioned from active service. The total number of vessels to be decommissioned varies from year to year, but currently averages eight per year. Upon the decommissioning of a vessel, the Secretary of the Navy is authorized, under 10 U.S.C. § 7304, to strike the vessel from the NVR. By the authority of the Secretary of the Navy under 10 U.S.C. § 7305–7307, stricken Navy vessels may be: 1) sold; 2) dismantled; 3) transferred, by gift or otherwise, to any State, Commonwealth, or possession of the U.S.,

the District of Columbia, or non-profit entity; 4) used for experimental purposes, including Navy sink exercises (SINKEXes); 5) transferred, by gift or otherwise, to any State, Commonwealth or possession of the U.S. for use as an artificial reef; or 6) disposed to a foreign nation by sale, lease, grant, loan, barter, transfer or otherwise. These six methods of final disposition, which are "undertakings" as defined by 36 C.F.R. § 800.16(y), are available to the Navy because it is neither cost effective nor consistent with the Navy's mission to retain vessels that have surpassed their useful life.

III. Determining Eligibility for Listing in the NRHP

A. Criteria

The Secretary of the Interior, through the NPS, established four criteria pursuant to its authority under the NHPA for determining whether property is eligible for listing in the NRHP. The four evaluation criteria are codified at 36 C.F.R. § 60.4 and listed below. The Navy is required to evaluate vessels for eligibility for listing in the NRHP using the four evaluation criteria:

i. are associated with events that have made a significant contribution to the broad patterns of our history;

ii. are associated with the lives of persons significant in our past;

iii. embody the distinctive characteristics of a type, period, or method of construction; or

iv. have yielded, or may be likely to yield, information important in prehistory or history.

Navy vessels that meet one or more of these criteria, and that continue to possess integrity of (as appropriate) design, materials, workmanship, feeling and/or association are eligible for listing in the NRHP.

Recognizing that vessels have a limited useful life of typically less than fifty years, the Navy has determined that, for Section 106 and Section 110 purposes, vessels possessing any of the following characteristics at any time, including during active service, are of exceptional importance and meet the listing eligibility criteria established by the NPS and codified at 36 C.F.R. § 60.4:

i. The vessel was awarded an individual Presidential Unit Citation. (A Presidential Unit Citation is awarded to military units that have performed an extremely meritorious or heroic act, usually in the face of an armed enemy.)

ii. An individual act of heroism took place aboard the vessel such that an individual was subsequently awarded the Medal of Honor or the Navy Cross. (The Medal of Honor is awarded for valor in action against an enemy force. The Navy Cross is awarded for extraordinary heroism in action not justifying an award of the Medal of Honor.)

iii. A President of the United States was assigned to the vessel during his or her naval service.

iv. The vessel was the first to incorporate engineering, weapons systems, or other upgrades that represent a revolutionary change in naval design or warfighting capabilities, or other special and unique considerations.

v. Some other historic or socially significant event occurred on the vessel.

B. Process

Each year, qualified Navy historians with knowledge about Navy vessels will review each vessel in active service to determine which, if any, possess any of the characteristics described above, and integrity, and therefore, will be determined eligible for listing in the NRHP.

Upon decommissioning, those vessels that have not already been determined eligible for listing in the NRHP will be evaluated by qualified Navy historians with knowledge about Navy vessels in accordance with the listing eligibility criteria established by the NPS, including whether the vessels possess integrity, and informed by the above, and thus, prior to making any final disposition decision with the potential to adversely affect historic property.

Depending on the availability of funds, the Navy may also develop type-specific context studies to determine NRHP listing eligibility of classes of vessels. Context studies shall be consistent with the eligibility criteria noted above and with the NPS publications "How to Apply the National Register Criteria for Evaluation," "How to Complete the National Register Multiple Property Documentation Form," and "Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places." Vessels will be analyzed by class and the appropriate historic preservation stakeholders will be consulted on appropriate application of the National Register criteria. In the event that context studies are developed, they will be made available to the public in accordance with Section IV of this Program.

C. Participation by Historic Preservation Stakeholders

The Navy encourages historic preservation stakeholders, including but not limited to the ACHP, the NPS, State Historic Preservation Officers (SHPO), the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation (National Trust), and the public to participate in the process for determining whether a vessel meets the eligibility criteria for listing in the NRHP. Through its existing public outreach programs the Navy will invite the public and historic preservation stakeholders to provide written comments and justification that support determining a vessel eligible for listing in the NRHP.

After the annual SDR, the Navy provides a list of vessels planned to be decommissioned over the next five years in a Report to Congress on the Annual Long-Range Plan for Construction of Naval Vessels. Subsequent to the release of the annual report to Congress, the Navy will provide statements of eligibility or ineligibility for listing in the NRHP on its website for those vessels to be decommissioned in the forthcoming year. The Navy will then solicit written comments on those statements of eligibility or ineligibility for listing in the NRHP from historic preservation stakeholders via its website. Historic preservation stakeholders will have sixty days from the time of publication of the list of vessels to be decommissioned to provide their comments. The Navy will notify historic preservation stakeholders, including the Historic Naval Ships Association (HNSA) and other Veterans-affiliated organizations, of the beginning of the sixty-day period. All written comments should be mailed to the Naval History and Heritage Command (NHHC) or submitted electronically via the NHHC's website. The Navy will consider all written comments received before making a final determination as to whether a vessel is eligible for listing in the NRHP. If the Navy determines no question exists as to whether a vessel is eligible for listing in the NRHP, then the Navy will publish its final determination of listing eligibility for each vessel on its website. If the Navy determines that a question exists as to whether a vessel is eligible for listing in the NRHP, or if the ACHP or the Secretary of the Interior so request, the Navy will seek a formal determination of eligibility from the Keeper. Upon review, the Keeper's determination of listing eligibility shall be final.

An historic preservation stakeholder may also comment on a vessel's eligibility or ineligibility for listing in the NRHP in writing while the vessel is in active service. These comments should be mailed to the NHHC or submitted electronically via the NHHC's website. The NHHC will acknowledge receipt of the comments in writing, and retain the comments for consideration when preparing the statement of eligibility or ineligibility for the vessel prior to the vessel's scheduled decommissioning.

D. Effect of Eligibility Determination on Active Vessels

A determination that a vessel in active service is eligible for listing in the NRHP shall not affect the vessel's availability for routine operations, combat operations, and modernization to keep the vessel battle-worthy, safe, and habitable, as required by the Navy's military mission. Specifically, the Navy shall employ, deploy, activate, inactivate, repair, modify, move and decommission such vessels without regard to their eligibility and without needing to consider effects to them under Section 106 of the NHPA.

IV. Treatment of Vessels Determined to be Eligible for Listing in the NRHP

The Navy will take the following steps regarding vessels determined to be eligible for listing in the NRHP during active service or upon decommissioning:

i. Annotate the vessel's entry in the NVR to reflect listing eligibility and include the basis for eligibility (the public can access the NVR at http://www.nvr.navy.mil); and

ii. Make available a documentation package consisting of historically significant records such as command operation reports, war diaries, and deck logs, as they are submitted (the public would be able to access the documentation package at the NHHC; unclassified command operation reports will be available at http://www.history.navy.mil).

The Navy will also strongly consider making the vessel available for donation only upon decommissioning and striking from the NVR pursuant to 10 U.S.C. § 7306 for up to two years unless:

i. The vessel is designated for Foreign Military Sales (FMS) transfer;

ii. There are other Navy requirements for its continued use;

iii. The material condition of the vessel precludes donation;

iv. National security or other restrictions preclude donation; or

v. The vessel is nuclear powered. (Additional coordination with the Director, Naval Nuclear Propulsion Program is required to determine donation feasibility.)

The Navy's Ship Donation Program is described at http://peoships.crane.navy.mil/donation/. Donation application requirements include submission of acceptable curatorial/museum and maintenance plans among other plans for the preservation of the vessel in a condition satisfactory to the Secretary of the Navy. If a qualified donee is not identified within two years, the Navy may remove the vessel from donation hold status and proceed with another method of final disposition. Contracts between the Navy and qualified donees include provisions that address historic preservation of the vessel.

The Navy will publish a list of vessels available for donation in the Federal Register and at *http://peoships.crane.navy.mil/donation/*. The list will include any NRHP eligible vessel initially precluded from donation that, due to a change in status, becomes available for donation.

The Navy will take the following steps regarding decommissioned vessels determined eligible for listing in the NRHP before final disposition by a method other than donation:

i. Give priority to compiling histories of these eligible vessels when preparing entries in the Dictionary of American Naval Fighting Ships;

ii. Retain and, depending on classification, provide public access to historical documentation from NRHP eligible vessels such as command operation reports, war diaries, and ship deck logs at the NHHC (deck logs that are more than thirty years old are transferred to the National Archives and Records Administration (NARA) for pemanent retention);

iii. In addition to the standard curator items removed from the vessel upon decommissioning in accordance with required Navy policy, including citations, correspondence of significant historical value, ship histories, paintings, ship silver services, and photographs selected to best display the physical characteristics of the vessel, the Navy would make the vessel available to the Navy Curator and eligible non-profit organizations for removal of additional equipment, parts of the vessel, etc. that contribute to the historical significance of the vessel. Items removed by the Navy Curator will be maintained and considered for loan to qualified U.S. non-profit organizations in accordance with 10 U.S.C. § 2572, 4575; and

iv. Within three years of designating a NRHP-eligible vessel for final disposition, deposit with the NARA documentation consisting of archivally stable media of the following items:

a. A Booklet of General Plans; and

b. The last report of the Board of Inspection and Survey describing the material condition of the vessel.

Note that accessibility to the public will depend on the document's classification and NARA policies.

V. Reports

The Navy will submit an annual report to the NCSHPO and the ACHP on the progress of this Program Comment on 1 December, annually. The report will include the following information:

i. The names and status of active vessels identified as eligible for listing in the NRHP, and the basis for their eligibility;

ii. The names and status of decommissioned vessels identified as eligible for listing in the NRHP, and a copy of the statement of eligibility;

iii. The names and status of decommissioned vessels identified as ineligible for listing in the NRHP, and a copy of the statement of ineligibility; and

iv. The names of the vessels eligible for listing in the NRHP whose final disposition occurred during the reporting period, along with the status of the documentation supporting final disposition.

The annual report will also be made available to the public on the Navy's donation website.

VI. Effect of the Program Comment

By following this Program Comment, the Navy will meet its responsibilities for compliance with Section 110, in part, and Section 106 of the NHPA concerning the evaluation of vessels for eligibility for listing in the NRHP and the final disposition of eligible vessels. Accordingly, the Navy will no longer be required to follow the standard Section 106 process for each final disposition decision affecting inactive vessels, except as provided in this Program Comment.

Vessels already determined eligible for listing in the NRHP that are not subject to an existing agreement established through the Section 106 consultation process will be subject to this Program Comment as if their eligibility had been established as a result of this Program Comment. Vessels that are the subject of an existing agreement established pursuant to the Section 106 regulations will continue to be subject to that existing agreement.

The Program Comment described herein will remain in effect for twenty years, unless and until the Navy decides to terminate its application or the ACHP "determines that the consideration of historic [vessels] is not being carried out in a manner consistent with the program comment" and withdraws the comment. (36 C.F.R. § 800.14(e) (6)).

Upon either event, the Navy shall comply with the requirements of 36 C.F.R. Part 800 for each undertaking within the scope of this Program Comment. The Navy shall inform historic preservation stakeholders of the Program Comment's termination.

The Navy shall reexamine the Program Comment's effectiveness after the first year of implementation and every five years thereafter within the context of its annual report or by convening a meeting with historic preservation stakeholders. In reexamining the Program Comment's effectiveness, the Navy shall consider any written recommendations for improvement submitted by historic preservation stakeholders to the NHHC.

Once in effect, the Program Comment may be amended when such an amendment is agreed to in writing by the Navy and the ACHP. The amendment will be effective on the date a copy of the amended Program Comment signed by the Navy and the ACHP is filed with the ACHP.

Appendix A

Definitions

a. Command Operation Report, formerly Command History Report means a report that covers the operational and administrative actions of the command for each calendar year and usually consists of a chronology, a narrative, and enclosures. Some Command Operation Reports are classified for a set period of time.

b. Decommission means to remove a vessel from active service.

c. Documentation package means a compilation of historically significant records including, but not limited to, command operation reports, war diaries, and deck logs.

d. Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

e. Historic Preservation Stakeholder means the ACHP, the NPS, SHPOs, NCSHPO, the National Trust, any other agency or organization specifically concerned with historic preservation issues, and the public.

f. Naval Vessel Register means the official inventory of ships and service craft titled to or in the custody of the U.S. Navy. It includes information about vessels from the time of their authorization through their life cycle and final disposition.

g. Ship deck log means a daily chronology of particular events for administrative and legal purposes, as set forth by the Office of the Chief of Naval Operations Instruction 3100.7 series.

h. Ship disposition review means an annual review of vessels in active service conducted by the Chief of Naval Operations to determine which vessels will be decommissioned from active service and retained for potential reactivation or stricken from the Naval Vessel Register and designated for disposal.

i. Stricken vessel means a decommissioned vessel that has been removed from the Naval Vessel Register.

j. Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

k. Vessel means the ships and service craft built by and for the Navy, used in furthering the Navy's military mission, and listed in the Naval Vessel Register. Vessel does not include those vessels retained in Navy custody for public display (i.e., USS CONSTITUTION, NAUTILUS (SSN 571), ex-BARRY (DD 933)).

1. War diary means a ship's recounting of wartime operations. Some war diaries are written in a cursory fashion. Others are works of literary art. War diaries for combat actions are included with the Command Operations Report.

Authority: 36 CFR 800.14(e).

Dated: January 14, 2010.

John M. Fowler,

Executive Director.

[FR Doc. 2010–1023 Filed 1–21–10; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of the National Advisory Committee meeting.

SUMMARY: This notice announces the date, time, location, and agenda for the next meeting of the National Advisory Council (NAC). At the meeting, the subcommittees will report on their work since the July 29–30, 2009 meeting. This meeting will be open to the public.

DATES: *Meeting Dates:* Wednesday, February 10, 2010, from approximately 10 a.m. EST to 5:45 p.m. EST and Thursday, February 11, 2010, 8:30 a.m. EST to 3:30 p.m. EST. A public comment period will take place on the afternoon of February 11, 2010, between approximately 2:30 p.m. EST and 3 p.m. EST.

Comment Date: Persons wishing to make an oral presentation, or who are unable to attend or speak at the meeting, may submit written comments. Written comments or requests to make oral presentations must be received by February 1, 2010.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024. Written comments and requests to make oral presentations at the meeting should be provided to the address listed in the **FOR FURTHER INFORMATION CONTACT** section and must be received by February 3, 2010. All submissions received must include the Docket ID FEMA–2007–0008 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments on the Web site.

E-mail: FEMA–RULES@dhs.gov. Include Docket ID FEMA–2007–0008 in the subject line of the message.

Facsimile: (703) 483–2999.

Mail: Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472–3100.

Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472–3100.

Instructions: All submissions received must include the Docket ID FEMA–2007–0008. Comments received also will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read documents or comments received by the National Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Breese Eddy, Alternate Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (Room 832), Washington, DC 20472–3100, telephone 202–646–3746, fax 202–646–3930, and e-mail to: *FEMA–NAC@dhs.gov.* The NAC Web site is located at: *http://www.fema.gov/about/nac/.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The National Advisory Council (NAC) will meet for the purpose of reviewing the progress and/or potential recommendations of the following NAC subcommittees: Stafford Act, National Response Framework, National Incident Management System, Post-Disaster Housing, Special Needs, Public/Private Partnerships, and Target Capabilities List. The Council may receive updates on preparedness issues, mitigation issues, the National Disaster Recovery Framework, and the Regional Advisory Councils.

Public Attendance: The meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. Persons with disabilities who require special assistance should advise the Alternate Designated Federal Officer of their anticipated special needs as early as possible. Members of the public who wish to make comments on Thursday, February 11, 2010 between 2:30 p.m. EST and 3 p.m. EST are requested to register in advance, and if the meeting is running ahead of schedule the public comment period may take place at 1 p.m. EST; therefore, all speakers must be present and seated by 12:15 p.m. EST. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

Dated: January 14, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–1170 Filed 1–21–10; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–03]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the

homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COAST GUARD: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; ENERGY: Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–5422; GSA: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; NAVY: Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: January 14, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 01/22/2010

Suitable/Available Properties

Building

Idaho

Residence
287 Westside Rd.
Bonners Ferry ID 83805
Landholding Agency: GSA
Property Number: 54201010001
Status: Excess
GSA Number: 9–I–ID–0578–AA
Comments: 1460 sq. ft., 2-story residence, off-site use only

Land

Kansas

Sunflower Hill Club & Cottage Sites
Hwy17/Hwy400
Fall River KS 67047
Landholding Agency: GSA
Property Number: 54201010002
Status: Excess
GSA Number: 7–D–KS–0513
Comments: approx. 126 acres, right-of-way access for roads and power lines

Suitable/Available Properties

Land

Texas

Cottonwood Bay
14th St/Skyline Rd.
Grand Prairie TX
Landholding Agency: GSA
Property Number: 54201010004
Status: Surplus
GSA Number: 7–N–TX–846
Comments: 110 acres includes a 79 acre water body, primary storm water discharge basin. remediation responsibilities, subject to all institutional controls

Unsuitable Properties

Building

California

Bldgs. PM4–32, PM5–24
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77201010001
Status: Unutilized
Reasons: Secured Area Floodway

Unsuitable Properties

Building

California

7 Bldgs.
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77201010002
Status: Unutilized
Directions: PM71, 73, 76, 77, 160, 350, 353, 384
Reasons: Secured Area Floodway

9 Bldgs.
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77201010003
Status: Unutilized
Directions: PM555, 565, 700, 704, 737, 759, 852, 853, 855
Reasons: Secured Area Floodway

4 Bldgs.
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77201010004
Status: Unutilized
Directions: 240CA, 244CA, 246CA, 248CA
Reasons: Extensive deterioration Floodway Secured Area

Unsuitable Properties

Building

California

8 Bldgs.
Naval Base
Port Hueneme CA 93043
Landholding Agency: Navy
Property Number: 77201010005
Status: Unutilized
Directions: PH827, 1206, 1207, 1374, 1375, 1376, 1527, 1528
Reasons: Extensive deterioration Secured Area Floodway

District of Columbia

8 Bldgs.
U.S. Naval Observatory
Washington DC 20007
Landholding Agency: Navy
Property Number: 77201010006
Status: Excess
Directions: 58, 60, 64, 64B, 84, 90, 98, T5
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

4 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201010001
Status: Unutilized
Directions: 46–0002, 46–0075, 46–0180, 46–0194
Reasons: Secured Area

9 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201010002
Status: Unutilized
Directions: 57–0018, 57–0041, 57–0074, 57–0084, 57–0085, 57–0086, 57–0121, 57–0122, 57–0123
Reasons: Secured Area

North Carolina

Bldgs. OK1, OK2
USCG Station
Hobucken NC 28537
Landholding Agency: Coast Guard
Property Number: 88201010001
Status: Excess
Reasons: Extensive deterioration Secured Area

Unsuitable Properties

Building

North Carolina

10 Bldgs.
U.S. Coast Guard
Cape Hatteras NC
Landholding Agency: Coast Guard
Property Number: 88201010002
Status: Excess
Directions: OB2, OB4, OD1, OD2, OE1, OG1, OI1, 001, 0S1, OU1
Reasons: Secured Area Floodway

7 Bldgs.
U.S. Coast Guard
Cape Hatteras NC
Landholding Agency: Coast Guard
Property Number: 88201010003
Status: Excess
Directions: OR1, OR2, OR4, OR5, OR6, OR7, OR8
Reasons: Floodway Secured Area

10 Bldgs.
U.S. Coast Guard
Cape Hatteras NC
Landholding Agency: Coast Guard
Property Number: 88201010004
Status: Excess
Directions: OV1, OV4, OV5, OV6, OV7, OV8, OV9, OV10, OV11, OV12
Reasons: Floodway Secured Area

Unsuitable Properties

Building

North Carolina

5 Bldgs.
U.S. Coast Guard
Cape Hatteras NC
Landholding Agency: Coast Guard
Property Number: 88201010005
Status: Excess
Directions: NB1, NR1, NR2, NS1, NS2
Reasons: Secured Area Floodway

Virginia

Bldgs. VB29–VB45, VB49
Joint Expeditionary Base
Little Creek
Virginia Beach VA
Landholding Agency: Navy
Property Number: 77201010007
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldg. 514
Joint Expeditionary Base
Little Creek
Virginia Beach VA
Landholding Agency: Navy
Property Number: 77201010008
Status: Unutilized
Reasons: Extensive deterioration Secured Area

Unsuitable Properties

Building

Virginia

Bldgs. 940, 951
Joint Expeditionary Base
Little Creek
Virginia Beach VA
Landholding Agency: Navy
Property Number: 77201010009
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Washington

Bldg. 513
Naval Base
Bremerton WA
Landholding Agency: Navy
Property Number: 77201010010
Status: Excess
Reasons: Secured Area Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Land

Massachusetts

5 Bog Tracts
Otis Air Natl Guard Base
Otis MA
Landholding Agency: GSA
Property Number: 54201010003
Status: Excess
GSA Number: 1–D–MA–0917
Reasons: Within airport runway clear zone

[FR Doc. 2010–964 Filed 1–21–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–C–24A]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2009 HOPE VI Main Street Grants Program—Extension of Application Deadline Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice: Extension of Application Deadline Date.

SUMMARY: On November 11, 2009, HUD posted its HOPE VI Main Street Grants program NOFA for FY2009 ("NOFA"). The NOFA makes available approximately $4 million in assistance for the HOPE VI Main Street Grants program, which was funded through the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009). The NOFA provides statutory and regulatory requirements, threshold requirements, and rating factors applicable to funding of grant applications. HUD published a notice announcing the availability of the NOFA in the **Federal Register** on November 18, 2009. Today's notice announces that HUD is extending the deadline date for applications for the HOPE VI Main Street NOFA from January 20, 2010 to March 3, 2010.

FOR FURTHER INFORMATION CONTACT: For further information regarding HUD's FY 2009 HOPE VI Main Street NOFA, contact the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000 or e-mail Mr. Lawrence Gnessin at *lawrence.gnessin@hud.gov.*

SUPPLEMENTARY INFORMATION: On November 11, 2009, HUD posted its FY 2009 HOPE VI Main Street NOFA on its Web site (*http://www.HUD.gov*) and on Grants.gov. HUD published a notice in the **Federal Register** announcing the availability of the NOFA on its Web site on November 18, 2009 (74 FR 59582). The HOPE VI Main Street NOFA announced the availability of approximately $4 million to provide grants to small communities to assist in the rejuvenation of an historic or traditional central business district or "Main Street" area by replacing unused commercial space in buildings with affordable housing units.

The NOFA, as posted on the HUD Web site and Grants.gov, established January 20, 2010 as the application deadline date. In order to increase eligible applications and further competition, HUD has decided to extend the deadline for applications to March 3, 2010. Because of this extension, the Estimated Grant Award Date is extended to April 2, 2010.

Dated: January 15, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–1177 Filed 1–21–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request for the USGS Mine, Development, and Mineral Exploration Supplement

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0060).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for the extension of the currently approved paperwork requirements for the USGS *Mine, Development, and Mineral Exploration Supplement.* This collection consists of one form and this notice provides the public an opportunity to comment on the paperwork burden of this form. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before February 22, 2010.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail to *OIRA_DOCKET@omb.eop.gov* or fax at 202–395–5806; and identify your submission as 1028–0060. Please also submit a copy of your written comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9230 (fax); or *pondsp@usgs.gov* (e-mail). Use OMB Control Number 1028–0060 in the subject line.

FOR FURTHER INFORMATION CONTACT: Shonta E. Osborne at 703–648–7960 or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

I. Supplementary Information

Abstract: Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data for nonfuel mineral commodities. The data obtained from this canvass are used by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, and the public. They provide essential mining, exploration, and development information to make domestic ore resource analyses. Tabulations of volumetric data concerning domestic mining operations' use of land can be used to compare the total volume of earth disturbed with the actual crude ore mined and the resulting marketable product. These data are an indicator of the future mining outlook. This information will be published as an Annual Report for use by Government agencies, industry, academia, and the general public.

II. Data

OMB Control Number: 1028–0060.

Title: Mine, Development, and Mineral Exploration Supplement.

Type of Request: Extension of a currently approved collection.

Respondent Obligation: Voluntary.

Frequency of Collection: Annually.

Affected Public: Businesses that explore for and produce nonfuel minerals.

Estimated Number of Annual Responses: 719.

Annual Burden Hours: 539 hours. We expect to receive 719 annual responses. We estimate an average of 45 minutes per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Reporting and Recordkeeping "*Non-Hour Cost*" *Burden:* We have not identified any "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

On May 27, 2009, we published a Federal Register notice (74 FR 25273) announcing that we would submit this ICR to OMB for approval and solicit comments. The comment period closed on July 27, 2009. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. 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.

USGS Information Collection Clearance Officer: Phadrea Ponds 970–226–9445.

Dated: January 13, 2010.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team, U.S. Geological Survey.

[FR Doc. 2010–1168 Filed 1–21–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2009–N212; 20131–1265–2CCP–S3]

Tishomingo National Wildlife Refuge, Comprehensive Conservation Plan, Johnston County, OK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and draft environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for Tishomingo National Wildlife Refuge (Refuge, NWR) for public review and comment. In these documents, we describe alternatives, including our preferred alternative, to manage this Refuge for the 15 years following approval of the final CCP. Draft compatibility determinations for several public uses are also available for review and public comment in the Draft CCP/EA.

DATES: To ensure consideration, we must receive your written comments by March 23, 2010. We will announce upcoming public meetings in local news media.

ADDRESSES: You may request a hard copy or CD–ROM copy of the draft CCP and EA by any of the following methods:

E-mail: joseph_lujan@fws.gov. Include "Tishomingo NWR Draft CCP and EA" in the subject line of the e-mail.

Fax: Attn: Joseph Lujan, Natural Resource Planner, 505–248–6874.

U.S. Mail: Joseph Lujan, Natural Resource Planner, U.S. Fish & Wildlife Service, Division of Planning, P.O. Box 1306, Albuquerque, NM 87103–1306.

In-Person Drop-off, Viewing, or Pickup: You may drop off comments during regular business hours (8 a.m. to 4:30 p.m.) at Tishomingo NWR Headquarters, 1200 South Refuge Road, Tishomingo, OK 73625; at the USFWS Regional Office, 500 Gold Avenue SW., 4th Floor, Room 4005, Albuquerque, NM 87102; or local libraries.

Agency Web Site: http://www.fws.gov/southwest/refuges/Plan/planindex.html.

FOR FURTHER INFORMATION CONTACT: Joseph R. Lujan, 505–248–7458; *joseph_lujan@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Tishomingo NWR, which we started with a notice of intent to prepare a CCP that appeared in the November 17, 1999, issue of the **Federal Register** (64 FR 62683). For more about the initiation of this process see that notice. The Tishomingo National Wildlife Refuge consists of 16,464 acres located in south-central Oklahoma. On January 24, 1946, the Refuge was authorized and established to preserve nesting grounds for migrating waterfowl, by order of U.S. President Harry S. Truman under Public Land Order 312. The Corps of Engineers (Corps) and the Service's cooperative agreement, along with a cooperative agreement between the Service, Oklahoma Department of Wildlife Conservation (ODWC), and the Corps, are the foundation of Refuge management authority for the Service.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Public Outreach

We started the CCP process for Tishomingo NWR in October 2007. At that time and throughout the process, public comments were requested, considered, and incorporated in numerous ways. Public outreach has included a public scoping meeting, planning updates, a CCP Web page, and **Federal Register** notices. Comments we received cover topics such as wildlife, habitat, refuge management, invasive species management, partnerships, and visitor services. We have considered and evaluated all of these comments, with many incorporated into the various alternatives addressed in the draft CCP and the EA.

CCP Alternatives We Are Considering

During the public scoping process with which we started work on this draft CCP, we, other governmental partners, Tribes, and the public raised several issues. Our draft CCP addresses them. A full description of each alternative is in the EA. To address these issues, we developed and evaluated the following alternatives, summarized below. The Draft EA/CCP presents an evaluation of the environmental effects of three alternatives for managing the Tishomingo Refuge for the next 15 years. The Service proposes to implement Alternative B, as described in the EA. Alternative B best achieves the Refuge's purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. This alternative is described in more detail in the CCP.

There are many features of proposed Refuge management that are common to all three alternatives. Features common to all alternatives include invasive species management, habitat management and restoration, implementation of hunting and fishing program, and providing wildlife observation and photography, and environmental education and interpretation opportunities. There are also many features of each alternative that are distinct.

Alternative A, the no action alternative, assumes no change from current management programs and is considered the baseline to compare other alternatives against. Under Alternative A, the primary management focus of the Refuge would continue to be providing for the enhancement and restoration of grasslands habitat at the rate and degree equivalent to existing restoration practices. Recreational opportunities would continue to be limited to traditional programs under existing approved hunting and fishing plans. The Cumberland Pool would continue to provide public hunting and fishing and the primary Refuge hunt area would remain the 3,170 acre Cooperative Wildlife Management Unit. Under this alternative the current headquarter facilities would not be improved or expanded to accommodate more visitors.

Current habitat management practices would continue including keeping approximately 1,000 acres of Refuge lands under cultivation. Total wetland acres would remain 156 acres unless increased by natural flooding.

Under Alternative B, the Refuge would adopt and implement the management efforts presented in the Tishomingo NWR CCP. The goals, objectives, and strategies detailed in the CCP would provide for short and long-term conservation and enhancement of Refuge resources and values while improving the overall quality of visitor services and addressing primary threats to the ecosystem. Under this alternative, existing habitat management activities would be expanded, including the improvement or creation of grassland habitats and moist soil units. This alternative would also utilize the management efforts detailed in the CCP to improve or expand visitor services programs and public use facilities on the Refuge. Additionally, under this alternative the use of adaptive management practices would contribute to ongoing monitoring and modification of Refuge resources for years to come.

Under this alternative, increased adaptive management practices would contribute to the completion of measurable objectives and further contribute to overall improvement of Refuge resources and quality of visitor services.

The Refuge habitat management program would continue to implement active management practices to address ecosystem threats such as mechanical removal of eastern red cedar, prescribed fire, and chemical and mechanical control of weed species to accelerate restoration of native plant species and enhance the quality of these habitats for wildlife. However, under this alternative these programs would be improved or expanded to more effectively utilize Refuge resources for habitat improvement. An example of this may include ongoing efforts to use

an integrated pest management approach, including prescribed fire, mechanical removal, herbicides, and other methods, to control invasive species.

The increased use of prescribed fire as a management tool would be emphasized for invasive brush and tree control. The plan calls for targeting and prioritizing problem areas for restoration using herbicides and prescribed fire as management tools. Existing areas of native bluestem and tall grass prairie, naturally occurring low water areas, riparian, timber, floodplain, and hardwood forest as well as the aquatic riverine habitats would be further protected and enhanced through planned management strategies.

The Refuge's biological program would become more focused and include comprehensive inventories of wildlife species and habitats, thereby improving the Refuge's baseline biological information. This would allow staff to better evaluate habitat management decisions in the future and reevaluate the local and regional threats to the ecosystem. Approximately 1,000 acres of Refuge lands optimal for crop production would continue to be farmed to provide forage for migratory birds and resident wildlife.

Under Alternative C, the Refuge would continue the expansion of habitat management and restoration activities, combined with an expanded public use development and an expanded farming program. This alternative would incorporate the habitat and wildlife management components called for in Alternative B; however, this alternative would include more concentrated efforts in developing the Refuge's public use programs and facilities beyond the existing program. The ODWC would simultaneously expand the hunting program services, but only on the ODWC-managed wildlife management unit, and would continue to comply with all applicable State hunting and wildlife regulations.

This alternative would primarily expand visitor services by developing extensive public use facilities including hiking, wildlife observation and photography, and environmental interpretive systems.

Additionally, the existing farming program would be expanded to produce increased hot foods sources for migrating waterfowl within the Refuge. Local populations of Canada geese are reportedly occurring in much fewer numbers than in previous years, largely due to the result of decreased agricultural activities within the region. With fewer supplemental food sources within the region, the Refuge is less capable of supporting the historically larger populations of geese. However, the expansion of the farming program would come at the expense of native grassland prairie restoration, either through conversion of grasslands to farm fields or by simply reducing the number of potential agriculture to grassland restoration sites.

Management efforts to develop the Refuge's public use and farming programs with this level of intensity would require a substantial increase in annual operational funding and the addition of one or two Visitor Services Park Rangers within 5 years. Additional miles in hiking trails as well as motorized tour routes would fall under areas of annual inundation and would require heavy maintenance and upkeep. This alternative may or may not be feasible under the existing budgetary constraints.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- Tishomingo National Wildlife Refuge, 12000 Refuge Road, Tishomingo, OK 73625.
- *Our Web site: http://fws.gov/southwest/refuges/plan/completeplans.html.*
- *Public Library:*—The Johnston County Library—Chikasaw Library System, located at 116 W. Main Street Tishomingo, OK 73460, during regular library hours.

Submitting Comments/Issues for Comment

We particularly seek comments on all issues.

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental assessment;
- Present reasonable alternatives other than those presented in the draft EA; and/or
- Provide new or additional information relevant to the assessment.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP.

Dated: December 09, 2009.

Brian A. Millsap,

Acting Regional Director, Region 2.

[FR Doc. 2010–112 Filed 1–21–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000 L58530000 EU0000; 09–08807; TAS: 14X5232]

Notice of Availability of Draft Supplemental Environmental Impact Statement for the Upper Las Vegas Wash Conservation Transfer Area, Las Vegas, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM) has prepared a Draft Supplemental Environmental Impact Statement (EIS) for establishing a final boundary for the Upper Las Vegas Wash Conservation Transfer Area, Las Vegas, Nevada, and by this Notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Upper Las Vegas Wash Conservation Transfer Area Draft Supplemental EIS within 60 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register.** The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Upper Las Vegas Wash Conservation Transfer Area by any of the following methods:

- *Web site: http://www.blm.gov/nv/st/en/fo/lvfo.html.*
- *E-mail: NV_SNDO_Planning@blm.gov.*
- *Fax:* 702–515–5023.
- *Mail:* Bob Ross, Field Manager, BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

Copies of the Draft Supplemental EIS for the Upper Las Vegas Wash Conservation Transfer Area are available in the Las Vegas Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: For further information contact Gayle Marrs-Smith, telephone (702) 515–5156 or e-mail *Gayle_Marrs-Smith@blm.gov.*

SUPPLEMENTARY INFORMATION: The Draft Supplemental EIS describes and analyzes possible boundary adjustments to the Upper Las Vegas Wash Conservation Transfer Area (CTA) referenced in the 2004 Final Las Vegas Valley Disposal Boundary

Environmental Impact Statement (EIS) and Record of Decision. Because of the significance of paleontological, botanical, hydrological, and cultural resources present within the CTA study area and the need for additional public input, the BLM is preparing a Supplemental EIS. The BLM proposes to establish a final boundary for the CTA. This decision was not made in the 2004 Record of Decision. The CTA study area is located in the northern portion of the Las Vegas Valley. A defined final boundary is needed to ensure protection of sensitive resources, including fossils, cultural resources, the natural functioning of the wash, and endemic plants on public lands available for disposal within the CTA study area, in accordance with applicable laws.

Six alternatives for boundaries are analyzed, ranging from approximately 13,000 acres to less than 1,500 acres. Alternative A, at 12,953 acres, includes the fossil formation, sensitive cultural and plant resources, active wash, the adjacent alluvial fan, and a one mile resource protection zone around northern and eastern boundaries of the Las Vegas Paiute reservation. Alternative B, at 11,008 acres, includes the fossil formation, sensitive cultural and plant resources, active wash, and the adjacent alluvial fan. Alternative B is the BLM's Preferred Alternative. Alternative C, at 6,362 acres, includes the fossil formation, sensitive cultural and plant resources, active wash, and a portion of the adjacent alluvial fan. Alternative D, at 5,301 acres, includes most of the fossil formation, the sensitive cultural and rare plant resources, and the active wash. Alternative E, at 3,314 acres, includes some of the fossil formation, the sensitive cultural and rare plant resources, and part of the active wash. The No Action alternative, at 1,448 acres, includes the Tule Spring cultural site and the 300-acre Eglington Preserve. Scoping of the project occurred from June 6 to August 20, 2007, and was extended to September 4, 2007. A total of 1,183 individuals submitted comments. Comments received pertained to a variety of broad categories, including alternatives, boundaries, management, and physical/natural resources. Additional stakeholder involvement has been achieved through the BLM's newsletters that provided updates on the Supplemental EIS process.

The Draft Supplemental EIS addresses the following issues identified during scoping: NEPA process (consultation/coordination, proposal description, alternatives, and connected actions/cumulative impacts); social resources (cultural resources, visual resources, noise, land use, recreation, transportation, and socioeconomic resources); and physical/natural resources (botanical resources, water resources, paleontological resources, and geologic/soil resources).

Maps of the CTA study area and the alternatives being analyzed in the Supplemental EIS are available at the BLM Las Vegas Field Office. Please note that public comments and information submitted including names, street addresses, and e-mail addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10.

Angie Lara,

Associate District Manager.

[FR Doc. 2010–976 Filed 1–21–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

The National Environmental Policy Act Procedures Manual

AGENCY: National Indian Gaming Commission.

ACTION: Notice of reopening of comment period.

SUMMARY: This notice reopens the period for comments on the Draft NEPA Procedures Manual published in the **Federal Register** on December 4, 2009 (74 FR 63765, 74 FR 63787).

DATES: The comment period for the Draft NEPA Procedures Manual is being reopened from January 19, 2010, to March 4, 2010.

ADDRESSES: Please submit your comments by only one of the following means: (1) By mail to: Brad Mehaffy, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; (2) by hand delivery to: National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; (3) by facsimile to: (202) 632–7066; (4) by e-mail to: *nepa_procedures@nigc.gov;* or (5) online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bradley Mehaffy, NEPA Compliance Officer at the National Indian Gaming Commission: 202–632–7003 or by facsimile at 303–632–7066 (not toll-free numbers).

SUPPLEMENTAL INFORMATION: In response to several requests, the Acting Chairman of the National Indian Gaming Commission has decided to reopen the comment period on the Draft NEPA Procedures Manual for an additional 45 days.

Dated: January 15, 2010.

George T. Skibine,

Acting Chairman, National Indian Gaming Commission.

[FR Doc. 2010–1148 Filed 1–21–10; 8:45 am]

BILLING CODE 7565–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–776–779 (Second Review)]

Preserved Mushrooms from Chile, China, India, and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia 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:* January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), 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 January 4, 2010, the Commission determined that the domestic interested party group response to its notice of institution (74 FR 50818, October 1, 2009) for each review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on February 17, 2010, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution, and any party other than an interested party to the reviews, may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before February 23, 2010 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 23, 2010. If comments contain business proprietary information (BPI), they must 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 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the 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.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

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.

By order of the Commission.

Issued: January 15, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–1136 Filed 1–21–10; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

DEPARTMENT OF JUSTICE

[OMB Number 1121–0311]

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension of Existing Collection With Change; National Inmate Survey.

The Department of Justice (DOJ), Bureau of Justice Statistics, 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 March 23, 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 Paige M. Harrison, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone: 202–514–0809).

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 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 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 existing collection with change.

(2) *Title of the Form/Collection:* National Inmate Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Paper and Pencil questionnaires—PAPI M12, PAPI M<12, PAPI F12, PAPI F<12, SP PAPI M12, SP PAPI M<12, SP PAPI F12, SP PAPI F<12; Facility Characteristics survey—NIS FS. The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Government. *Other:* Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to produce estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79).

(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 105,500 respondents will spend approximately 30 minutes on average responding to the survey.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 57,592 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 19, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–1210 Filed 1–21–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0309]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: International Terrorism Victim Expense Reimbursement Program Application.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime 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 March 23, 2010. This process is conducted in accordance with 5 CFR 1320.10. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

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 Chandria Slaughter, Office for Victims of Crime, 810 Seventh Street, NW., Washington, DC 20531; by facsimile at (202) 305–2440 or by e-mail, to *ITVERP@usdoj.gov.*

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

(1) *Type of information collection:* Reinstatement with no change of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* International Terrorism Victim Expense Reimbursement Program (ITVERP) Application.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number:* The Office of Management and Budget Number for the certification form is 1121–0309. The Office for Victims of Crime, Office of Justice Programs, United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual victims, surviving family members or personal representatives; *Other:* Federal Government. This application will be used to apply for expense reimbursement by U.S. nationals and U.S. Government employees who are victims of acts of international terrorism that occur(red) outside of the United States. The application will be used to collect necessary information on the expenses incurred by the applicant, as associated with his or her victimization, as well as other pertinent information, and will be used by OVC to make an award determination.

(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 2,000 respondents will complete the certification in approximately 45 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 1,500 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: January 19, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–1239 Filed 1–21–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Wage and Hour Division

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, 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. 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 Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Motor Vehicle Safety for Transportation of Migrant and Seasonal Agricultural Workers. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 23, 2010.

ADDRESSES: You may submit comments, identified by Control Number 1215–0036, by either one of the following methods:

E-mail: WHDPRAComments@dol.gov.

Mail, Hand Delivery, Courier: Regulatory Analysis Branch, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Michel Smyth, Chief, Regulatory Analysis Branch, Division of Interpretations and Regulatory Analysis, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

Migrant and Seasonal Agricultural Worker Protection Act (MSPA) section 401 (29 U.S.C. 1841) requires, subject to certain exceptions, all Farm Labor Contractors (FLCs), Agricultural Employers (AGERs), and Agricultural Associations (AGASs) to ensure that any vehicle they use or cause to be used to transport or drive any migrant or seasonal agricultural worker conforms to safety and health standards prescribed by the Secretary of Labor under the MSPA and with other applicable Federal and State safety standards. These MSPA safety standards address the vehicle, driver, and insurance. The Wage and Hour Division (WHD) has created Forms WH–514, WH–514a, and WH–515, which allow FLC applicants to verify to the WHD that the vehicles used to transport migrant/seasonal agricultural workers meet the MSPA vehicle safety standards and that anyone who drives such workers meets the Act's minimum physical requirements. The WHD uses the information in deciding whether to authorize the FLC/FLC Employee applicant to transport/drive any migrant/seasonal agricultural worker(s) or to cause such transportation. Form WH–514 is used to verify that any vehicle used or caused to be used to transport any migrant/seasonal agricultural worker(s) meets the Department of Transportation (DOT) safety standards. When the adopted DOT rules do not apply, FLC applicants seeking authorization to transport any migrant/seasonal agricultural workers use Form WH–514a to verify that the vehicles meet the DOL safety standards and, upon the vehicle meeting the required safety standards, the form is completed. Form WH–515 is a doctor's certificate used to document that a motor vehicle driver or operator meets the minimum DOT physical requirements that the DOL has adopted. This information collection is currently approved for use through August 31, 2010.

II. Review Focus

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The DOL seeks the approval of the extension of the subject information collection requirements in order to verify that FLCs, AGERs, and AGASs have complied with the applicable safety standards as a condition of their transportation and/or driving authorization.

Type of Review: Extension.

Agency: Wage and Hour Division.

Titles: Vehicle Mechanical Inspection Report for Transportation Subject to Department of Transportation Requirements; Vehicle Mechanical Inspection Report for Transportation Subject to Department of Labor Safety Standards; MSPA Doctor's Certificate.

OMB Number: 1215–0036.

Agency Numbers: Form WH–514, WH–514a, WH–515.

Affected Public: Businesses or other for-profits, Farms.

Respondents: 1500.

Total Annual Responses: 4500.

Estimated Total Burden Hours: 750.

Estimated Time per Response: 5 minutes for the vehicle mechanical inspection reports and 20 minutes for the MSPA Doctor's Certification.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $220,500.

Dated: January 15, 2010.

Michel Smyth,

Regulatory Analysis Branch Chief.

[FR Doc. 2010–1194 Filed 1–21–10; 8:45 am]

BILLING CODE 4510–27–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9:30 a.m. to 5 p.m., on Monday, February 8, 2010.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after April 1, 2010.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures

confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Michael P. McDonald, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202–606–8322.

Lisette Voyatzis,

Attorney-Advisor.

[FR Doc. 2010–1107 Filed 1–21–10; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0018]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–8037, Information Relevant to Ensuring that Occupational Radiation Exposures at Medical Institutions Will be as Low as is Reasonably Achievable.

FOR FURTHER INFORMATION CONTACT: Mohammad Saba, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7558 or e-mail to *Mohammad.Saba@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Information Relevant to Ensuring that Occupational Radiation Exposures at Medical Institutions Will be as Low as is Reasonably Achievable," is temporarily identified by its task number, DG–8037, which should be mentioned in all related correspondence. DG–8037 is a proposed Revision 2 of Regulatory Guide 8.18, dated October 1982.

This guide is directed specifically toward medical licensees and recommends methods that the staff of the NRC considers acceptable to maintain occupational exposures as low as is reasonably achievable (ALARA) in medical institutions. In a medical institution, certain persons other than employees are exposed to radiation from licensed radioactive material. These persons include visitors, as well as patients other than those being treated with radioactive material. This guide addresses the protection of these individuals. The content of this guide is also applicable to veterinary medical institutions, insofar as specific diagnostic or therapeutic procedures are performed. Similar protection practices are applicable for keeping employee and visitor exposures ALARA, whether the patients are animal or human.

II. Further Information

The NRC staff is soliciting comments on DG–8037. Comments may be accompanied by relevant information or supporting data and should mention DG–8037 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0018 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0018. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

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

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–8037 is available electronically under ADAMS Accession Number ML091940170 . In addition, electronic copies of DG–8037 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.*

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0018.

Requests for technical information about DG–8037 may be directed to the NRC contact, Mohammad Saba at (301) 251–7558 or e-mail to *Mohammad.Saba@nrc.gov.*

Comments would be most helpful if received by March 19, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 12th day of January 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–1197 Filed 1–21–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366; NRC–2010–0024]

Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for a certain new requirement of 10 CFR part 73, "Physical protection of plants and materials," for Renewed Facility Operating License Nos. DPR–57 and NPF–5, issued to Southern Nuclear Operating Company, Inc. (SNC, the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (HNP), located in Appling County, Georgia. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt HNP from the required implementation date of March 31, 2010, for a certain new requirement of 10 CFR part 73. Specifically, HNP would be granted an exemption from being in full compliance with a certain new requirement contained in 10 CFR 73.55 by the March 31, 2010, deadline. SNC has proposed an alternate full compliance implementation date of December 6, 2010, approximately 8 months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the HNP site.

The proposed action is in accordance with the licensee's application dated November 6, 2009, as supplemented by letter dated November 20, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time to perform upgrades to the HNP security system due to procurement, resource, and logistical impacts, including the spring 2010 Unit 1 refueling outage and other factors.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)].

The licensee currently maintains a security program acceptable to the NRC and the new 10 CFR part 73 security measures that will be implemented by March 31, 2010, will continue to provide acceptable physical protection of the HNP. Therefore, the extension of the implementation date for the specified new requirement of 10 CFR part 73, to December 6, 2010, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the HNP, dated October 1972, as supplemented through the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Edwin I. Hatch Nuclear Plant, Units 1 and 2—Final Report (NUREG—1437, Supplement 4)."

Agencies and Persons Consulted

In accordance with its stated policy, on January 5, 2010, the NRC staff consulted with the Georgia State official, Mr. Jim Hardeman of the Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an

environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 6, 2009, as supplemented by letter dated November 20, 2009. Portions of the submittals contain proprietary and security information and, accordingly, are not available to the public pursuant to 10 CFR 2.390. The public documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document 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 send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of January 2010.

For the Nuclear Regulatory Commission.

Donna N. Wright,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–1182 Filed 1–21–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328; NRC–2010–0021]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR part 73, "Physical protection of plants and materials," for Facility Operating License Nos. DPR–77 and DPR–79, issued to Tennessee Valley Authority (TVA, the licensee), for operation of the Sequoyah Nuclear Plant, Units 1 and 2 (SQN), located in Hamilton County, Tennessee. In accordance with 10 CFR 51.21, "Criteria for and identification of licensing and regulatory actions requiring environmental assessments," the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed action will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the TVA from the required implementation date of March 31, 2010, for several new requirements of 10 CFR part 73. Specifically, SQN would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," by the March 31, 2010, deadline (74 FR 13935, March 27, 2009). TVA has proposed an alternate full compliance implementation date of September 24, 2012, approximately two and half years beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the SQN site that were not previously considered in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009).

The proposed action is in accordance with the licensee's application dated November 6, 2009, as supplemented by letter dated January 11, 2010.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the SQN security system because they involve new components and engineering that cannot be obtained or completed by the March 31, 2010, implementation date.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

The licensee currently maintains a security system acceptable to the NRC and will continue to provide acceptable physical protection of SQN as TVA implements certain new requirements in 10 CFR part 73. Therefore, the extension of the implementation date of the new requirements of 10 CFR part 73 to September 24, 2012, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for SQN dated February 13, 1974.

Agencies and Persons Consulted

In accordance with its stated policy, on December 22, 2009, the NRC staff consulted with the Tennessee State official, Elizabeth Flannagan of the Tennessee Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 6, 2009, as supplemented by letter dated January 11, 2010. Portions of the November 6, 2009, submittal contain safeguards and security sensitive information and, accordingly, are not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document 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 send an e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of January 2010.

For the Nuclear Regulatory Commission.

Siva P. Lingam,

Project Manager, Plant Licensing Branch LPL2–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–1196 Filed 1–21–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0174; Forms RI 20–63, RI 20–116 and RI 20–117]

Proposed Collection; Comment Request for Review of a Currently Approved Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a currently approved information collection. "Survivor Annuity Election for a Spouse" (OMB Control No. 3206–0174; Form RI 20–63), is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. (OMB Control No. 3206–0174; Form RI 20–116) is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter may be used to decline to elect. (OMB Control No. 3206–0174; RI 20–117) is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity. This letter may be used to ask for more information or to decline to elect.

RI 20–117 is accompanied by RI 20–63A, Information on Electing a Survivor Annuity for Your Spouse, or RI 20–63B, Information on Electing a Survivor Annuity for Your Spouse When You Are Providing a Former Spouse Annuity. Both booklets explain the election. RI 20–63A is for annuitants who do not have a former spouse who is entitled to a survivor annuity benefit. RI 20–63B is for those who do have a former spouse who is entitled to a benefit. These booklets do not require OMB clearance. They have been included because they provide the annuitant additional information.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 2,400 RI 20–63 forms are returned each year electing survivor annuities and 200 annuitants return the cover letter to ask for information about the cost to elect less than the maximum survivor annuity or to refuse to provide any survivor benefit. We estimate this form takes an average of 45 minutes per response to complete the form with a burden of 1,800 hours and 10 minutes to complete the letter, which gives a burden of 34 hours. The total burden for RI 20–63 is 1,834 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–1112 Filed 1–21–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Extension of a Currently Approved Information Collection: (OMB Control No. 3206–0211; Reemployment of Annuitants, 5 CFR 837.103)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for extension of a currently approved information collection. "Reemployment of Annuitants" (OMB Control No. 3206–0211; 5 CFR 837.103), requires agencies

to collect information from retirees who become employed in Government positions. Agencies need to collect timely information regarding the type and amount of annuity being received so the correct rate of pay can be determined. Agencies provide this information to OPM so a determination can be made whether the reemployed retiree's annuity must be terminated.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 3,000 reemployed retirees are asked this information annually. It takes each reemployed retiree approximately 5 minutes to provide the information for an annual estimated burden of 250 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW. Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–1113 Filed 1–21–10; 8:45 am]

BILLING CODE 6325–38–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12020 and # 12021]

Massachusetts Disaster # MA–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 01/15/2010.

Incident: Mystic Side Estates Apartment Building Fire.

Incident Period: 01/09/2010.

DATES: *Effective Date:* 01/15/2010.

Physical Loan Application Deadline Date: 03/16/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 10/15/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Middlesex.

Contiguous Counties:

Massachusetts: Essex, Norfolk, Suffolk, Worcester.

New Hampshire: Hillsborough.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.125
Homeowners Without Credit Available Elsewhere:	2.562
Businesses With Credit Available Elsewhere:	6.000
Businesses Without Credit Available Elsewhere:	4.000
Non-Profit Organizations With Credit Available Elsewhere:	3.625
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12020 5 and for economic injury is 12021 0.

The States which received an EIDL Declaration # are Massachusetts, New Hampshire.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 15, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–1183 Filed 1–21–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12015 and # 12016]

Louisiana Disaster # LA–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 01/14/2010.

Incident: Severe Weather and Flooding.

Incident Period: 12/10/2009 through 12/18/2009.

Effective Date: 01/14/2010.

Physical Loan Application Deadline Date: 03/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 10/14/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes: Lafourche.

Contiguous Parishes: Louisiana:

Assumption, Jefferson, Saint Charles, Saint James, St. John the Baptist, Terrebonne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.562
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000

	Percent
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12015 6 and for economic injury is 12016 0.

The State which received an EIDL Declaration # is Louisiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 14, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–1203 Filed 1–21–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: US Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–12; SEC File No. 270–442; OMB Control No. 3235–0498.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided in Rule 17a–12 (17 CFR 240.17a–12) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (“Exchange Act”).

Rule 17a–12 under the Exchange Act is the reporting rule tailored specifically for OTC derivatives dealers registered with the Commission, and Part IIB of Form X–17A–5,[1] the Financial and Operational Combined Uniform Single (“FOCUS”) Report, is the basic document for reporting the financial and operational condition of OTC derivatives dealers.

Rule 17a–12 requires registered OTC derivatives dealers to file Part IIB of the FOCUS Report quarterly. Rule 17a–12 also requires that OTC derivatives dealers file audited financial statements annually. There are currently four registered OTC derivatives dealers. The staff expects that one additional firm, with an application pending, will register as an OTC derivatives dealer within the next three years. The staff estimates that the average amount of time necessary to prepare and file the quarterly reports required by the rule is eighty hours per OTC derivatives dealer[2] and that the average amount of time for the annual audit report is 100 hours per OTC derivatives dealer, for a total of 180 hours per OTC derivatives dealer annually. Thus the staff estimates that the total number of hours necessary for the four current OTC derivatives dealers plus the additional OTC derivative dealer to comply with the requirements of Rule 17a–12 on an annual basis is 900 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: January 15, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1147 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

[1] Form X–17A–5 (17 CFR 249.617).

[2] Based upon an average of 4 responses per year and an average of 20 hours spent preparing each response.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61367; File No. SR–OPRA–2009–01]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment To Revise the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Serve as the Operating Agreement for OPRA LLC

January 15, 2010.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)[1] and Rule 608 thereunder,[2] notice is hereby given that on December 28, 2009, the Options Price Reporting Authority (“OPRA”) submitted to the Securities and Exchange Commission (“Commission”) an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA Plan”).[3] The proposed amendment would revise the OPRA Plan for the sole purpose of enabling it to serve as the Limited Liability Company Agreement of OPRA LLC. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Plan Amendment

OPRA proposes to change its structure from a committee of national securities exchanges acting jointly pursuant to the OPRA Plan to a limited liability company organized under the Delaware Limited Liability Company Act of which its participating national securities exchanges will be members. The restructured OPRA will be known as Options Price Reporting Authority, LLC (“OPRA LLC”). To facilitate the restructuring of OPRA, the OPRA Plan is proposed to be revised for the sole purpose of enabling it to serve as the Limited Liability Company Agreement

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The seven participants to the OPRA Plan are NASDAQW OMX BX, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

(sometimes referred to as the "Operating Agreement") of OPRA LLC. The OPRA Plan as proposed to be revised was attached as Exhibit A to the filing.

The purpose of the amendment to the OPRA Plan is to permit the Plan to serve as the Operating Agreement for OPRA LLC, which is the entity that is proposed to succeed to OPRA in its current structure. In 1975, when OPRA was first established as a registered securities information processor ("SIP"), unlike other SIPs in existence at that time, OPRA was not organized as an association pursuant to Articles of Association or as any other form of organization. Instead, OPRA simply served as the name used to describe a committee of registered national securities exchanges acting jointly in accordance with a national market system plan to provide consolidated last sale reports and quotation information in accordance with Commission rules and policies that were the predecessors of what is now contained in Rules 601 and 602 under Regulation NMS. This structure has served OPRA well over the years. However, OPRA has recently been advised that the very lack of a clear identity for OPRA as an entity could give rise to uncertainty as to the nexus between OPRA or its constituent exchanges and various states for purpose of the application of certain state tax laws to OPRA's activities. OPRA has been told that in order to resolve this uncertainty OPRA should restructure itself so it clearly is an entity separate and apart from its constituent exchanges, and that the best way to do this is for OPRA to become a limited liability company organized under the Delaware Limited Liability Company Act ("Delaware Act").

In order to accomplish this, it is necessary for the OPRA Plan to be amended to incorporate various provisions that will enable it to serve as the Operating Agreement of a limited liability company under the Delaware Act. This is reflected in the amendment to the OPRA Plan filed herewith. In preparing this amendment, care was taken to limit revisions to the current OPRA Plan only to those that are necessary to accommodate its structure as an LLC (much of which consists of new language added for federal and state income tax purposes), and not to change any of the provisions of the Plan that govern the way in which OPRA performs its activities as a registered SIP. Thus although the governance structure of OPRA needs to be described in terms that apply to an LLC under the Delaware Act, the essence of its governance remains unchanged, so that OPRA will continue to be governed by its constituent exchanges, each of which has one vote on matters that come before them, subject to Commission filing and approval requirements under the Exchange Act. Likewise, OPRA's financial structure, including the fees it charges and how it allocates fees and expenses among the exchanges, is not changed by this amendment. The various forms of agreements that OPRA enters into with vendors, subscribers and others who access the market data it provides will be changed only as necessary to reflect the change in OPRA's structure. OPRA's procedures for the admission of new exchanges to membership in OPRA, the way in which OPRA conducts its capacity planning activities with the assistance of an independent system capacity advisor and all other operational aspects of OPRA's activities will also not be changed.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, *http://opradata.com,* and on the Commission's Web site at *http://www.sec.gov.*

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(ii) of Rule 608 under the Act,[4] OPRA designated this amendment as one concerned solely with the administration of the Plan, or involving the governing or constituent documents relating to any person authorized to implement or administer the Plan on behalf of its sponsors. Accordingly, OPRA intends to put the Plan amendment into effect upon filing it with the Commission, having previously filed the necessary documents with the State of Delaware to cause OPRA to be restructured as an LLC, concurrently herewith amending its Form SIP on file with the Commission to reflect the change in OPRA's structure, and taking such other steps as are necessary to assure that OPRA LLC is able to succeed to the rights and obligations of OPRA under the various contracts OPRA has entered into with vendors, subscribers, other users of its market data, its processor and others who perform administrative functions on behalf of OPRA, and its independent system capacity advisor.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act[5] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

[4] 17 CFR 242.608(b)(3)(ii).

[5] 17 CFR 242.608(b)(2).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–OPRA–2009–01 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–OPRA–2009–01. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. 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–OPRA–2009–01 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1146 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61350; File No. SR–NYSE–2010–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Waiving All Transaction Fees for Shares Executed on the NYSE MatchPoint℠ System Until January 29, 2010

January 14, 2010.

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 January 7, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 waive all transaction fees for shares executed on the NYSE MatchPoint℠ ("NYSE MatchPoint" or "MatchPoint") system, effective upon filing this rule change with the Securities and Exchange Commission ("SEC" or "Commission") until January 29, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE's 2010 Price List by waiving all transaction fees for shares executed on the NYSE MatchPoint system, which will be effective upon filing this rule change with the Commission until January 29, 2010. The Exchange is also eliminating the current temporary equity transaction fee for shares executed on MatchPoint, which has been in effect since January 2009.

Background

On January 7, 2009, the Exchange filed with the Securities and Exchange Commission a proposed rule change to adopt a temporary equity transaction fee for shares executed on the NYSE MatchPoint system, effective until February 28, 2009.[4] This temporary equity transaction fee has been extended numerous times since the original filing and is currently in effect until January 31, 2010.[5] Each such filing was effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4.[7]

The current temporary equity transaction fee is a scaled fee for MatchPoint users based on the average daily volume of shares executed during a calendar month through the MatchPoint system as follows:

Average daily volume of shares executed	Rate (per share)
50,000 shares or less	$.0015
Over 50,000 to 499,999	.0010
500,000 and greater	.0005

The Exchange believes that a temporary waiver of the current transaction fees for all executions will induce users to enter more single-sided volume[8] into the MatchPoint system, which benefits all participants in MatchPoint, since it increases the likelihood of a match during the matching sessions (*i.e.,* intra-day and after hours matching sessions). This waiver of transaction fees will apply to all Exchange members that access MatchPoint.

It is intended that new MatchPoint transaction fees will be in effect on February 1, 2010, after the proposed fee waiver terminates. The new transaction fees will also provide incentives for adding volume to the MatchPoint system.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")[9] for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the fee waiver for all MatchPoint executions is reasonable in that it provides a significant incentive for users to add volume into the MatchPoint system. The fee waiver will be in effect upon filing the rule change with the Commission until January 29, 2010. Adding volume to the MatchPoint system will increase a user's likelihood of obtaining an execution. Increased volume and trading activity will improve the overall market for customers. The proposed transaction fee waiver is also designed to make the system more competitive, which will further improve the quality of the market and benefit customers. Finally, the transaction fee waiver is equitable because it is available to all Exchange members that access the MatchPoint system, and it applies to all MatchPoint executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[6] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59229 (January 12, 2009) 74 FR 3119 (January 16, 2009) (SR–NYSE–2009–01).

[5] *See* Securities Exchange Act Release No. 59491 (March 3, 2009) 74 FR 10107 (March 9, 2009) (SR–NYSE–2009–20); *see* Securities Exchange Act Release No. 59864 (May 5, 2009) 74 FR 22194 (May 12, 2009) (SR–NYSE–2009–44); *see* Securities Exchange Act Release No. 60278 (July 10, 2009) 74 FR 34615 (July 16, 2009) (SR–NYSE–2009–67); *see* Securities Exchange Act Release No. 60439 (August 5, 2009) 74 FR 40270 (August 11, 2009) (SR–NYSE–2009–78) and *see also* Securities Exchange Act Release No. 60949 (November 6, 2009) 74 FR 58665 (November 13, 2009) (SR–NYSE–2009–110).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] Executions in the MatchPoint system occur when buy and sell interest in a security is entered on a matched basis (both buy and sell sides submitted together) or when interest submitted in the system by one user matches against contra side interest submitted by another user.

[9] 15 U.S.C. 78a.

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–01. 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–NYSE–2010–01 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1141 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61361; File No. SR–FINRA–2010–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Publication of Certain Aggregate Daily Trading Volume Data

January 14, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA has filed a proposed rule change relating to the publication of aggregate daily trading volume data for over-the-counter trades in NMS stocks that are executed within a FINRA member's alternative trading system ("ATS") dark pool and reported to a FINRA Trade Reporting Facility ("TRF").[3] The proposed rule change would amend FINRA Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants) to (1) require members that opt to have their trading data published to obtain and use a separate Market Participant Identifier ("MPID") designated exclusively for reporting the member's ATS dark pool transactions, and (2) adopt related Supplementary Material.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Some FINRA members operate "dark pools," a type of ATS that does not display quotations or subscribers' orders to any person or entity either internally within the ATS dark pool or externally beyond the ATS dark pool (other than employees of the ATS).[4] Over-the-counter transactions executed within an ATS dark pool are reported by the ATS to a FINRA facility, *e.g.,* a FINRA TRF.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The FINRA TRFs are facilities used by members to report over-the-counter transactions in NMS stocks to FINRA. There are two TRFs in operation today: the FINRA/Nasdaq TRF and the FINRA/NYSE TRF. Each TRF is operated in conjunction with the respective exchange "Business Member."

[4] *See, e.g.,* Rule 301(b)(3)(i)(A) of Regulation ATS.

Currently, information relating to the trading volume reported to FINRA facilities by participants operating ATS dark pools is not separately identified to the public.

The TRF Business Members have determined to publish aggregate daily trading volume data for transactions executed within ATS dark pools and reported to the TRFs.[5] FINRA, through its TRF Limited Liability Companies, will distribute transaction reporting data to the Business Members so that the Business Members may publish, after the close of trading, aggregate daily trading volume data for trades executed within participating ATS dark pools. FINRA is making such data available to the Business Members and the Business Members will make the data widely available to the public at no cost.[6]

The data for transactions reported to each TRF will be posted on the respective Business Member's Web site (*i.e.,* the NYSE will post daily trading volume data on its Web site based on transactions reported to the FINRA/NYSE TRF, and Nasdaq will post daily trading volume data on its Web site based on transactions reported to the FINRA/Nasdaq TRF).[7] The daily trading volume data will be segregated by participating ATS dark pool. Initially, the data may be presented as an overall volume percentage; however, at a later date, it may be further broken down by security. As discussed below, members that opt into the proposed program must acknowledge that their data may be published in one of these two ways.

FINRA member participation in the proposed program to publish dark pool transaction data is voluntary. No member's data will be included in the aggregate daily trading volume unless the member expressly requests that it be published.

Any member that opts to have its volume included in the published data must comply with proposed new paragraph (c) of Rule 6160. Under current Rule 6160, FINRA permits members to obtain and use multiple MPIDs for purposes of reporting trades to a TRF on a pilot basis.[8] Members must submit a written request to, and obtain approval from, FINRA Operations for additional MPID(s). As part of the approval process, members must provide bona fide business and/or regulatory reasons for requesting an additional MPID, such as to facilitate a member's back office operations (*e.g.,* the member might use multiple MPIDs for trade reporting purposes if it clears trades through multiple clearing firms).[9]

Proposed paragraph (c) of Rule 6160 would apply only to members that voluntarily participate in the proposed program to publish ATS dark pool data. The proposed rule requires that the member obtain and use a separate MPID designated exclusively for the reporting of transactions executed within the ATS dark pool.[10] The member must use such separate MPID to report all transactions executed within the ATS dark pool to a TRF(s). The member shall not use such separate MPID to report any transaction that is not executed within the ATS dark pool, including, *e.g.,* trades that are routed out by the ATS dark pool. The member cannot obtain more than one MPID under proposed paragraph (c) for purposes of reporting transactions executed within a single ATS dark pool. In addition, any member that operates multiple ATS dark pools and opts to have each ATS dark pool participate in the proposed program must obtain a separate MPID for each ATS dark pool; the member cannot use a single MPID to report transactions executed within multiple ATS dark pools. Members that opt to have their volume included in the published data must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under proposed Rule 6160(c) are restricted to trades executed within the ATS dark pool.

If a member designates a separate MPID for dark pool transaction reporting for purposes of the proposed program, then all transactions reported under such MPID will be included in the published ATS dark pool volume, irrespective of whether the member reports to a single TRF or multiple TRFs.[11] Because a member that opts in to the proposed program may report transactions executed within its ATS dark pool to more than one TRF, the data published on one Business Member's Web site may not reflect 100% of that member's volume. Interested parties would need to consult all Business Members' Web sites to see the total volume for any given ATS dark pool, and the Business Members will make prominent disclosure to this effect on their Web sites. The proposed Supplementary Material also would clarify that the Business Members will make such disclosure.

Pursuant to the proposed Supplementary Material, a member operating an ATS dark pool must certify in writing to FINRA that (1) the member is affirmatively opting in for purposes of having its dark pool transaction data included in the published data and acknowledges that its data may be presented as an overall percentage volume only or may be broken down by security; (2) the member meets the definition of ATS dark pool in proposed Rule 6160(c); and (3) the member has obtained a separate MPID that will be used exclusively for reporting its dark pool transactions as required by proposed Rule 6160(c). The member will be required to identify to FINRA the MPID (or MPIDs, if the member operates more than one ATS dark pool and opts to have each ATS dark pool participate in the proposed program) that should be aggregated in the published volume.

The proposed requirements relating to the establishment and use of separate MPIDs for purposes of dark pool

[5] Under the TRF Limited Liability Company Agreements between FINRA and the exchanges, FINRA, the "SRO Member," has sole regulatory responsibility for the TRFs. The Business Member (*see* note 3) is primarily responsible for the management of the TRF's business affairs, including establishing pricing for use of the TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the TRF.

[6] The TRFs receive the data and the Business Members, because they operate the TRFs, have access to the data through their contractual arrangements with FINRA. Thus, FINRA will not be required to take any specific action to "distribute" or make the data available to the Business Members.

[7] FINRA notes that the TRF Business Members have previously posted data on their web site that did not require a rule filing; however, because this data product is not derived directly (or indirectly) from publicly disseminated information, SEC staff have indicated that a rule filing is necessary.

[8] Similarly, FINRA permits members to obtain and use multiple MPIDs for purposes of displaying quotes/orders and reporting trades to the Alternative Display Facility ("ADF") under Rule 6170.

[9] FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a TRF Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to the Participant for purposes of reporting trades to a TRF. *See* Rule 6160.

[10] Today, a broker-dealer that operates an ATS dark pool may report trades executed within the ATS using the same MPID that it uses for transactions it executes in other areas of its business (including, e.g., other ATSs it operates). As a result, it would not be possible to determine from the trade reporting data which trades were executed within the ATS dark pool as opposed to other areas of the broker-dealer's business. An ATS dark pool using such a "multi-purpose" MPID would be ineligible to opt in to the proposed program for publication of ATS dark pool volume.

[11] In other words, once a member has opted in to the program, 100% of its ATS dark pool transactions must be reported under a single MPID to one or more TRFs (the member can choose to report to a single TRF or multiple TRFs) and 100% of the member's volume will be published. Because the ADF does not offer a program to publish dark pool transaction data, the member would be prohibited from reporting to the ADF in this instance.

transaction reporting will ensure that the published volume is limited to the member's dark pool activity. In addition to these requirements, FINRA has established certain other parameters to minimize the risk of double counting and ensure the accuracy and reliability of the published data. The data posted on each TRF Business Member's Web site will show the trading volume reported to the respective TRF only and will not include transactions reported to or counted by another venue, *e.g.,* another TRF. Only transactions that are reported for purposes of publication will be included in the published data (*i.e.,* "non-tape" regulatory or clearing-only reports will not be included in the aggregate volume). In addition, there will be no double counting of trade volume (*i.e.,* a 1,000 share trade reported for publication purposes will not be counted as 2,000 shares to reflect 1,000 shares on the buy side and 1,000 shares on the sell side).

FINRA notes that members will not be charged a fee for having their ATS dark pool data included in the published aggregate daily trading volume data. Additionally, no TRF Business Member will charge a fee to view the aggregate daily trading volume data posted on its Web site.

The proposed rule change will be effective upon Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that by providing additional market data relating to ATS dark pools, the proposed rule change will increase market transparency of trading volumes within those ATS dark pools that choose to participate.

FINRA also believes that distribution of this data is consistent with Rule 603(a) of Regulation NMS, which requires, among other things, that distributions of certain data by FINRA not be unreasonably discriminatory.[13] FINRA, through its TRF Limited Liability Companies, will distribute certain data to the Business Members so that the Business Members may publish, after the close of trading, aggregate daily trading volume data for trades executed within participating ATS dark pools. FINRA is making such data available to the Business Members and the Business Members will make the data widely available to the public at no cost. Because the data that FINRA is proposing to distribute to the Business Members will be published by each Business Member on its Web site in a widely disseminated and easily accessible manner, the proposal is not unreasonably discriminatory. In addition, the benefit to the marketplace of increased transparency regarding dark pool transaction volume, together with the readily accessible manner in which this reference data will be made available by the Business Members, offers compelling justification for the proposed program to publish ATS dark pool data.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–001. 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 FINRA. 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–FINRA–2010–001 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1145 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] *See* Rule 603(a)(2) of Regulation NMS.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61360; File No. SR–NYSEAMEX–2010–03]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 452—NYSE Amex Equities and Section 723 of the NYSE Amex Company Guide To Insert a Date (January 1, 2010) That Was Inadvertently Omitted in a Previous Rule Change

January 14, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2010, NYSE Amex LLC ("Exchange" or "NYSE Amex") 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 Rule 452—NYSE Amex Equities and Section 723 of the NYSE Amex Company Guide (the "Company Guide"). The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and on the Exchange's Web site at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 5, 2010, the Commission issued a release pursuant to Section 19(b)(1) [3] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 [4] thereunder declaring immediate effectiveness of a rule change proposed by the Exchange to eliminate broker discretionary voting for the election of directors.[5] Specifically, the language of Rule 452—NYSE Amex Equities and Section 723 of the Company Guide was revised to add the election of directors to a list of specific non-routine matters as to which a member organization may not give a proxy to vote without instructions from beneficial owners. That rule change was identical to a rule change filed by the New York Stock Exchange ("NYSE") and approved by the Commission on July 1, 2009.[6] The Form 19b–4 for the earlier Exchange filing stated that, "The proposed amendment will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010." In requesting the Commission to waive the 30-day delayed operative date for that earlier filing, the Exchange also noted "that the NYSE's new rules will be applicable to shareholder meetings held on or after January 1, 2010 and believes that its proposed rule change should be operative no later than that date to conform to the Commission's mandate to eliminate any disparities involving voting."

While the proposed January 1, 2010 operative date of the Exchange's prior rule text change was correctly identified in the Form 19b–4 for that rule filing, it was inadvertently left out of the related Exhibit 5. Instead, the general phrase "insert effective date" was left in the text in the two places where the specific operative date should have been inserted. Consequently, the Exchange is making this "cleanup" filing so that the operative date of January 1, 2010 that was accurately described in the earlier Form 19b–4 and in the Notice of Filing is reflected in the rule text of Rule 452—NYSE Amex Equities and Section 723 of the Company Guide as well.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release No. 34–61292 (January 5, 2010), 75 FR 1664 (January 12, 2010) (notice of filing and immediate effectiveness of SR–NYSEAmex–2009–93) ("Notice of Filing").

[6] *See* Securities Exchange Act Release No. 34–60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92) ("NYSE Approval Order").

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed correction would protect investors and the public interest by eliminating any potential confusion to investors and others that might result from leaving the current generalized reference to the effective date in the text of the Exchange's rules.

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) by its terms, 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) [10] of the Act and Rule 19b-4(f)(6)(iii) thereunder.[11]

[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)(iii). 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

Continued

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 the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In making this request, the Exchange stated that waiver of this period will permit the text of the Exchange's rules to exactly match the corresponding text of the NYSE's rules as soon as possible and will eliminate any potential confusion to investors and others that might result from the more generalized reference to the effective date of the new rule that is in the current rule text.

The Commission believes that the waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest.[14] The proposal would correctly insert the effective date, as described in the Exchange's prior proposed rule change, into the text of the Exchange's rules to ensure that investors and issuers are aware that the Exchange's rule is operative on the same date as NYSE's rule change. Based on the foregoing, the Commission deems the proposal 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–NYSEAmex–2010–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2010–03. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–03 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1144 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

as designated by the Commission. The Commission has waived the pre-filing requirement in this case.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61359; File No. SR–FINRA–2009–082]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating To Reporting of Trade Cancellations to FINRA

January 14, 2010.

On November 24, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Amend FINRA trade reporting rules to permit members to report trade cancellations after 5:15 p.m. Eastern Time on the trade date to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") and the OTC Reporting Facility ("ORF");[3] and (2) make certain conforming changes to the rules relating to the submission of trade cancellations to the Alternative Display Facility ("ADF").[4] Notice of the proposed rule change was published for comment in the **Federal Register** on December 10, 2009.[5] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This change will allow members to submit reports of trade cancellations on the trade date until the close of the facilities at 8 p.m. Previously, FINRA rules prohibited members from reporting trade cancellations after 5:15 p.m. on the trade date for these two reporting facilities.

[4] Among other changes, the proposed amendments to Rule 6282(j)(2) provide that if a normal market hours trade is cancelled during market hours on trade date, the cancellation must be reported within 90 seconds.

[5] *See* Securities Exchange Act Release No. 61105 (December 3, 2009), 74 FR 65578.

[6] 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).

[7] 15 U.S.C. 78*o*–3(b)(6).

general, to protect investors and the public interest.

The proposed amendments are identical to the current rules relating to the FINRA/NYSE Trade Reporting Facility ("FINRA/NYSE TRF") and would make FINRA rules governing the submission of trade cancellations consistent across the "FINRA Facilities." [8] The Commission believes such consistency should enhance market transparency and eliminate systematically imposed delays in the reporting of trade cancellations to the FINRA/Nasdaq TRF and ORF.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2009–082), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1143 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61357; File No. SR–CBOE–2010–001]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Elimination of the Hybrid Electronic Quoting Fee

January 14, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 4, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. On January 12, 2010, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule to eliminate the Hybrid Electronic Quoting Fee. The text of the proposed rule change is available on the Exchange's website (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the Hybrid Electronic Quoting Fee ("Quoting Fee"), which is applicable to all Market-Makers, DPMs, and e-DPMs (collectively "liquidity providers"). The Quoting Fee was implemented in February 2007 with the purpose of promoting and encouraging more efficient quoting.[1] Under the Quoting Fee, CBOE assesses all liquidity providers who are submitting electronic quotations to CBOE in Hybrid option classes a monthly amount of $450 per membership utilized. CBOE also assesses or credits fees on liquidity providers that vary depending on: (i) The quality of the liquidity provider's quotation (a quotation is a bid and an offer); and (ii) the value of the underlying security and CBOE's bid in the option series.[2] If a liquidity provider is assessed (or credited) the Quoting Fee, the liquidity provider does not pay a member dues fee under Section 10 of the Fees Schedule.

The Exchange believes the Quoting Fee is no longer necessary to help mitigate quote message traffic. The Exchange believes liquidity providers generally are quoting more efficiently in response to the expansion of the Penny Pilot Program in order to remain competitive in the penny classes. In addition, the Exchange believes the other quote mitigation strategies it implemented at the inception of the Penny Pilot Program should continue to be effective in mitigating quotations.[3] Also, since the adoption of the Quoting Fee the Exchange has invested heavily to increase its options system capacity to handle greater quote message traffic. Accordingly, the Exchange believes it would be appropriate to eliminate the Quoting Fee.

Liquidity providers will continue to be charged $450 per month as member dues under Section 10 of the Fees Schedule instead of as a Hybrid Electronic Quoting Fee.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[4] in general, and furthers the objectives of Section 6(b)(4) [5] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members. The Exchange believes it is appropriate to eliminate the Quoting Fee because it is no longer necessary to help mitigate quote message traffic.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

[8] The ADF, FINRA/Nasdaq TRF, FINRA/NYSE TRF and ORF are collectively referred to herein as the "FINRA Facilities."

[9] 17 CFR 200.30–3(a)(12).

[1] *See* Securities Exchange Act Release No. 54804 (November 21, 2006), 71 FR 69150 (November 29, 2006). The Quoting Fee was amended three times. *See* Securities Exchange Act Release No. 56602 (October 3, 2007), 72 FR 57620 (October 10, 2007); Securities Exchange Act Release No. 56927 (December 7, 2007), 72 FR 70912 (December 13, 2007); and Securities Exchange Act Release No. 58513 (September 11, 2008), 73 FR 54186 (September 18, 2008).

[2] *See* CBOE Fees Schedule, Section 17.

[3] *See* Securities Exchange Act Release No. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–001 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–CBOE–2010–001. 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–CBOE–2010–001 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1142 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61323; File No. SR–NASDAQ–2009–116]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 2240 and 2250 To Reflect Changes to Corresponding FINRA Rules

January 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2009, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[4] and Rule 19b–4 thereunder,[5] The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend NASDAQ Rule 2240 and 2250 to reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

NASDAQ Stock Market Rules

* * * * *

[2240. Disclosure of Control Relationship with Issuer
Nasdaq Members shall comply with NASD Rule 2240 as if such Rule were part of Nasdaq's Rules.]

* * * * *

[2250. Disclosure of Participation or Interest in Primary or Secondary Distribution
Nasdaq Members shall comply with NASD Rule 2250 as if such Rule were part of Nasdaq's Rules.]

* * * * *

2262. Disclosure of Control Relationship with Issuer
Nasdaq Members shall comply with FINRA Rule 2262 as if such Rule were part of Nasdaq's Rules.

* * * * *

2269. Disclosure of Participation or Interest in Primary or Secondary Distribution
Nasdaq Members shall comply with FINRA Rule 2269 as if such Rule were part of Nasdaq's Rules.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ Rule 2240 entitled "Disclosure of Control Relationship with Issuer" and 2250 entitled "Disclosure of Participation or Interest in Primary or Secondary Distribution." NASDAQ Rule 2262 makes reference to NASD 2240 entitled "Disclosure of Control Relationship with Issuer." FINRA filed a proposed rule change to adopt NASD Rule 2240 as FINRA Rule 2262, NASD Rule 2250 as FINRA Rule 2269 and NASD Rule 3340 as FINRA Rule 5260.[6]

FINRA transferred NASD Rule 2240 unchanged into the Consolidated FINRA Rulebook as FINRA Rule 2262. FINRA Rule 2262 provides that a member controlled by, controlling, or under common control with the issuer of any security must, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to the customer the existence of such control; if such disclosure is not made in writing, it must be supplemented by written disclosure at or before the completion of the transaction.

FINRA transferred NASD Rule 2250 unchanged into the Consolidated FINRA Rulebook as FINRA Rule 2269. FINRA Rule 2269 provides that if a member is acting as a broker for a customer, or is acting for both the customer and some other person, or is acting as a dealer and receives or has promise of receiving a fee from a customer for advising the customer with respect to securities, then the member must, at or before the completion of any transaction for or with the customer in any security in the primary or secondary distribution of which the member is participating or is otherwise financially interested, give the customer written notification of the existence of such participation or interest.

FINRA transferred NASD Rule 3340 without material change into the Consolidated FINRA Rulebook as FINRA Rule 5260. FINRA Rule 5260 prohibits members from, directly or indirectly, effecting transactions or publishing quotations or indications of interest ("IOIs") in (1) any security with respect to which a trading halt is in effect; or (2) any security future when there is a regulatory trading halt in effect with respect to the underlying security. The trading and quoting conduct prohibited by Rule 3340 is triggered only when a trading halt is in effect. The rule also provides that, in the event that FINRA halts over-the-counter trading and quoting in NMS stocks because the Alternative Display Facility ("ADF") or a Trade Reporting Facility ("TRF") is unable to transmit real-time information to the applicable Securities Information Processor, members are not prohibited from trading through other markets for which trading is not halted.

NASDAQ is proposing to amend NASDAQ Rule 2240 by renaming Rule 2240 to new Rule 2262. Also, NASDAQ is proposing to amend NASDAQ Rule 2250 by renaming Rule 2250 to new Rule 2269. NASDAQ would delete current Rules 2240 and 2250. NASDAQ also proposes to amend the references to NASD Rule 2240 and 2250 to instead state FINRA Rules 2262 and 2269 in the new Rules 2262 and 2269, respectively. No changes are necessary to Rule 3340.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform NASDAQ Rules 2240 and 2250 to recent changes made to corresponding FINRA rules and rename Rules 2240 and 2250 to new Rules 2262 and 2269 respectively.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–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

[6] Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (SR–FINRA–2009–044).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–116 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1140 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61321; File No. SR–NASDAQ–2010–002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 2810 To Reflect Changes to Corresponding FINRA Rule

January 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2010, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rule 2810 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). NASDAQ will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ Rule 2810, which formerly corresponded to NASD 2810, and which addresses underwriting terms and arrangements in public offerings of direct participation programs and unlisted real estate investments trusts (collectively, "Investment Programs"). In SR–FINRA–2009–016,[4] FINRA redesignated NASD Rule 2810 as FINRA Rule 2310 with no material change. FINRA Rule 2310 requires that members participating in a public offering of an Investment Program meet certain requirements regarding underwriting compensation, fees and expenses, perform due diligence on the Investment Program, follow specific guidelines on suitability, and adhere to limits on non-cash compensation.

NASDAQ is adopting the new FINRA rule in full, and because the NASDAQ Rules currently contain a Rule 2310, will redesignate Rule 2810 as NASDAQ Rule 2310A, so as to closely correspond to the new FINRA rule number.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform NASDAQ Rule 2810 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 34–59987 (May 27, 2009), 74 FR 106 [sic] (June 4, 2009) (SR–FINRA–2009–016).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–002 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1139 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61320; File No. SR–NASDAQ–2010–001]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 2342 To Reflect Changes to Corresponding FINRA Rule

January 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2010, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rule 2342 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). NASDAQ will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ Rule 2342, which sets forth requirements for providing information regarding the Securities Investor Protection Corporation ("SIPC") to customers, and which formerly corresponded to NASD 2342. In SR–FINRA–2009–016,[4] FINRA re-designated NASD Rule 2342 as FINRA Rule 2266, with no material changes. FINRA Rule 2266 requires members, with certain exceptions, to advise all new customers that they may obtain information about SIPC by contacting SIPC, and to provide SIPC's web site address and telephone numbers.

NASDAQ is adopting the new FINRA rule in full and is re-designating the rule as NASDAQ Rule 2266, to correspond to the new FINRA rule number.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform NASDAQ Rule 2342 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[4] Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 106 [sic] (June 4, 2009) (SR–FINRA–2009–016).

[5] 15 U.S.C. 78f.

[6] 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–001 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1138 Filed 1–21–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections, a collection in use without an OMB number, and new information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Director to the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–0454, E-mail address: *OPLM.RCO@ssa.gov*.

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than March 23, 2010. Individuals can obtain copies of the collection instruments by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. *Waiver of Supplemental Security Income (SSI) Payment Continuation—20 CFR 416.1400–416.1422—0960–NEW.* SSA collects the information on Form SSA 263–U2 to determine whether an individual meets the provisions of the Social Security Act regarding waiver of payment continuation. Recipients must use Form SSA 263–U2 when they are awaiting a determination on their appeal and have decided to stop their payment continuation. SSA needs the information on the form as proof respondents no longer want their payments to continue. Respondents are recipients of SSI payments who wish to discontinue receipt of payment while awaiting a determination on their appeal.

Type of Request: Existing information collection in use without an OMB number.

Number of Respondents: 3,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 250 hours.

2. *Notice Regarding Substitution of Party upon Death of Claimant—Reconsideration of Disability Cessation—20 CFR 404.917–404.921 and 416.1407–416.1421—0960–0351.* When a claimant dies before we make a determination on that person's request for reconsideration of their disability cessation, SSA seeks a qualified substitute party to pursue the appeal. If SSA locates a qualified substitute party, the agency will use Form SSA–770 to collect information about whether to pursue or withdraw the reconsideration request. The information Form SSA–770 collects is the basis of the decision to continue or discontinue the appeals process. Respondents are substitute applicants who are pursuing a reconsideration request for a deceased claimant.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 100 hours.

3. *Application for Benefits under the Italy-U.S. International Social Security Agreement—20 CFR 404.1925—0960–0445.* SSA collects information using Form SSA–2582 based on the United States-Italy agreement effective November 1, 1978. Article 19.2 of that agreement provides that an applicant for benefits can file an application with either country. Article 4.3 of the Protocol to the Agreement dictates the country receiving the application will forward agreed-upon forms and applications to the other country. As agreed upon by the United States and Italian Social Security agencies, individuals filing an application for U.S. benefits directly with one of the Italian Social Security agencies must complete Form SSA–2528. The SSA–2528 is mandatory for respondents living in Italy who wish to file an application for U.S. benefits. SSA uses the SSA–2528 to establish age, relationship, citizenship, marriage, death, military service, or to evaluate a family bible or other family record when determining eligibility for benefits. The Italian Social Security agencies assist applicants in completing Form SSA–2528 and then forward the application to SSA for processing. The respondents are individuals living in Italy who wish to file for U.S. Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 250.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 83 hours.

4. *Earnings Record Information—20 CFR 404.801–404.803 and 404.821–404.822—0960–0505.* SSA discovered that as many as 70 percent of the wage reports it receives for children under age 7 are actually the earnings of someone other than the child. To ensure we credit the correct person with the reported earnings, SSA decided we should verify wage reports for children under age 7 with the children's employers before posting to the earnings record. SSA uses Form SSA–L3231–C1 for this purpose. The respondents are employers who report earnings for children under age 7.

Type of Information Collection: Revision of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

5. *Work Incentives Planning and Assistance Program—0960–0629.* The Work Incentives Planning and Assistance (WIPA) program collects identifying information from project sites and Community Work Incentives Coordinators (CWIC). In addition, the program collects data from beneficiaries on background employment, training, benefits, and work incentives. SSA is interested in identifying beneficiary outcomes under the WIPA program to determine the extent to which beneficiaries with disabilities achieve their employment, financial, and health care goals. SSA will also use the data in its analysis and future planning for Social Security Disability Insurance and SSI programs.

Type of Request: Extension of an OMB-approved information collection.

Estimated Annual Burden: 5,019 hours.

Respondent	Number of annual responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Project Site	147	1	2	5
CWIC	422	1	2	14
Beneficiary	60,000	1	5	5,000
Totals	60,569			5,019

6. *Beneficiary Interview and Auditor's Observations Form—0960–0630.* SSA's Office of the Inspector General (OIG) will use the information collected through Form SSA–322, the Beneficiary Interview and Auditor's Observation form, to interview beneficiaries and/or their payees to determine if they are complying with their duties and

responsibilities. SSA will randomly select SSI recipients and Social Security beneficiaries who have representative payees as respondents for this collection.

Type of Request: Extension of a previously-approved OMB information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 50 hours.

7. *Certification of Contents of Document(s) or Record(s)—20 CFR 404.715f—0960–0689.* SSA must secure evidence necessary for individuals to establish rights to benefits. Some of the required evidence categories include evidence of age, relationship, citizenship, marriage, death, and military service. Form SSA–704 allows SSA employees, State record custodians, and other custodians of evidentiary documents to record information from documents and records to establish these types of evidence. State record custodians and other custodians of evidentiary documents are the respondents.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 4,800.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 800 hours.

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than February 22, 2010. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above email address.

1. *Notification of a Social Security Number (SSN) to an Employer for Wage Reporting—20 CFR 422.103—0960–NEW.* Individuals applying for employment must provide an SSN or indicate they have applied for one. The information SSA collects on Form SSA–112 allows SSA to send, at the individual's request, the individual's SSN to his or her employer. Mailing this information to the employer ensures the employer has the correct SSN for the individual, allows SSA to receive correct earnings information for wage reporting purposes for the individual, and reduces the delay between the initial SSN assignment and delivery of the SSN information to the employer. The respondents are individuals who are applying for an initial SSN and who ask SSA to mail confirmation of their application or the SSN to their employers.

Type of Request: New information collection.

Number of Respondents: 375,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 12,500 hours.

2. *Important Information about Your Appeal, Waiver Rights, and Repayment Options—20 CFR 404.502–521—0960–NEW.* When SSA accidentally overpays beneficiaries, the agency uses Form SSA–3105 to inform those beneficiaries about their rights to reconsideration, waiver, or a different repayment rate. Beneficiaries use Form SSA–3105 to inform SSA if they do not agree with SSA's initial overpayment determination, if they are unable to repay the overpayment, or to request a waiver for repayment to SSA. The respondents are individuals who are overpaid claimants and who are requesting a waiver of recovery for the overpayment, reconsideration of the overpayment determination, or a lesser rate of withholding of the overpayment.

Type of Request: New information collection.

Number of Respondents: 800,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 200,000 hours.

3. *Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits—20 CFR 404.2015 and 416.615—0960–0024.* SSA collects information on Form SSA–787 to determine beneficiaries' ability to handle their own benefits. This information assists SSA in determining the need for a representative payee. The respondents are the beneficiary's physicians or medical officers of the institution in which the beneficiary resides.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 20,000 hours.

4. *Statement for Determining Continuing Eligibility, Supplemental Security Income Payment(s)—20 CFR 416.204—0960–0416.* SSA uses the information from the SSA–8203–BK for high-error-profile (HEP) redeterminations of disability to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount. Periodic collection of this information is the only way SSA can make these determinations, and collection of this information is mandatory under the law. Typically, beneficiaries complete this collection in field offices by personal contact (face-to-face or telephone interview) using the automated Modernized SSI Claim System (MSSICS). The respondents are SSI recipients or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
MSSICS	94,568	1	20	31,523
MSSICS/Signature Proxy	31,522	1	19	9,982
Paper	31,522	1	20	10,507
Totals	157,612			52,012

5. *Pain Report Child—20 CFR 416.912 and 416.512—0960–0540.* Disability interviewers and applicants/claimants in self-help situations use Form SSA–3371–BK to record information about pain or other symptoms of a child who is claiming disability. The State Disability Determination Services adjudicators and administrative law judges use this information to assess the effects of symptoms on functionality to help make a disability determination. The respondents are applicants for SSI payments.

Note: This is a correction notice. SSA published this information collection as an extension on November 17, 2009, at 74 FR 59336. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 62,500 hours.

6. *Internet Direct Deposit Application—31 CFR 210—0960–0634.* SSA uses Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information received from beneficiaries to facilitate DD/EFT of their Social Security benefits with a financial institution. Respondents are Social Security beneficiaries who use the Internet to enroll in DD/EFT.

Note: This is a correction notice. SSA published this information collection as an extension on November 17, 2009, at 74 FR 59336. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 90,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 15,000 hours.

7. *Certificate of Support—20 CFR 404.370, 404.750, 404.408a—0960–0001.* A parent of a deceased, fully insured worker may be entitled to Title II benefits on the earnings record of the deceased worker under certain conditions. One of the conditions is the parent must have received at least one-half support from the deceased worker. The one-half support requirement also applies to a spouse applicant in determining whether Title II benefits are subject to Government Pension Offset (GPO). SSA uses the information from Form SSA–760–F4 to determine whether the parent of a deceased worker or a spouse applicant meets the one-half support requirement. Respondents are parents of deceased workers or spouses who may be exempt from GPO.

Note: This is a correction notice. SSA published this information collection as an extension on October 26, 2009, at 74 FR 55080. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 18,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 4,500 hours.

Dated: January 15, 2010.

Elizabeth A. Davidson,

Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–1115 Filed 1–21–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6884]

Culturally Significant Object Imported for Exhibition; Determinations: "Projects 92: Yin Xiuzhen"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "Projects 92: Yin Xiuzhen," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Museum of Modern Art, New York, New York, from on or about February 24, 2010, until on or about May 24, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 14, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–1215 Filed 1–21–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6883]

Culturally Significant Objects Imported for Exhibition Determinations: "The Mourners: Tomb Sculptures From the Court of Burgundy"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Mourners: Tomb Sculptures from the Court of Burgundy," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about March 1, 2010, until on or about May 23, 2010; the St. Louis Art Museum, St. Louis, MO, from on or about June 20, 2010, until on or about September 6, 2010; the Dallas Museum of Art, Dallas, TX, from on or about October 3, 2010 until on or about January 2, 2011; the Minneapolis Institute of Arts, Minneapolis, MN, from on or about January 23, 2011, until on or about April 17, 2011; the Los Angeles County Museum of Art, Los Angeles, CA, from on or about May 8, 2011, until on or about July 31, 2011; the Fine Arts Museums of San Francisco, San Francisco, CA, from on or about August 21, 2011, until on or about January 1, 2012; the Virginia Museum of Fine Arts, Richmond, VA, from on or about January 20, 2012, until on or about April 15, 2012; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S.

Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: January 14, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–1217 Filed 1–21–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0003]

Establishment of an Emergency Relief Docket for Calendar Year 2010

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of establishment of public docket.

SUMMARY: This Notice announces the establishment of FRA's emergency relief docket (ERD) for calendar year 2010. The designated ERD for calendar year 2010 is docket number FRA–2010–0003.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for further information regarding submitting petitions and/or comments to Docket No. FRA–2010–0003.

SUPPLEMENTARY INFORMATION: On May 19, 2009, FRA published a direct final rule addressing the establishment of ERDs and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 74 FR 23329. That direct final rule became effective on July 20, 2009 and made minor modifications to § 211.45 to the FRA's Rules of Practice published at 49 CFR part 211. Paragraph (b) of § 211.45 provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system (available on the Internet at *http://www.regulations.gov).* Paragraph (b) of § 211.45 further provides that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. As noted in the rule, FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. This Notice announces that the designated ERD for calendar year 2010 is docket number FRA–2010–0003.

As detailed § 211.45, if the FRA Administrator determines that an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. In such an event, the FRA Administrator will issue a statement in the ERD indicating that the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its Web site *http://www.fra.dot.gov/.* Any party desiring relief from FRA regulatory requirements as a result of the emergency situation should submit a petition for emergency waiver in accordance with 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers in accordance with 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are found at 49 CFR 211.45(h).

Privacy

Anyone is able to search 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 665, Number 7, Pages 19477–78). The statement may also be found at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on January 19, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–1230 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Interstate 84 Highway in Idaho

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, I–84 Karcher Interchange to Five Mile Environmental Study, in Boise, Ada and Canyon Counties in the State of Idaho [Idaho Transportation Department (ITD) Key Number 10002].

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or prior to July 21, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Peter Hartman, Division Administrator, Federal Highway Administration, 3050 Lake Harbor Lane, Suite 126, Boise, Idaho 83703; telephone: (208) 334–9180; e-mail: *Idaho.FHWA@dot.gov.* The FHWA Idaho Division Office's normal business hours are 8 a.m. to 5 p.m. (Mountain Standard Time). For ITD: Ms. Sue Sullivan, Environmental Section Manager, Idaho Transportation Department, 3311 W. State St., PO Box 7129, Boise, ID 83707–1129, (208) 334–8203. Normal business hours are 8 a.m. to 5 p.m. (Mountain Standard Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing approvals for the following highway project in the State of Idaho: I–84 Karcher Interchange to Five Mile Environmental Study in Boise, Ada and Canyon Counties. The project will be approximately 16 miles long, and expand the existing four-lane freeway to a six-lane freeway from approximately Karcher interchange to Garrity Boulevard interchange. An existing six-lane freeway will be expanded to an eight-lane freeway from Garrity interchange to Meridian Road interchange, and from Meridian Road interchange to just east of Five Mile Road the existing eight-lane freeway will be reconstructed.

The project also includes:

- Addition of eastbound and westbound auxiliary lanes between the Northside Boulevard and Franklin Boulevard Interchange on- and off-ramps.
- Addition of an eastbound deceleration lane for the Garrity Boulevard Interchange eastbound off-ramp as part of a two-lane off-ramp.

• Addition of an eastbound acceleration lane for the Garrity Boulevard Interchange eastbound on-ramp.
• Addition of a westbound acceleration lane for the Meridian Road Interchange westbound on-ramp.
• Addition of a westbound auxiliary lane between the Eagle Road Interchange westbound on-ramp and the Meridian Road Interchange westbound off-ramps.
• Addition of an eastbound deceleration lane for the Eagle Road Interchange eastbound off-ramp as part of a two-lane off-ramp.
• Reconstruction of the Northside Boulevard, Garrity Boulevard, and Meridian Road interchanges and expansion of the Eagle Road Interchange.
• Interchange and/or ramp improvements to the Karcher Interchange and Franklin Boulevard Interchange.
• Reconstruction of the Karcher Road and 11th Avenue overpasses.
• Reconstruction and/or widening of irrigation and stream structures along I–84.
• Reconstruction of the structures over the Union Pacific Railroad and the Idaho Northern and Pacific Railroad.
• Culvert expansion and storm water storage facilities throughout the corridor.

The actions by the FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on November 14, 2008. A Finding of No Significant Impact (FONSI) issued on April 10, 2009. The EA, FONSI and other project records are available by contacting the FHWA or the Idaho Transportation Department at the addresses provided above. The EA and FONSI can be viewed and downloaded from the project Web site at *http://itd.idaho.gov* by clicking on the "GARVEE Transportation Program" logo, then by selecting the I–84 Caldwell to Meridian corridor, then by selecting the I–84 Karcher Interchange to Five Mile Environmental Study.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; Public Hearing [23 U.S.C. 128].

2. *Air and Noise:* Clean Air Act [42 U.S.C. 7401–7671(q)]; Intermodal Surface Transportation Efficiency Act of 1991, Congestion Mitigation and Air Quality Improvement Program (Sec. 1008 U.S.C. 149); Noise Standards: 23 U.S.C. 109(i) (Pub. L. 91–605) (Pub. L. 93–87).

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

5. *Land:* Section 4(f) of The Department of Transportation Act: 23 U.S.C. 138, 49 U.S.C. 303 (Pub. L. 100–17), (Pub. L. 7–449), (Pub. L. 86–670); Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, et seq.)

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601 et seq., Pub. L. 91–646) as amended by the Uniform Relocation Act Amendments of 1987 (Pub. L. 100–17).

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C.] ; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Peter J. Hartman,

Division Administrator, FHWA—Idaho Division.

[FR Doc. 2010–1160 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–01]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before February 11, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–1161 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Les Taylor (816–329–4134), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust St., Kansas City, MO 64106; or Brenda Sexton (202–267–3644), Office of Rulemaking (ARM–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 15, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–1161.

Petitioner: Cubcrafters, Inc.

Section of 14 CFR Affected: 14 CFR 23.562, Amendments 23–50.

Description of Relief Sought: This exemption, if granted, would allow for type certification of the Model CC18–181 aircraft with seats that have not shown compliance with the emergency landing dynamic conditions. Cubcrafters proposes the use of static tests on the seat and harnesses and to equip the aircraft with a four-point harness by using a Technical Standards Order (TSO).

[FR Doc. 2010–1106 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Adrian and Blissfield Railroad

[Waiver Petition Docket Number FRA–2009–0113]

The Adrian and Blissfield Railroad (ADBF), a Class III railroad located in Lenawee County in the State of Michigan, seeks a waiver of compliance from the requirements of 49 CFR 223.15 *Requirements for existing passenger cars.* Specifically, ADBF has petitioned FRA for a waiver for passenger coach ADBF 3370, *Columbia River*, which was built for the Union Pacific Railroad in 1949. ADBF operates this car in a dinner train exclusively on ADBF tracks in a rural area at speeds not exceeding 15 miles per hour on a 16-mile round trip.

ADBF states that passenger car ADBF 3370 is equipped with double pane safety glass. In the 15 years of operation in its present service, neither this car nor the two passenger cars it normally operates with have suffered any glazing breakage due to an accident or act of vandalism. The petitioner additionally states that preliminary estimates for upgrading this car to FRA Type I and II glazing are in the range of $20,000 to $30,000, which is the approximate value of the railcar.

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–2009–0113) 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 January 19, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–1228 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2009–03

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory; Identification and Handling of Highway-Rail Grade Crossings with Vertical Profile Conditions.

SUMMARY: FRA is issuing Safety Advisory 2009–03 to address Safety Recommendations H–96–01, H–96–02, and H–96–04, issued by the National Transportation Safety Board (NTSB) that relate to vertical roadway profile conditions at highway-rail grade crossings. This safety advisory reminds States of their responsibility to identify and document in the U.S. DOT National Highway-Rail Grade Crossing Inventory ("DOT Crossing Inventory") highway-rail crossings where "Low Ground Clearance" signs have been installed. This safety advisory also recommends that States implement policies and procedures to identify public highway-rail grade crossings that do not satisfy the standard for vertical profile conditions set forth in the American Association of State Highway and Transportation Officials' Policy on Geometric Design of Highways and Streets ("AASHTO Green Book") and recommends that corrective action be taken to bring them into compliance.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Staff Director, Highway-Rail Grade Crossing & Trespasser Prevention Division, FRA, RRS–23, Mail Stop 25, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6299), or Kathryn Shelton,

Attorney, Office of Chief Counsel, FRA, RCC–11, Mail Stop 10, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6038).

SUPPLEMENTARY INFORMATION:

Background

In Safety Recommendation H–96–01, the NTSB recommended that DOT expand its DOT Crossing Inventory to include vertical profile information on all highway-rail grade crossings in the United States. The NTSB advised that this additional data, which could be obtained in a cost-effective manner by simply training the survey teams that currently collect State grade crossing data to make vertical profile measurements, would facilitate the identification of existing crossings that do not meet the AASHTO Green Book standard for vertical profile conditions.[1]

FRA determined, however, that requiring States to take vertical profile measurements of each highway-rail grade crossing could be very burdensome and costly on State highway transportation departments who would likely bear the brunt of additional costs associated with required training and/or employment of additional personnel. Therefore, FRA modified the DOT Crossing Inventory Form in March 1999 to include a data field that would identify crossings equipped with Low Ground Clearance signs (W10–5 in the Federal Highway Administration's Manual on Uniform Traffic Control Devices). However, based on a recent review of DOT Crossing Inventory records, it appears that States have not been submitting this information, even though use of this relatively new sign is understood to be increasing.

FRA has been statutorily mandated by the Rail Safety Improvement Act of 2008 (RSIA08) to prescribe regulations that would require States and railroads to submit current information and periodic updates for public, private, and pedestrian crossings. Rail Safety Improvement Act of 2008, 49 U.S.C. 20160, 23 U.S.C. 130 (2008). Therefore, given the lack of current data on the prevalence of crossings with substandard vertical profiles, FRA intends to address this issue during the course of the upcoming rulemaking. In addition, FRA is currently funding a pilot demonstration project that utilizes LIDAR (light detection and ranging) mounted on a track inspection vehicle to determine if this technology is an economical and efficient way to collect vertical profile data at crossings. A successful project could lead to an automated method to collect the data, thus reducing the potential burden on State highway transportation departments who would likely be required to provide this information for public highway-rail grade crossings.

In Safety Recommendation H–96–02, the NTSB recommended that DOT encourage and coordinate efforts between the railroad industry and State and local highway transportation officials to identify crossings with substandard vertical profiles and close or take appropriate corrective action to eliminate them. FRA believes that the rulemaking mandated by RSIA08 will play an important role in facilitating joint efforts by the railroad industry and State and local highway officials to identify crossings with substandard vertical profile conditions and take appropriate corrective action to eliminate them. As stated above, FRA intends to address the absence of current data on the prevalence of crossings with substandard vertical profiles in this upcoming rulemaking.

In Safety Recommendation H–96–04, the NTSB recommended that DOT develop procedures and processes that will facilitate improved communication and coordination between the railroad industry and State and local highway transportation officials regarding crossing maintenance activities so as to prevent the creation of crossings with substandard vertical profile conditions. FRA intends to comply with this Safety Recommendation by participating in a joint effort with the Federal Highway Administration to develop and propose guidance for inclusion in the next revision of the AASHTO Green Book that would require prior communication and coordination of any changes in highway approach elevation or roadway width with appropriate railroad personnel. FRA has been informed that similar revisions have been proposed by the American Railway Engineering and Maintenance of Way Association (AREMA) for the railroad industry. FRA believes that revision of these AASHTO and AREMA standards will facilitate improved communication and coordination between the railroad industry and State and local highway transportation officials regarding crossing maintenance activities, so as to reduce and/or eliminate the creation of new crossings with substandard vertical profile conditions.

Recommended Action: Based on the foregoing discussion and to promote the safety of highway-rail grade crossings on the Nation's railroads, FRA recommends that each State:

(1) Identify public highway-rail grade crossings where Low Ground Clearance signs have been installed and submit updated data on these crossings to the DOT Crossing Inventory; and

(2) implement policies and procedures to identify public highway-rail grade crossings that do not satisfy the AASHTO Green Book standard for vertical profile conditions and take corrective action to bring them into compliance.

States are encouraged to take action consistent with the preceding recommendations and to take other actions to help ensure the safety of highway-rail grade crossings on the Nation's railroads. FRA may modify this Safety Advisory 2009–03, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on December 31, 2009.

Jo Strang,

Associate Administrator for Railroad Safety/ Chief Safety Officer.

[FR Doc. 2010–1118 Filed 1–21–10; 8:45 am]

BILLING CODE 4910–06–P

[1] AASHTO's Green Book standard for vertical profile conditions states that the crossing surface should be at the same plane as the top of the rails for a distance of two feet outside the rails. Additionally, the surface of the highway should not be more than three inches higher or lower than the top of the nearest rail at a point 30 feet from the rail (except where track superelevation makes a different level necessary). A copy of AASHTO's Green Book standard for vertical profile conditions may be obtained from AASHTO at the following address: 444 North Capitol Street, NW., Suite 249, Washington, DC 20001. A copy of AASHTO's Green Book standard for vertical profile conditions is also available at the Federal Railroad Administration, Docket Office, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (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 OMB control

number. The OCC is soliciting comment concerning its information collection titled, "Disclosure and Reporting of CRA–Related Agreements (12 CFR part 35)."

DATES: Comments must be received by March 23, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0219, 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 may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC. 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.

Additionally, you should send a copy of your comments to: OCC Desk Officer, [1557–0219], 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.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Disclosure and Reporting of CRA–Related Agreements (12 CFR part 35).

OMB Control No.: 1557–0219.

Description: This submission covers an existing regulation and involves no change to the regulation, the information collection requirements, or the burden estimates. The OCC requests only that OMB extend its approval of the information collection.

National banks and their affiliates (hereinafter referred to collectively as national banks) occasionally enter into agreements with nongovernmental entities or persons (NGEPs) that are related to national banks' Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act (FDI Act) requires disclosure of certain of these agreements, and imposes reporting requirements on national banks and other insured depository institutions (IDIs), their affiliates, and NGEPs. 12 U.S.C. 1831y. As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of Thrift Supervision issued regulations to implement these disclosure and reporting requirements. The reporting provisions of these regulations constitute collections of information under the Paperwork Reduction Act (PRA). The regulation issued by the OCC is codified at 12 CFR 35; the collections of information contained in that regulation are known as "CRA Sunshine."

Section 48 of the FDI Act applies to written agreements that: (1) Are made in fulfillment of the CRA, (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an IDI or affiliate of an IDI and an NGEP. 12 U.S.C. 1831y(e).

The parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt, and use of funds or other resources under the agreement. The collections of information in CRA Sunshine implement these statutorily mandated disclosure and reporting requirements. The parties to the agreement may request confidential treatment of proprietary and confidential information in an agreement or annual report. 12 CFR 35.8. 12 U.S.C. 1831y(a)–(c).

The information collections are found in 12 CFR 35.4(b); 35.6(b)(1); 35.6(c)(1); 35.6(d)(1)(i) and (ii); 35.6(d)(2); 35.7(b); and 35.7(f)(2)(ii).

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 573.

Estimated Total Annual Responses: 1,161.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,206.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

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

(b) The accuracy of the agency's estimate of the burden of the collection of information;

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

(d) Ways to minimize the burden of the collection 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: January 15, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2010–1135 Filed 1–21–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of four individuals and one entity whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the four individuals and one entity identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on January 8, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On January 8, 2010, OFAC removed from the SDN List the four individuals and one entity listed below, whose property and interests in property were blocked pursuant to the Order:

1. MIRA VALENCIA, Adriana Patricia, Carrera 4 No. 11–45 Ofc. 503, Cali, Colombia; Avenida Piedra Grande, Casa 45, Cali, Colombia; c/o CONSTRUCCIONES PROGRESO DEL PUERTO S.A., Puerto Tejada, Colombia; c/o UNIDAS S.A., Cali, Colombia; c/o MIRA E.U., Cali, Colombia; DOB 07 May 1970; POB Cali, Valle, Colombia; Cedula No. 66810589 (Colombia); Passport 66810589 (Colombia) (individual) [SDNT].

2. OLIVELLA CELEDON, Jaime Antonio, Carrera 5 No. 86–36 Apt. 402, Bogota, Colombia; c/o INTERCONTINENTAL DE AVIACION S.A., Bogota, Colombia; DOB 23 May 1944; POB Augustin Codazzi, Cesar, Colombia; Cedula No. 17100787 (Colombia); Passport AG619501 (Colombia); alt. Passport AC557754 (Colombia); alt. Passport AE542565 (Colombia) (individual) [SDNT].

3. MAZUERO ERAZO, Hugo, c/o SOCIEDAD CONSTRUCTORA LA CASCADA S.A., Cali, Colombia; c/o INVERSIONES SANTA LTDA., Cali, Colombia; c/o GRUPO SANTA LTDA., Cali, Colombia; DOB 17 Jul 1936; alt. DOB 1945; alt. DOB 14 Jul 1936; Cedula No. 2445590 (Colombia) (individual) [SDNT].

4. JIMENEZ BEDOYA, Maria Adriana, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; DOB 13 Apr 1971; Cedula No. 31417388 (Colombia); Passport 31417388 (Colombia) (individual) [SDNT].

5. TRANSPORTING, LLC, 6555 NW. 36th Street, Suite 304, Virginia Gardens, FL 33166; 9443 Fontainebleau Boulevard, No. 114, Miami, FL 33172; Business Registration Document # L00000012836 (United States); US FEIN 65–1048798 [BPI–SDNT].

Dated: January 8, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–1181 Filed 1–21–10; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of new System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled "All Employee Survey" (160VA10A2).

DATES: Comments on this new system of records must be received no later than February 22, 2010. If no public comment is received, the new system will become effective February 22, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Diana Rogers, Department of Veterans Affairs, VHA HPDM Program Office, 55 N. Robinson Ave., Oklahoma City, OK 73102; telephone (405) 552–4336.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

The All Employee Survey (AES) is a data repository that stores all data gathered from the administration of the AES taken by VA employees.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot de disclosed under a routine use unless there is also specific statutory authority permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. Disclosure may be made to the National Archives and Records Administration and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

NARA and GSA are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA and GSA in order to determine the proper disposition of such records.

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is

relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement, or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with Office of Management and Budget (OMB) guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

5. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information or documentation related to or in support of the reported incident.

7. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: December 30, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

SOR# 160VA10A2

SYSTEM NAME:

All Employee Survey-VA.

SYSTEM LOCATION:

Records are maintained at the North Little Rock Campus, 2200 Fort Roots Drive, Little Rock Arkansas, 72114. A copy of the system data is saved on CD and stored at the VHA HPDM Program Office, 55 N. Robinson Avenue, Suite 1061, Oklahoma City, OK 73102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning all VHA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. All Employee Survey responses by work group.

- 7 digit work group organization code.
- Work group code identifies a valid Veterans Affairs organizational work unit.
- These identification codes will identify work units rather than specific individuals. VA will provide a table of approximately 15,000 to 40,000 valid

work group organization codes prior to survey administration.

2. All Employee Survey responses by demographics.

- Gender.
- Age in groups of decades.
- Race.
- National origin.
- Incumbency in VA.
- Level of supervisory responsibility.

3. All Employee Survey responses by national function file.

- Category of workgroup—the VistA clinical function file with increased granularity of administrative functions.
- There are 100 entries to categorize workgroups.

4. All Employee Survey responses by occupational group.

- This is a three digit code to categorize occupations. It is provided to each individual respondent.
- There are just under 100 codes; they are not job occupation series codes. It is a code developed for the All Employee Survey.

5. All Employee Survey responses by question and modality.

- The response is provided by the interactive Web-based survey, telephone or paper submission and response type captured.

6. All Employee Survey responses by organization and sub organization title, type and function.

- The workgroup identifies organization, sub organization if applicable, organization type and function for which the response is provided.

7. All Employee Survey responses by response rate.

- Responses are stored at the individual level, response rates are reported at the work unit lowest level, then hierarchically rolled upward in summary totals to the next level within the organization. The hierarchy is based on the organization structure (facility and parents) and the 7 digit work group organization code.
- Reporting of response data follows the rule of 10 for any response. Any response data for any values that are less than 10 will never be released from the data repository.

8. All Employee Survey responses by date and time survey taken.

- Date and time response submitted.

9. All Employee Survey responses by factors.

- Job satisfaction index.
- Organization assessment inventory.
- Organization culture assessment.
- And demographic data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 501a.

PURPOSE(S):

The records and information may be used for analysis of employee satisfaction on quality and quantity of work, personal safety, promotion and training opportunity, fair and equitable treatment, work/family balance. Data validation, evaluation of personnel/organizational management and staffing satisfaction and culture, including workforce effectiveness are shared to facilities. Action plans, development of goals and follow-up performance measures are developed as a result.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, i.e., individually identifiable health information, and 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed

compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on HPDM1 Server in Little Rock, Arkansas and on compact disk in the High Performance Development Model server room safe in Oklahoma City, Oklahoma.

RETRIEVABILITY:

Records may be retrieved by organization, name, or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a "need-to-know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automatic Data Processing peripheral devices are placed in secure areas. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes employees are limited to only that information in the file which is needed in the performance of their official duties.

3. Access to the Little Rock Campus Servers is restricted to Center employees, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic scanning and locking devices. All other persons gaining access to computer rooms are escorted after identity verification and log entry to track person, date, time in, and time out of the room. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, Information Systems Centers, VA Central Office, and Veteran Integrated Service Networks. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee. The CD is stored in the VHA HPDM Corporate Office server room in Oklahoma City, Oklahoma and is accessible by restricted, authorized personnel through electronic scanning and locking devices. The CD is stored in a safe in the server room accessible by the Security Officer and Infrastructure Chief.

RETENTION AND DISPOSAL:

Paper records are scanned and digitized for viewing electronically and are destroyed after they have been scanned onto disks, and the electronic copy determined to be an accurate and complete copy of the paper record scanned.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures; Office of Workforce Management & Consulting Office (10A2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining the system; Diana Rogers of the HPDM National Program Office located at 55 North Robinson Avenue, Suite 1033, Oklahoma City, OK 73102.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they are or were employed or made contact. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they are or were employed or made contact.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by VA employees.

[FR Doc. 2010–1180 Filed 1–21–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,

January 22, 2010

Part II

Department of Commerce

National Telecommunications and Information Administration

Department of Agriculture

Rural Utilities Service

Broadband Technology Opportunities Program; Notices

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 0907141137–0024–06]

RIN 0660–ZA28

Broadband Technology Opportunities Program

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Notice of Funds Availability (NOFA) and solicitation of applications.

SUMMARY: NTIA announces general policy and application procedures for the Broadband Technology Opportunities Program (BTOP or Program) that the agency established pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act). BTOP provides grants for deploying broadband infrastructure in unserved and underserved areas of the United States, enhancing broadband capacity at public computer centers, and promoting sustainable broadband adoption projects. In facilitating the expansion of broadband communications services and infrastructure, BTOP advances the objectives of the Recovery Act to spur job creation and stimulate long-term economic growth and opportunity.

DATES: All applications for funding BTOP projects must be submitted between February 16, 2010, at 8 a.m. Eastern Standard Time (EST) and March 15, 2010, at 5 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The application packages for electronic submissions will be available at *http://www.broadbandusa.gov*. See **SUPPLEMENTARY INFORMATION** for more details.

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding BTOP or questions regarding this NOFA, contact Anthony Wilhelm, Director, BTOP, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, U.S. Department of Commerce (DOC), 1401 Constitution Avenue, NW., HCHB, Room 4887, Washington, DC 20230; Help Desk e-mail: *BroadbandUSA@usda.gov*, Help Desk telephone: 1–877–508–8364. Additional information regarding BTOP may be obtained at *http://www.ntia.doc.gov/broadbandgrants/*. For inquiries regarding BTOP compliance requirements, including applicable Federal rules and regulations protecting against fraud, waste, and abuse, contact *btopcompliance@ntia.doc.gov*. Additional information regarding compliance for BTOP may be obtained at *http://www.broadbandusa.gov/compliance.htm*.

Authority: This notice is issued pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5, 123 Stat. 115 (2009).

SUPPLEMENTARY INFORMATION:

Electronic submissions: Electronic submissions of applications will allow for the expeditious review of an applicant's proposal consistent with the goals of the Recovery Act. As a result, all applicants are required to submit their applications electronically at *https://applyonline.broadbandusa.gov*. The electronic application system will provide a date-and-time-stamped confirmation number that will serve as proof of submission. Please note that applications will not be accepted via paper, facsimile machine transmission, electronic mail, or other media format. Applicants, however, may request a waiver of these filing instructions pursuant to Section X.N. of this NOFA.

Catalog of Federal Domestic Assistance (CFDA) Number: Broadband Technology Opportunities Program (BTOP)—11.557.

Additional Items in Supplementary Information

I. Overview: Describes the broadband initiatives in the Recovery Act, the first round of funding, and an overview of the next round of funding.

II. Funding Opportunity Description: Provides a more thorough description of BTOP and the funding priorities.

III. Definitions: Sets forth the key statutory terms and other terms used in BTOP.

IV. Award Information: Describes funding availability, grant terms, as applicable, and other award information.

V. Eligibility Information and General Program Requirements: Establishes eligibility criteria, eligible and ineligible costs, and general program requirements.

VI. Application and Submission Information: Provides information regarding how to apply, application materials, and the application process.

VII. Application Review Information: Establishes the evaluation criteria for application review.

VIII. Anticipated Announcement and Award Dates: Identifies the initial announcement date for certain awards and provides other information regarding BTOP.

IX. Award Administration Information: Provides award notice information, administrative and national policy requirements, terms and conditions, and other reporting requirements for award recipients.

X. Other Information: Sets forth guidance on funding, compliance with various laws, confidentiality, discretionary awards, and authorized signatures.

I. Overview

A. American Recovery and Reinvestment Act of 2009 (Recovery Act)

On February 17, 2009, President Obama signed the Recovery Act into law.[1] The essential goal of the Recovery Act is to provide a "direct fiscal boost to help lift our Nation from the greatest economic crisis in our lifetimes and lay the foundation for future growth."[2] Accordingly, the Recovery Act identifies five overall purposes: To preserve and create jobs and promote economic recovery; to assist those most impacted by the current economic recession; to provide investments needed to increase economic efficiency by spurring technological advances in science and health; to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and to stabilize State and local government budgets.[3] The Recovery Act further instructs the President and the heads of Federal departments and agencies to manage and expend Recovery Act funds to achieve these five purposes, "commencing expenditures and activities as quickly as possible consistent with prudent management."[4]

Consistent with the purposes described above, the Recovery Act provides the U.S. Department of Agriculture's Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) with $7.2 billion to expand access to broadband services in the United States. In so doing, the Recovery Act recognizes the growing importance of access to broadband services to economic development and to the quality of life of all Americans.

The Recovery Act provides $4.7 billion to NTIA to establish the Broadband Technology Opportunities Program (BTOP or Program) and directs that these funds be awarded by September 30, 2010. This amount represents a significant investment to advance President Obama's national broadband strategy. Of these funds, at least $200 million will be made available for competitive grants for

[1] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115 (2009) (Recovery Act).

[2] Statement on Signing the American Recovery and Reinvestment Act of 2009, Daily Comp. of Pres. Doc., 2009 DCPD No. 00088, at 1 (Feb. 17, 2009), *http://fdsys.gpo.gov/fdsys/pkg/DCPD-200900088/pdf/DCPD-200900088.pdf*.

[3] Recovery Act sec. 3(a), 123 Stat. at 115–16.

[4] *See id.* Sec. 3(b), 123 Stat. at 116.

expanding public computer center capacity; at least $250 million will be made available for competitive grants for innovative programs to encourage sustainable adoption of broadband services; and up to $350 million will be made available to fund the State Broadband Data and Development Grant Program (Broadband Mapping Program) authorized by the Broadband Data Improvement Act.[5] The Broadband Mapping Program is designed to support the development and maintenance of a nationwide broadband map for use by policymakers and consumers.[6]

B. Round One

In response to the first Notice of Funds Availability (First NOFA), RUS and NTIA received almost 2,200 applications requesting nearly $28 billion in funding for proposed broadband projects reaching all States, five territories, and the District of Columbia.[7] When including about $10.5 billion in matching funds committed by the applicants, these applications represent more than $38 billion in proposed broadband projects. RUS and NTIA received applications from a diverse range of parties, including: State, tribal, and local governments; nonprofits; industry; small businesses; community anchor institutions such as libraries, universities, community colleges, and hospitals; public safety organizations; and other entities in rural, suburban, and urban areas. Parties submitted more than 830 applications jointly to RUS's Broadband Initiatives Program (BIP) and NTIA's BTOP, requesting nearly $12.8 billion in infrastructure funding. NTIA received an additional 260 infrastructure applications that sought only BTOP funding, requesting more than $5.4 billion in grants for broadband infrastructure projects in unserved and underserved areas. Parties submitted more than 360 applications to NTIA requesting more than $1.9 billion in grants from BTOP for public computer center projects. In addition, parties filed more than 320 applications with NTIA requesting nearly $2.5 billion in grants from BTOP for projects that promote sustainable demand for broadband services.

On December 17, 2009, NTIA announced the first set of awards out of the $1.6 billion that was allocated for the first round of funding. These awards, as well as additional awards announced by Secretary Locke on January 13, 2010, totaled approximately $137 million for investments in ten broadband projects benefitting ten States.[8] Of these awards, $119 million was dedicated for Middle Mile projects; $15.9 million for Public Computer Center projects; and $2.4 million for Sustainable Broadband Adoption projects. Additional awards will be announced on a rolling basis.

C. Round Two

1. Funding Process

The purpose of this NOFA is to describe the availability of BTOP funds for the second round of funding and set forth the application requirements for those entities wishing to participate in the Program. Applicants are permitted to apply to one or more of the project categories. Each application will be screened for initial eligibility. Those eligible applications that satisfy the statutory purposes and funding priorities will be prioritized and evaluated against objective evaluation criteria to determine whether an award may be merited. Applications that satisfy the BTOP priorities and score highly when evaluated against the objective evaluation criteria will advance to the due diligence stage of review, where NTIA may request additional information and adjustments to the proposal. From this pool of applications, NTIA will select awardees based on the selection factors. NTIA anticipates completing this round of funding as quickly as possible to maximize the stimulative effect of the Recovery Act. NTIA also is committed to transparency and fairness in the award process and will require rigorous reporting to ensure prudent stewardship of taxpayer funds.

2. Request for Information (RFI)

To prepare for this round of funding, on November 10, 2009, RUS and NTIA released a second joint request for information seeking public comment on ways to enhance the applicant experience through targeted revisions to the First NOFA.[9] RUS and NTIA received approximately 225 comments from institutions and individuals on a wide range of topics, and these comments have played an important role in developing this NOFA. For further discussion and explanation of NTIA's reliance on the public comments in the policy decisions involved in BTOP, see the attached Policy Justification found in the Appendix at the end of this NOFA.

3. Project Categories

For this round of funding, NTIA will award grants in three categories of eligible projects: Comprehensive Community Infrastructure (CCI), Public Computer Centers (PCC), and Sustainable Broadband Adoption (SBA).[10] The CCI category will focus on Middle Mile broadband infrastructure projects that offer new or substantially upgraded connections to community anchor institutions, especially community colleges. The PCC category will help expand public access to broadband service and enhance broadband capacity at entities that permit the public to use these computing centers, such as community colleges and public libraries.[11] The SBA category will fund innovative projects that promote broadband demand, including projects focused on providing broadband education, awareness, training, access, equipment, or support, particularly among vulnerable population groups that traditionally have underutilized broadband technology.[12]

NTIA plans to award all remaining BTOP grants funded by the Recovery Act in this round of funding. Approximately $2.6 billion of program-level funding has been allocated to this NOFA by NTIA. NTIA intends to award approximately $2.35 billion for CCI projects, at least $150 million for PCC projects, and at least $100 million for SBA projects.

4. Changes From the First NOFA

Based on the comments received in response to the second RFI and the experience gained from administering the first round of funding, NTIA is making a number of changes to the Program. The goals of these changes are to increase efficiency, sharpen the Program's funding focus, and improve the applicant experience.

In the first round, RUS and NTIA issued a joint BIP/BTOP NOFA to

[5] Pub. L. 110–385, 122 Stat. 4096 (to be codified at 47 U.S.C. 1301 *et seq.*).

[6] *See* State Broadband Data and Development Grant Program, Notice of Funds Availability and Solicitation of Applications, 74 FR 32545 (July 8, 2009).

[7] Notice of Funds Availability and Solicitation of Applications, 74 FR 33104 (July 9, 2009).

[8] White House Press Release, Vice President Biden Kicks Off $7.2 Billion Recovery Act Broadband Program (December 17, 2009), *available at http://www.whitehouse.gov/the-press-office/vice-president-biden-kicks-72-billion-recovery-act-broadband-program*. Department of Commerce Press Release, Commerce Secretary Gary Locke Announces $7.5 Million Investment to Increase Broadband Access in Los Angeles (January 13, 2010), *available at http://www.commerce.gov/newsroom/pressreleases_factsheets/prod01_008797*.

[9] Joint Request for Information (RFI), 74 FR 58940 (Nov. 16, 2009).

[10] *See* Recovery Act Div. A, Tit. II, 123 Stat. at 128.

[11] *Id.* Div. A, Tit. II & sec. 6001(b)(3), 123 Stat. at 128, 512–13.

[12] *Id.* Div. A, Tit. II & sec. 6001(b)(5), 123 Stat. at 128, 513.

promote coordination between these programs. The agencies gave applicants the option to file a single application for infrastructure projects for both programs. For the second round of funding, RUS and NTIA have decided to issue separate NOFAs for BIP and BTOP to better promote each agency's distinct objectives. The joint application process was burdensome for some applicants. Therefore, RUS and NTIA have eliminated the option of allowing applicants to file a single, joint BIP/BTOP application in the second funding round in favor of separate applications.

NTIA has sought to bring further leverage to Federal funds by giving additional consideration to projects that propose to contribute a non-Federal cost share/match that equals or exceeds 30 percent of the total eligible costs of the project.

In addition, NTIA is adopting a "comprehensive communities" approach to award BTOP grants for infrastructure projects that emphasize Middle Mile broadband capabilities and new or substantially upgraded connections to community anchor institutions to maximize the benefits of BTOP funds. In adopting this approach, NTIA has restructured the Broadband Infrastructure category of the First NOFA into the CCI category for this second round of funding.

Further, NTIA has implemented other targeted changes to several Program provisions. In particular, NTIA has reduced the number of BTOP's eligibility factors to just three criteria—eligible entities, fully completed application, and matching—which will be used to determine whether an application is eligible for consideration. NTIA has further streamlined the eligibility review by removing the budget reasonableness and technical feasibility factors from the eligibility requirements, because these categories are more effectively evaluated during the expert review and due diligence phases of application consideration. NTIA also has changed the number of expert reviewers from at least three to at least two in order to make the expert review process as efficient as possible, without impacting the rigor of review. NTIA will review CCI applications according to the priorities established in Section II.B. Additionally, NTIA has clarified the process for requesting waivers from several key statutory and programmatic obligations, including the matching fund requirement, Last Mile coverage obligation, and restriction on the sale or lease of project assets.

With respect to the application, NTIA will now collect the information most essential to project review in the application itself, with the option to collect additional data during the due diligence review, as needed. In addition, NTIA has made numerous adjustments to the online application system to streamline the intake of information and reduce applicant burden. In particular, NTIA has reduced the overall number of attachments to the applications. It also has separated the BTOP infrastructure application from the BIP infrastructure application and separated the PCC application from the SBA application. Moreover, it has eliminated the proposed funded service area mapping tool and modified the service area delineations from Census blocks to Census tracts and block groups. NTIA also has made it easier for applicants filing applications in multiple project categories to link these applications, in furtherance of NTIA's focus on comprehensive communities.

II. Funding Opportunity Description

A. Statutory Purposes

Section 6001 of the Recovery Act establishes a national broadband service development and expansion program to promote five core purposes:

a. To provide access to broadband service to consumers residing in unserved areas of the country;

b. To provide improved access to broadband service to consumers residing in underserved areas of the country;

c. To provide broadband education, awareness, training, access, equipment, and support to: (i) Schools, libraries, medical and healthcare providers, community colleges and other institutions of higher learning, and other community support organizations; (ii) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband services by vulnerable populations (*e.g.,* low-income, unemployed, aged); or (iii) job-creating strategic facilities located in State- or Federally-designated economic development zones;

d. To improve access to, and use of, broadband service by public safety agencies; and

e. To stimulate the demand for broadband, economic growth, and job creation.[13]

B. BTOP Priorities

All projects funded under BTOP must advance one or more of the five statutory purposes outlined above. The Program is designed to extend broadband access to unserved areas, improve access to underserved areas, and expand broadband access to a wide range of institutions and individuals, including vulnerable populations. It will seek to serve the highest priority needs for Federal investment—particularly projects that offer the potential for economic growth and job creation. The Program will support viable, sustainable, and scalable projects.

1. Comprehensive Community Infrastructure Projects

a. Background

In the first funding round, NTIA solicited Broadband Infrastructure applications in two categories, Last Mile and Middle Mile. Last Mile projects were defined as any infrastructure project the predominant purpose of which is to provide broadband service to end users or end-user devices. Middle Mile projects were defined as any broadband infrastructure project that does not predominantly provide broadband service to end users or to end-user devices and that may include interoffice transport, backhaul, Internet connectivity, or special access. Middle Mile projects funded to date in Round One also included expanding and enhancing broadband services for community anchor institutions such as schools, libraries, colleges and universities, medical and healthcare providers, public safety entities, and other community support organizations.

Recognizing the significant importance of Middle Mile infrastructure to improving broadband capabilities for consumers residing in unserved and underserved areas of the nation, NTIA has awarded a significant portion of funds in the first round of funding to Middle Mile projects, particularly those that connect a significant number of community anchor institutions. Such projects provide substantial benefits, including enhancing broadband service for community anchor institutions, facilitating the development of Last Mile broadband services in unserved and underserved areas, and promoting economic growth.

b. CCI Funding Priorities

In this round of funding, NTIA seeks to focus on Middle Mile projects by adopting a "comprehensive communities" approach to awarding BTOP infrastructure grants. Under this approach, priority will be given to CCI projects that include a Middle Mile component and satisfy certain

[13] *See id.* Sec. 6001(b), 123 Stat. at 512–13.

additional considerations.[14] This prioritization will be used for the sequencing of applications for the objective merit review performed by expert reviewers.[15] In particular, the highest priority for merit review will be given to CCI applications that satisfy all of the criteria below. Note that the application evaluation process will continue to consider additional factors, including, for example, the degree to which the projects will benefit consumers residing in unserved or underserved areas, the participation of an Indian Tribe or socially and economically disadvantaged small business concern as defined under Section 8(a) of the Small Business Act (as modified by NTIA's adoption of an alternative small business concern size standard for use in BTOP),[16] and the ability of a project to leverage funding from another Recovery Act program or other State or Federal development program.[17] In order of importance, the CCI priority criteria are set forth as follows:

(1) Projects that will deploy Middle Mile broadband infrastructure with a commitment to offer new or substantially upgraded service to community anchor institutions. Those projects proposing to serve a significant number of community anchor institutions that have expressed a demand or indicated a need for access or improved access to broadband service will receive higher priority;

(2) Projects that will deploy Middle Mile broadband infrastructure and incorporate a public-private partnership among government, non-profit and for-profit entities, and other key community stakeholders, particularly those that have expressed a demand or indicated a need for access or improved access to broadband service;

(3) Projects that will deploy Middle Mile broadband infrastructure with the intent to bolster growth in economically distressed areas;

(4) Projects that will deploy Middle Mile broadband infrastructure with a commitment to serve community colleges that have expressed a demand or indicated a need for access or improved access to broadband service;

(5) Projects that will deploy Middle Mile broadband infrastructure with a commitment to serve public safety entities that have expressed a demand or indicated a need for access or improved access to broadband service;

(6) Projects that will deploy Middle Mile broadband infrastructure that includes (i) a Last Mile infrastructure component in unserved or underserved areas; or (ii) commitments or non-binding letters of intent from one or more Last Mile broadband service providers.[18] For Last Mile infrastructure components in rural areas, however, the additional costs of the Last Mile component used to offer service to residential consumers and non-community anchor institutions may not exceed more than 20 percent of the total eligible costs of the project; and

(7) Projects that will deploy Middle Mile broadband infrastructure and propose to contribute a non-Federal cost match that equals or exceeds 30 percent of the total eligible costs of the project.

To the extent that a CCI applicant with a Middle Mile component does not address all of the criteria set forth above (*i.e.*, criteria (1)–(7)), NTIA will prioritize those applications remaining for merit review in the order that they satisfy the most highly-ranked criteria (*i.e.*, applications satisfying criteria (1)–(6) will be sequenced for merit review, then applications satisfying (1)–(5), then (1)–(4), then (1)–(3), then (1)–(2) respectively, and, finally, applications that satisfy only the first criterion). All other CCI applicants with a Middle Mile component, that is, those that do not satisfy the first criterion identified above, will be next in priority for merit review.

c. "Comprehensive Communities" Policy Rationale

The "comprehensive communities" approach, with its focus on the deployment of Middle Mile broadband facilities and the provision of new or substantially upgraded connections to community anchor institutions as its centerpiece, will provide a number of benefits to the public and taxpayers. "Comprehensive communities" projects can leverage resources and better ensure sustainable community growth and prosperity. These projects also can create consumer demand and lay the foundation for the ultimate provision of reasonably priced end-user broadband services in unserved and underserved communities. Open and nondiscriminatory CCI projects funded by BTOP will enable other service providers to serve the community.[19] Once Middle Mile facilities are built, the costs of providing services to a broad array of end users are reduced. Much like the interstate highways that link together the nation's roads and streets, Middle Mile broadband facilities play a critical role in the healthy functioning of the nation's broadband infrastructure and are a necessary foundation for the ultimate provision of affordable end-user broadband services in unserved and underserved communities.

Expanding Middle Mile broadband service not only enhances the availability and affordability of end-user broadband connectivity for consumers and businesses, it also increases the effectiveness of community anchor institutions in fulfilling their missions. Schools, libraries, colleges and universities, medical and healthcare providers, public safety entities, and other community support organizations increasingly rely on high-speed Internet connectivity to serve their constituencies and their communities. Expanding broadband capabilities for community anchor institutions will result in substantial benefits for the entire community, delivering improved education, healthcare, and economic development.

CCI projects are also job-intensive and pave the way for a ripple effect of economic development throughout the communities they touch. Focusing the awards in this funding round on CCI projects that provide high-speed Middle Mile networks to connect community anchor institutions, including community colleges, or benefit consumers residing in unserved or underserved areas will maximize the benefits of Recovery Act dollars and lay a foundation for economic development for years to come.[20]

d. Relationship to BIP

Although BIP and BTOP no longer will offer a joint application, RUS and NTIA continue to collaborate to maximize the impact of available Federal funding, to best leverage the experience and expertise of each agency, and to avoid geographic overlap

[14] Consistent with the terms of the Recovery Act, in this funding round NTIA will not fund Middle Mile projects in areas that RUS has already funded with Middle Mile awards made through BIP.

[15] *See* Department of Commerce (DOC) Grants and Cooperative Agreements Interim Manual (Grants Manual), ch. 8, secs. B.1.c. and B.3 (June 21, 2007) (available at *http://oam.ocs.doc.gov/GMD_updated-doc.html*).

[16] 15 U.S.C. 637(a)(4). NTIA sought the Small Business Administration's approval to adopt a $40 million alternative small business size standard for BTOP. The Small Business Administration issued a letter approving the use of this alternative size standard of $40 million to define a small business concern for purposes of BTOP.

[17] *See infra* Section VII.A.1.

[18] Consistent with the terms of the Recovery Act, in this funding round NTIA will not fund Last Mile projects in areas that RUS has already funded with Last Mile awards made through BIP.

[19] *See* Recovery Act sec. 6001(j), 123 Stat. at 515.

[20] *See* National Economic Council, Recovery Act Investments in Broadband: Leveraging Federal Dollars to Create Jobs and Connect America (Dec. 2009), *available at http://www.whitehouse.gov/sites/default/files/20091217-recovery-act-investments-broadband.pdf.*

in projects funded by the two agencies (as required by the Recovery Act).[21] To accomplish these objectives, NTIA strongly recommends that CCI applicants that are currently RUS loan or grant recipients as well as any CCI applicant whose project will include a Last Mile service area that is at least 75 percent rural apply to BIP for funding. Applications from such applicants will not be viewed favorably by NTIA and will not be a funding priority.

e. Exclusive Last Mile Projects

As explained above, priority will be given to CCI projects that include a Middle Mile component. While a CCI project may exclusively contain a Last Mile component, it will only be considered for merit review and funding after all projects with a Middle Mile component have been considered.

2. Public Computer Centers (PCC)

In this funding round, consistent with the Recovery Act, NTIA will fund PCC projects. These projects provide broadband access to the general public or a specific vulnerable population and must either create or expand a public computer center or improve broadband service or connections at a public computer center, including those at community colleges, that meets a specific public need for broadband service. PCC projects are a logical complement to CCI projects, because they are uniquely positioned to serve many members of a community with computer equipment, computer training, job training, and access to job and educational resources that might not otherwise be available.

3. Sustainable Broadband Adoption (SBA)

Consistent with the Recovery Act and the promotion of BTOP's five core objectives, NTIA also will fund SBA projects. The SBA program is designed to fund innovative projects that promote broadband demand, especially among vulnerable population groups where broadband technology traditionally has been underutilized. Broadband technology has reshaped the way our nation functions, and NTIA recognizes that broadband adoption projects strive to ensure that as much of the population as possible has opportunities, abilities, and resources to thrive in today's society. With projects focusing on broadband awareness, access, training, and education, barriers to broadband adoption can be overcome, fostering educational and business opportunities and a more competitive country as a whole. NTIA, therefore, seeks SBA projects that, after establishing a subscribership baseline in a given community, demonstrate a clear ability to measure and sustain the expected increase in broadband adoption without ongoing Federal grant assistance, so that the nation will continue to see the benefits of these projects well after the period of performance for the grant award has ended.

C. Application Review and the Selection Process

1. Initial Review

NTIA will conduct an initial review of applications to determine whether they meet the eligibility requirements set forth in Section V.A. through V.C. of this NOFA. These requirements are mandatory, and applicants that fail to meet them will not have their applications considered further.

2. Scoring Applications

Subsequent to this initial eligibility review, applications will be separated into the three project categories. For PCC and SBA projects, applications will receive an Evaluation Criteria Review score by at least two objective expert reviewers who may be Federal employees or non-Federal persons. For CCI projects, program staff will prioritize the applications for the Evaluation Criteria Review based on the BTOP priorities set forth in Section II.B., and then the applications will be evaluated in priority order by at least two objective expert reviewers who may be Federal employees or non-Federal persons. No consensus advice will be provided by the non-Federal expert reviewers.

Reviewers will be selected based on their expertise in: (i) Analyzing a business or organizational model pursuant to BTOP purposes; (ii) designing, funding, constructing, or operating broadband networks or public computer centers; (iii) broadband-related outreach, training, or education; (iv) innovative programs to increase the demand for broadband services; or (v) other broadband-related functions or activities. Reviewers will evaluate applications against the evaluation criteria provided in this NOFA and independently score each application. Reviewer scores will be averaged and NTIA will establish thresholds that will be used to determine which applications are considered "highly qualified." Highly qualified applications may be considered further for an award by NTIA Program staff and given a "due diligence" review. For CCI projects, priority in due diligence processing will be given to applications that best conform to BTOP priorities as expressed in Section II.B.1.b of this NOFA.

3. State and Tribal Consultation

The Recovery Act authorizes NTIA to consult with States, territories, possessions, and the District of Columbia ("States") regarding the identification of unserved and underserved areas within their borders and the allocation of grant funds to projects in or affecting their State.[22] After the application deadline, NTIA will invite each State, via its Governor, to provide input on those geographic areas within the State for which NTIA should give priority in selecting projects for funding. States may, if they wish, comment on specific BTOP applications that propose to serve areas within their jurisdiction, regardless of the size or geographic scope of the project and, at their discretion, provide an explanation for why certain applications meet the greatest needs of the State. NTIA also will extend the invitation to tribal entities to comment upon applications that propose to serve tribal communities in an effort to fund projects that best meet the needs of their tribal lands.

NTIA will share data that are available on the publicly searchable application database with each relevant State and tribe. States and tribes that wish to review additional information regarding applications proposing to serve areas within their jurisdiction may request such information from applicants directly. States and tribes will not be required to rank or comment on BTOP applications in order for applications affecting their areas to receive funding. The input of States and tribes is consultative in nature and, while extremely valuable, constitutes only one among several factors the Selecting Official, the Assistant Secretary, weighs when evaluating applications. States or tribes will not have the ability to veto any particular project. States and tribes will have no less than 20 calendar days from the date of notification to submit their comments to NTIA. NTIA will make the comments of the States and tribes publicly available at *http://www.broadbandusa.gov.* Accordingly, States and tribes should not include in their comments to NTIA any information that is deemed confidential and proprietary.

4. Due Diligence Review

During due diligence review, applicants may be asked to submit additional information, as appropriate,

[21] Recovery Act Tit. I, 123 Stat. at 118.

[22] Recovery Act sec. 6001(c), 123 Stat. at 513.

to clarify or to further substantiate the representations made in their applications. The supplemental information, along with all information submitted with the application, will be reviewed and analyzed by NTIA Program staff to confirm eligibility and evaluate the applications with respect to general Program requirements, the appropriate Federal share of the project, evaluation criteria, and selection factors. Applicants whose supporting documents are not timely filed or who do not adequately substantiate the representations in their applications may be rejected. NTIA may, at its discretion, request supplemental documentation before deciding to reject such applications and re-evaluate the application package based on all of the information presented.

At any time during the application review process, NTIA reserves the right to discuss with the applicant specific modifications to the application to resolve any differences that may exist between the applicant's original request and NTIA's determination of eligible costs and funding priorities, including, for example, the right to adjust the Federal share of the project. Note that it is NTIA's intent to fund only the portion of the project that satisfies Program purposes and is justified based on an analysis of anticipated costs and revenues. Specifically, pursuant to the Recovery Act requirement that applicants demonstrate that a project would not have been implemented during the grant period without Federal assistance, NTIA may seek to adjust the amount of funds made available for the Federal share of the project to a level warranted based on this "but for" test.[23] Not all applicants contacted necessarily will receive a BTOP award. Upon completion of due diligence, NTIA Program staff will summarize their analysis for each application reviewed.

5. The Selection Process

The Director of BTOP (BTOP Director) will prepare and present a package or packages of recommended grant awards to the Associate Administrator for the Office of Telecommunications and Information Applications (OTIA Associate Administrator), or his/her designee, for review and approval. The BTOP Director's recommendations and the OTIA Associate Administrator's review and approval will consider the following selection factors:

a. The Evaluation Criteria Review score of the objective expert reviewers;

b. The analysis of NTIA Program staff;

c. Satisfaction of the statutory purposes and BTOP priorities set forth in Section II.;

d. The extent to which the non-Federal cost match equals or exceeds 30 percent of the total eligible costs of the project;

e. The geographic distribution of the proposed grant awards (*e.g.,* ensuring that, to the extent practical, NTIA awards not less than one grant in each State as set forth in the Recovery Act);

f. The range of technologies and uses of the technologies employed by the proposed grant awards;

g. Avoidance of redundancy, duplication, and conflicts with the initiatives of other Federal agencies, including Department of Agriculture loan and grant programs for broadband services, applicable universal service programs authorized by the Federal Communications Commission, and, to the extent practical, avoidance of unjust enrichment; [24]

h. The availability of funds;

i. If applicable, the comments of States, including, but not limited to, such comments as described in their application for the Broadband Mapping Program or as subsequently provided to NTIA either on their own or along with the submission of State-level broadband maps; [25] and

j. If applicable, the comments of tribal entities.

Upon approval of the OTIA Associate Administrator or designee, the BTOP Director's recommendations then will be presented to the Selecting Official. The Assistant Secretary selects the applications for grant awards, taking into consideration the BTOP Director's and the OTIA Associate Administrator's, or his or her designee's, recommendations and the degree to which the application package, taken as a whole, satisfies the selection factors described above and the Program's statutory purposes and priorities as set forth in Sections II of this NOFA. Awards will be made on a rolling basis subject to the availability of funds. Unsuccessful applicants will be notified in writing.

III. Definitions

The terms and conditions provided in this NOFA are applicable to and for purposes of this NOFA only.

Applicant means an entity requesting approval of an award under this NOFA.

Assistant Secretary means the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, Department of Commerce, or the Assistant Secretary's designee.

Award means a grant made under this NOFA by NTIA.

Awardee means a grantee.

Broadband means providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a Middle Mile project to support the provision of broadband service to end users.

BTOP means the Broadband Technology Opportunities Program, administered by NTIA, under the Recovery Act.

Build-out means the construction or improvement of facilities and equipment as specified in the application.

Community anchor institutions means schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, the unemployed, and the aged.

Comprehensive Community Infrastructure (CCI) project means an infrastructure project that focuses primarily on providing new or substantially upgraded connections to community anchor institutions.

Economically distressed area means an area that has: (i) A per capita income of 80 percent or less of the national average; and (ii) an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate.[26]

Forecast period means the time period used by NTIA to determine if an application is financially feasible. Financial feasibility of an application is based on eight-year projections.

GAAP means generally accepted accounting principles.

Grant agreement means the agreement between NTIA and the grantee for grants awarded under this NOFA, including

[23] *See* Recovery Act sec. 6001(e)(3), 123 Stat. at 514.

[24] Recovery Act sec. 6001(h)(2)(D), 123 Stat. at 515.

[25] Consistent with the Recovery Act, the Broadband Mapping Program provides participating States the opportunity to identify unserved and underserved areas in their State.

[26] This definition is derived from regulations adopted by the Economic Development Administration, U.S. Department of Commerce, regarding the Public Works and Economic Development Act of 1965, as amended. *See* 13 CFR 301.3.

any amendments thereto, setting forth the binding terms and conditions relating to Federal funding under BTOP. Sample grant agreements are available for review at *http://www.broadbandusa.gov* or *http://www.ntia.doc.gov.*

Grant funds means Federal funds provided pursuant to a grant made under this NOFA.

Grantee means the prime recipient of a grant under this NOFA.

Last Mile means those components of a CCI project that provide broadband service to end-user devices through an intermediate point of aggregation. That is, in most cases, the Last Mile connection goes from the end-user device through an intermediate point of aggregation (*i.e.,* a remote terminal, fiber node, wireless tower, or other equivalent access point) to a primary IP routing entity in a centralized facility (*i.e.,* in the central office, the cable headend, the wireless switching station, or other equivalent centralized facility). The Last Mile also includes equivalent services that, solely because of close proximity between the customer and centralized facility, are routed directly to the centralized facility. The Last Mile will terminate at, and include, the initial customer-facing router or aggregation switch in the centralized facility (*e.g.,* a DSLAM, CMTS, RNC, or equivalent) that is utilized to deliver Last Mile broadband service.

Last Mile service area means the service area of a Last Mile component of a CCI project, composed of one or more contiguous Census block groups [27] or tracts,[28] where the applicant is requesting BTOP funds to provide broadband service to end-user devices through an intermediate point of aggregation and terminating at the initial customer-facing router or aggregation switch in the centralized facility used to deliver the Last Mile broadband service.

Middle Mile means those components of a CCI project that provide broadband service from one or more centralized facilities, (*i.e.,* the central office, the cable headend, the wireless switching station, or other equivalent centralized facility) to an Internet point of presence. The Middle Mile includes, among other things, the centralized facilities and all of the equipment in those facilities, except for any equipment that would qualify as part of a Last Mile component as defined in this NOFA.

Middle Mile service area means the project service area, composed of one or more contiguous Census block groups or tracts, where the applicant is requesting BTOP funds to provide broadband service from one or more centralized facilities, (*i.e.,* the central office, the cable headend, the wireless switching station, or other equivalent centralized facility) to an Internet point of presence.

Pre-application expense means any reasonable expense incurred after the release of this NOFA up to the issuance of the grant award from NTIA to prepare an application. These expenses include engineering costs, accountant or other consultant fees, and costs related to developing the proposal. Lobbying costs and contingency fees are not included as pre-application expenses.

Proposed funded service area means the total service area of a CCI project where broadband service will be provided.

Public computer center means a place, including but not limited to community colleges, libraries, schools, youth centers, employment service centers, Native American chapter houses, community centers, senior centers, assistive technology centers for people with disabilities, community health centers, and Neighborhood Network Centers in public housing developments, that provide broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities, and people with disabilities.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through a grant) other than an individual. This includes a State that receives Recovery Act funds.

Recovery Act means the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5, 123 Stat. 115 (2009).

Rural area means any area, as confirmed by the latest decennial Census of the U.S. Census Bureau, that is not located within: (i) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or (ii) an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial Census of the U.S. Census Bureau.

Socially and Economically Disadvantaged Small Business Concern means a firm, together with its controlling interests and affiliates, with average gross revenue not exceeding $40 million for the preceding three years, and that meets the definition of a socially and economically disadvantaged small business concern under the Small Business Act.[29]

State means, for purposes of BTOP, a State or political subdivision thereof, the District of Columbia, or a territory or possession of the United States.

Sub-recipient means an entity that expends Recovery Act funds received through a subaward from a recipient to carry out a Federal program but does not include an individual who is a beneficiary of such a program.[30]

Tribe means an Indian tribe that has the meaning given that term in Section 4(e) of the Indian Self-Determination and Education Assistance Act.[31]

Underserved area means a Last Mile or Middle Mile service area, where at least one of the following factors is met: (i) No more than 50 percent of the households in the Last Mile or Middle Mile service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed (set forth in the definition of broadband above); (ii) no fixed or mobile terrestrial broadband service provider advertises to residential end users broadband transmission speeds of at least three megabits per second ("Mbps") downstream in the Last Mile or Middle Mile service area; or (iii) the rate of terrestrial broadband subscribership for the Last Mile or Middle Mile service area is 40 percent of households or less.

[27] A Census block group is a cluster of Census blocks having the same first digit of their four-digit identifying numbers within a Census tract. A Census block group is the next level above Census block in the geographic hierarchy.

[28] Census tracts are small, relatively permanent statistical subdivisions of a county. Census tracts are delineated for most metropolitan areas (MAs) and other densely populated counties by local Census statistical areas committees following Census Bureau guidelines (more than 3,000 Census tracts have been established in 221 counties outside MAs). Census tracts usually have between 2,500 and 8,000 persons and, when first delineated, are designed to be homogeneous with respect to population characteristics, economic status, and living conditions. Census tracts do not cross county boundaries. The spatial size of Census tracts varies widely depending on the density of settlement. Census tract boundaries are delineated with the intention of being maintained over a long time so that statistical comparisons can be made from Census to Census. However, physical changes in street patterns caused by highway construction, new development, or other reasons may require occasional revisions; Census tracts occasionally are split due to large population growth, or combined as a result of substantial population decline. See the Census Bureau's Web site at *http://www.census.gov* for more detailed information on its data gathering methodology.

[29] 15 U.S.C. 637(a)(4) (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP).

[30] Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB M–09–21 June 22, 2009), *available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09–21.pdf.*

[31] 25 U.S.C. 450b(e).

An underserved area may include individual Census block groups or tracts that on their own would not be considered underserved. The availability of or subscribership rates for satellite broadband service is not considered for the purpose of determining whether an area is underserved.

Unserved area means a Last Mile or Middle Mile service area where at least 90 percent of the households lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed (set forth in the definition of broadband above). An unserved area may include individual Census block groups or tracts that on their own would not be considered unserved. A household has access to broadband service if the household readily can subscribe to that service upon request. The availability of or subscribership rates for satellite broadband service is not considered for the purpose of determining whether an area is unserved.

IV. Award Information

A. General

Approximately $2.6 billion in budget authority has been set aside for funding opportunities under this NOFA. Publication of this NOFA does not obligate NTIA to award any specific project or obligate all of the available funds. Based on Round 1 experience, NTIA expects this grant round to be very competitive. During Round 1, RUS and NTIA received approximately 2,200 applications collectively requesting nearly $28 billion in Federal funds.

B. Funding Limits

Approximately $2.6 billion is available to be awarded under this NOFA, which NTIA anticipates will be allocated in the following categories:

a. Approximately $2.35 billion will be made available for CCI projects;

b. At least $150 million will be made available for PCC projects; and

c. At least $100 million will be made available for SBA projects.

C. Repooling

Subject to the statutory thresholds set forth in the Recovery Act, NTIA retains the discretion to divert funds from one category of projects to another.

D. Unused Funds

Funds remaining from the initial round of funding due to BTOP funding priorities or any other reason, and unused funds not awarded under the Broadband Mapping Program, may be used to augment the BTOP funding categories established above.[32] NTIA reserves the right to reopen the application window or release subsequent NOFAs to ensure that all funds are awarded by September 30, 2010.

E. Award Amount

Given NTIA's Round 1 experience, NTIA expects to make awards within the following funding ranges. These ranges are not required minimums and maximums, but applicants requesting amounts for projects outside of these ranges must provide a reasoned explanation for the variance in their project size.

CCI: $5 million–$150 million
PCC: $500,000–$15 million
SBA: $500,000–$15 million

F. Award Period

All awards under BTOP must be made no later than September 30, 2010.[33] While the completion time will vary depending on the complexity of the project, grant recipients must substantially complete projects supported by this Program no later than two years, and projects must be fully completed no later than three years, following the date of issuance of the grant award.[34]

G. Type of Funding Instrument

The funding instrument will be a grant.

V. Eligibility Information for BTOP

Applicants must satisfy the eligibility requirements set forth below in Sections V.A. through V.C. to qualify for funding. Applicants failing to comply with these requirements will not be considered for an award.

A. Eligible Entities

1. Applicant Organization

The following entities are eligible to apply for funding:

a. States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof;

b. The District of Columbia;

c. A territory or possession of the United States;

d. An Indian tribe (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b));

e. A native Hawaiian organization;

f. A non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association;

g. Other non-profit entities;

h. For-profit corporations;

i. Limited liability companies; and

j. Cooperative or mutual organizations.

2. BTOP Public Interest Finding

Section 6001(e)(1)(C) of the Recovery Act authorizes the Assistant Secretary to find by rule that it is in the public interest for any entity not otherwise encompassed by Section 6001(e)(1) to be eligible for a BTOP grant to the extent that such finding will promote the purposes of BTOP in a technology neutral manner. Consistent with the rationale set forth in the First NOFA,[35] the Assistant Secretary found it to be in the public interest to permit for-profit corporations and non-profit entities (not otherwise encompassed by Section 6001(e)(1)(B)) that are willing to promote the goals of the Recovery Act and comply with the statutory requirements of BTOP to be eligible for a grant. By adopting this broad approach, the Assistant Secretary intended to invite a diverse group of applicants to participate in BTOP and to expand broadband capabilities in a technology neutral manner.[36] NTIA will continue to permit these same entities to apply for funding in this next round of awards.

B. Fully Completed Application

All applications will be evaluated initially to ensure that they are fully complete, certified, and contain all supporting documentation.

C. Cost Share/Matching

1. Matching Requirement

In general, awardees under BTOP are required by statute to provide matching funds of at least 20 percent toward the total eligible costs of the project unless the Assistant Secretary grants a waiver. For costs to be eligible to meet matching requirements, they first must be allowable under the grant program. Eligible cost concepts are discussed in more detail in Section V.E. of this NOFA. Applicants must document in their application their capacity to provide matching funds. NTIA will provide up to 80 percent of the total eligible costs of the project, unless the applicant petitions the Assistant Secretary for a waiver of the matching requirement and that waiver is granted based on the applicant's demonstration of financial need, as discussed below.[37]

Generally, Federal funds may not be used as a cost match except as provided

[32] *See supra* note 6.

[33] Recovery Act sec. 6001(d)(2), 123 Stat. at 513.

[34] *Id.* Sec. 6001(d)(3), 123 Stat. at 513.

[35] *See* 74 FR at 33134 (July 9, 2009).

[36] Recovery Act sec. 6001(e)(1)(C), 123 Stat. at 513; 74 FR at 33110.

[37] *See id.* sec. 6001(f), 123 Stat. at 514.

by Federal statute.[38] In-kind contributions, including third party in-kind contributions, are non-cash donations to a project that may count toward satisfying the non-Federal matching requirement of a project's total budgeted costs. In-kind contributions must be allowable project expenses. Such contributions may be accepted as part of an applicant's matching costs when such contributions meet certain criteria.[39]

Applicants that propose to provide a cost match that is all cash will be given additional favorable consideration in the application review process. Additionally, applicants will be given favorable consideration in the selection process by proposing to contribute a non-Federal cost match that equals or exceeds 30 percent of the total eligible costs of the projects. CCI applicants are strongly encouraged to not request more Federal funding than they require to make the project financially feasible and sustainable.[40]

2. Petition for Waiver

In requesting a waiver of the matching requirement, an applicant should fully explain and document its inability to provide the required 20 percent matching share of the eligible costs of the proposed project. In demonstrating financial need, the applicant should submit: (1) Documents that include the applicant's assets, liabilities, operating expenses, and revenues from any existing operations; (2) denial of funding from a public or private lending institution; or (3) any other documents that demonstrate financial need. Mere statements of financial need without supporting documentation will not be viewed favorably. The petition for waiver and documentation must be set forth clearly in the application. The Assistant Secretary will evaluate the information provided in support of the petition and may increase the Federal share if financial need is demonstrated.

D. General Program Requirements

1. Timely Completion

Applicants must demonstrate that the project can be substantially completed within two years of the start date of the grant award and fully completed no later than three years following the date of issuance of the grant award. A BTOP project is considered "substantially complete" when a grantee has met 67 percent of the project milestones and received 67 percent of its award funds. In evaluating compliance with this factor, NTIA will consider the planned start date of the project; the reasonableness of the project timeline and associated milestones; whether the applicant will be able to secure all licenses, franchises, and regulatory approvals required to complete the project; whether the applicant will be able to meet all environmental requirements; and whether the required contractors and vendors necessary to implement the project are prepared to enter into contracts as soon as the funds are made available.

In view of the urgent need for additional economic stimulus, however, NTIA strongly encourages applicants to fully complete their projects within the two-year time period from the date of issuance of the award.

2. Demonstration That Project Could Not Be Implemented "But For" Federal Grant Assistance

Grant applicants must provide documentation that the project would not have been implemented during the grant period without Federal grant assistance.[41] This documentation may consist of, but is not limited to, such items as a denial of funding from a public or private lending institution, a current fiscal year budget that shows the lack of available revenue options for funding the project, or a business case that demonstrates that the project would not be economically feasible without grant financing.

3. Additional Requirements Applicable to Comprehensive Community Infrastructure Applicants

a. Broadband Service

All CCI applicants must propose to offer service meeting the definition of broadband as defined in Section III.

b. Nondiscrimination and Interconnection

All CCI applicants must commit to the following Nondiscrimination and Interconnection Obligations:[42]
(i) Adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05–151, adopted August 5, 2005) or any subsequent ruling or statement; (ii) not favor any lawful Internet applications and content over others; (iii) display any network management policies in a prominent location on the service provider's Web page and provide notice to customers of changes to these policies (awardees must describe any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage illegal or harmful content); (iv) connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and (v) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, at reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic. Applicants must disclose their proposed interconnection, nondiscrimination, and network management practices with the application.

All these requirements shall be subject to the needs of law enforcement and reasonable network management. Thus, awardees may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching (including content delivery networks) and application-neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content, and other harmful activities. In evaluating the reasonableness of network management techniques, NTIA will be guided by any applicable rules or findings established by the FCC, whether by rulemaking or adjudication.

In addition to providing the required connection to the Internet, awardees may offer managed services, such as telemedicine, public safety communications, distance learning, and virtual private networks, that use private network connections for enhanced quality of service rather than traversing the public Internet.

An awardee may satisfy the requirement for interconnection by negotiating in good faith with all parties making bona fide requests. The awardee and requesting party may negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection. If the awardee and requesting party cannot reach agreement, they may voluntarily seek an interpretation by the FCC of any FCC rules implicated in the dispute. If an agreement cannot be reached within 90 days, the party requesting interconnection may notify NTIA in

[38] *See* Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations, 15 CFR 14.23(a)(5); *see also* Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 24 CFR 24.24(b)(1).

[39] *See* 15 CFR 14.23(a), 24.24(a).

[40] *See supra* Section II.C.4.

[41] *See supra* note 23.

[42] Nothing herein shall be construed to affect the jurisdiction of the FCC with respect to such matters.

writing of the failure to reach satisfactory terms with the awardee. The 90-day limit is to encourage the parties to resolve differences through negotiation.

With respect to non-discrimination, those who believe an awardee has failed to meet the non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in the dispute. If the FCC chooses to take no action, those seeking recourse may notify NTIA in writing about the alleged failure to adhere to commitments of the award.

These conditions apply to the awardee and will remain in effect for the life of the awardee's Federally funded facilities and equipment used in the project. These conditions will not apply to any existing network arrangements or to non-awardees using the network. Note, however, that the awardee may negotiate contractual covenants with other broadband service providers engaged to deploy or operate the network facilities and pass these conditions through to such providers. Awardees that fail to accept or comply with the terms listed above may be considered in default of their grant agreements. NTIA may exercise all available remedies in the event of a default, including suspension of award payments or termination of the award.[43]

c. Last Mile Coverage Obligation

i. Service Obligation

An applicant for a CCI project that includes a Last Mile component must identify the Last Mile service area(s) selected for the project. There is a presumption that the applicant will provide service to the entire Last Mile service area(s).

ii. Petition for Waiver

An applicant may petition for a waiver of the Last Mile Coverage Obligation if it provides a reasoned explanation as to why providing service or coverage for the entire Last Mile service area is extremely burdensome for the applicant. In considering whether providing service or coverage is extremely burdensome, the applicant must explain whether there are any legal, technical, or financial impediments to covering each Census block group or tract. Mere statements regarding the burden to serve an area without supporting documentation will not be viewed favorably. The petition for waiver and documentation must be set forth clearly in the application. Applicants may be permitted to serve less than an entire Census block group or tract under certain conditions. For example, an applicant might request to be relieved of this requirement if the Census block group or tract exceeds 100 square miles or more or is larger than the applicant's authorized operating territory (*e.g.,* it splits a rural incumbent local exchange carrier's (ILEC's) study area or exceeds the boundaries of a wireless carrier's licensed territory). Where applicable, an applicant seeking a waiver also should include information regarding the characteristics of the Last Mile service area (*e.g.,* data showing whether broadband services already are available in the proposed unserved territory by more than one service provider or information regarding terrain, acreage, population, etc.) and costs (*e.g.,* pro forma financial projections or estimated applicant cost/burden to provide broadband service to the remainder of the area).

d. Announcement of Proposed Funded Service Areas

In the interests of promoting transparency and strengthening the selection process, NTIA will post an announcement identifying each CCI application it has received, along with a list of the Census block groups or tracts that each infrastructure applicant has proposed to serve through its project, at *http://www.broadbandusa.gov.* The posting of this announcement will provide existing broadband service providers with a 15-day window voluntarily to submit to NTIA information about the broadband services they currently offer in their respective service territories by Census block group or tract. If an existing broadband service provider submits a response outside of the 15-day period, NTIA may not consider this information in its evaluation of an applicant's Last Mile or Middle Mile service area(s).

NTIA will consider the comments of existing broadband service providers as a factor in its evaluation of the applicant's Last Mile or Middle Mile service area(s)[44] provided that they include the following information, some of which will be made public: (1) The name of the company providing information on its broadband service offerings; (2) a summary describing the information the provider has presented to NTIA; (3) the number of households and businesses that have access to broadband service in the provider's service territory by Census block group or tract; (4) the type of broadband services the provider offers in its service territory by Census block group or tract and the technology used to provide those services, including, for wireless carriers, the spectrum that is used; (5) the prices at which the broadband services are offered; (6) the speed of the broadband services that are offered; (7) the number of subscribers that the provider currently has for each of the broadband services it offers in its service territory by Census block group or tract; and (8) optionally, a list of the provider's Points of Presence (POPs) in or near Census block groups or tracts listed by the announcement.

The information submitted by an existing broadband service provider relating to items (3) through (8) enumerated above will be treated as proprietary and confidential to the extent permitted under applicable law. The information described in items (1) and (2) above, which includes the identity of the company submitting information and a summary of its response, will be made publicly available. NTIA will post at *http://www.broadbandusa.gov* a list of the Census block groups or tracts in which existing broadband service providers have indicated that they provide broadband service. NTIA may consider any information submitted by existing broadband service providers as relevant to its prioritization and review of CCI applications and as part of its evaluation of the merits of a highly qualified CCI application. NTIA will contact the applicant as necessary for additional information to evaluate the unserved or underserved status of its Last Mile or Middle Mile service area(s), if applicable, and may take other data, such as existing State broadband maps and FCC Form 477 data, into account during this examination.

E. Funding Restrictions—Eligible and Ineligible Costs

1. General

Grant funds that NTIA awards may not necessarily be used to pay for all of the costs that the grant recipient incurs in carrying out the project. Specifically, grant funds must be used only to pay for eligible costs. Eligible costs are consistent with the cost principles identified in the applicable OMB circulars[45] and in the grant program's

[43] Note that the changes made to this section from the First NOFA are meant to clarify, and not change, applicants' obligations.

[44] *See infra* Section VII.A.1.

[45] For example, there is a set of Federal principles for determining eligible or allowable costs. Allowability of costs will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State, Local and Indian

Continued

authorizing legislation. In addition, costs must be reasonable, allocable, necessary to the project, and conform to GAAP. For CCI projects, eligible costs are generally capital expenses, and not operating expenses. An applicant proposing to use any portion of the grant funds for any ineligible cost will be instructed to revise its proposed budget to remove such costs prior to the award of a grant.[46] A more detailed discussion of the eligible and ineligible costs that are applicable to each BTOP project category is set forth in the following sections.

In general, a project will incur both direct and indirect costs. Direct and indirect costs may be reimbursed from grant funds provided that they fall within the approved eligible cost categories discussed below.

a. Direct Costs of a BTOP Project

Direct costs are those that are directly related and traceable to the cost of the project being supported. Direct costs of a project may be charged to the award if they are allowable costs and are included within approved budget categories.

b. Indirect Costs of a BTOP Project

NTIA has the discretion to consider indirect costs as eligible expenses under BTOP. For CCI projects, reasonable indirect costs associated with the construction, deployment, or installation of facilities and equipment used to provide broadband service as described in Section V.E.2. will be considered eligible provided that they are included as a line item in the applicant's budget and the applicant has established, or commits to apply for, an approved indirect cost rate. For PCC and SBA projects, reasonable indirect costs associated with eligible project activities as detailed in Sections V.E.3. and V.E.4. will be considered eligible costs provided they are included as a line item in the applicant's budget and the applicant has established, or commits to apply for, an approved indirect cost rate. The process for establishing an indirect cost rate with the DOC is described in a document entitled "General Indirect Cost Rate Program Guidelines for Grantee Organizations" and can be found on the Department of Commerce Web site.[47] Applicants that do not have an approved indirect cost rate will have 90 days from the award start date to apply to have a rate established.

2. Eligible and Ineligible Costs for BTOP Comprehensive Community Infrastructure Projects

a. Eligible Costs for Comprehensive Community Infrastructure Projects

Grant funds may be used to pay for the following expenses:

i. To fund the construction or improvement of all facilities required to provide broadband service; [48]

ii. To fund the cost of long-term leases (for terms greater than one year) of facilities required to provide broadband service, including indefeasible right-of-use (IRU) agreements;

iii. To fund reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses, which include expenses related to preparing an application, may be reimbursed if they are incurred after the publication date of this NOFA and prior to the date of issuance of the grant award from NTIA, except that lobbying costs and contingency fees are not reimbursable from BTOP funds;

iv. To fund reasonable indirect costs consistent with the principles outlined in Section V.E.1. of this NOFA; and

v. Undertaking such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the Program is established.

b. Ineligible Costs for Comprehensive Community Infrastructure Projects

Grant funds may not be used for any of the following purposes:

i. To fund operating expenses of the applicant;

ii. To fund costs incurred prior to the date on which the application is submitted, with the exception of eligible pre-application expenses;

iii. To fund an acquisition of an affiliate, including the acquisition of the stock of an affiliate;

iv. To fund the purchase or lease of any vehicle other than those used primarily in construction or system improvements;

v. To fund the merger or consolidation of entities; or

vi. To fund costs incurred in acquiring spectrum as part of an FCC auction or in a secondary market acquisition.

3. Eligible and Ineligible Costs for Public Computer Center Projects

a. Eligible Costs for Public Computer Center Projects

Projects under this category are aimed at expanding broadband access and capacity at community anchor institutions, organizations serving vulnerable populations, or job-creating strategic facilities located in State- or Federally-designated economic development areas as well as stimulating broadband demand, economic growth, and job creation. Grantees may use BTOP funding to expand public computer center capacity by:

i. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services, including the purchase of word processing software, computer peripherals, such as mice and printers, and computer maintenance services and virus-protection software;

ii. Developing and providing training, education, support, and awareness programs or web-based resources, including reasonable compensation for qualified instructors, technicians, managers, and other employees essential for these types of programs;

iii. Facilitating access to broadband services, including, but not limited to, making public computer centers accessible to the disabled;

iv. Installing or upgrading broadband facilities on a one-time, capital improvement, basis in order to increase broadband capacity;

v. Constructing, acquiring, or leasing a new facility, provided that the applicant explains why it is necessary to construct, acquire, or lease a new facility to facilitate public access to broadband services or expand computer center capacity;

vi. Funding reasonable indirect costs consistent with the principles outlined in Section V.E.1. of this NOFA;

vii. Undertaking such other projects and activities as the Assistant Secretary

Tribal Governments." The allowability of costs incurred by nonprofit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those nonprofit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part. 31. *See* 15 CFR 14.27 and 24.22 (governing the Department of Commerce's implementation of OMB requirements).

[46] BTOP CCI applicants and PCC applicants will be directed to revise SF–424A (for non-construction projects) or SF–424C (for construction projects). SBA applicants will be directed to revise SF–424A (for non-construction projects).

[47] *See http://oam.ocs.doc.gov/docs/DOC%20IDC%20Ext%20Policy.v6.doc.*

[48] These facilities and equipment may include, for example, but are not limited to, the costs associated with complying with all applicable legal requirements, such as the Communications Assistance for Law Enforcement Act (CALEA). *See infra* Section X.P.

finds to be consistent with the purposes for which the Program is established; and

viii. Paying for reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses, which include expenses related to preparing an application, may be reimbursed if they are incurred after the publication date of this NOFA and prior to the date of issuance of the grant award from NTIA, except that lobbying costs and contingency fees are not reimbursable from BTOP funds.

While some of the costs associated with the activities enumerated above may be properly classified as operating expenses, an applicant should describe in its application how it intends to cover the operating expenses of the project after the grant period expires.

b. Ineligible Costs for Public Computer Center Projects

BTOP grant funds may not be used to fund purchases that are not used predominantly for expanding public access to broadband service or enhancing broadband capacity at public computer center locations.

4. Eligible and Ineligible Costs for Sustainable Broadband Adoption Projects

a. Eligible Costs for Sustainable Broadband Adoption Projects

Projects under this category are aimed at providing broadband education, awareness, training, access, equipment, and support in order to stimulate sustainable adoption of broadband services by individuals, households, and community anchor institutions. In this context, sustainable means adoption (*i.e.,* subscription to broadband service) that the consumer or institution can and will continue to pay for after the award period. Grantees may use BTOP funding for innovative programs that encourage sustainable adoption of broadband services by:

i. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services;

ii. Developing and providing training, education, support, and awareness programs, as well as web-based content that is incidental to the program's purposes, and includes reasonable compensation for qualified instructors for these types of programs;

iii. Conducting broadband-related public education, outreach, support, and awareness campaigns;

iv. Implementing programs to facilitate greater access to broadband service, devices, and equipment;

v. Funding reasonable indirect costs consistent with the principles outlined in Section V.E.1. of this NOFA;

vi. Undertaking such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the Program is established; and

vii. Paying for reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses, which include expenses related to preparing an application, may be reimbursed if they are incurred after the publication date of this NOFA and prior to the date of issuance of the grant award from NTIA, except that lobbying costs and contingency fees are not reimbursable from BTOP funds.

While some of the costs associated with the activities enumerated above may be properly classified as operating expenses, an applicant should describe in its application how it intends to cover the operating expenses of the project after the grant period expires, if appropriate.

b. Ineligible Costs for Sustainable Broadband Adoption Projects

BTOP grant funds may not be used for expenses or purchases that are not used predominantly for the provision of broadband education, awareness, training, access, equipment, and support. Additionally, costs associated with constructing or leasing broadband facilities and infrastructure are not eligible.

F. Use of Program Income

Grantees are required to account for any Program income directly generated by projects financed in whole or in part with Federal funds. Given the Recovery Act's objectives to spur job creation and stimulate long-term economic growth and opportunity, projects funded by BTOP grants are expected to demonstrate convincingly the ability to be sustained beyond the funding period. While grant funds are intended to cover the capital costs of a project as part of the Recovery Act's effort to stimulate the economy, grant recipients for all grant programs are expected to present projects that will sustain long-term growth and viability.

Any Program income generated by a project funded by BTOP during the grant period shall be retained by the grant recipient and shall be used in one or more of the following ways: (1) Added to the funds committed to the project by NTIA and the recipient to conduct additional activities that will further eligible project objectives, including (a) reinvestment in project facilities, (b) funding BTOP compliance costs, and (c) paying operating expenses of the project; or (2) used to finance the non-Federal share of the project.[49] Program income means gross income earned by the recipient that is either directly generated by a supported activity or earned as a result of the award during the funding period.[50] Grant recipients shall have no obligation to the Federal government regarding Program income earned after the end of the project period.[51] However, the Federal government retains an interest in property in the event that it is sold, consistent with the guidance outlined in Section IX.C. of this NOFA and in applicable DOC regulations.[52]

VI. Application and Submission Information

A. Request for Application Package

Complete application packages, including required Federal forms and instructions, will be available at *http://www.broadbandusa.gov.* Additional information for BTOP can be found in the *Application Guidelines* at *http://www.broadbandusa.gov.* This Web site will be updated regularly.

B. Registration

1. Central Contractor Registration (CCR)

All applicants are required to have a current registration in the CCR database prior to receiving an award. Online CCR registration is available at *http://www.ccr.gov/StartRegistration.aspx.* Applicants without a current CCR are encouraged to register as soon as possible after the release of this NOFA.[53]

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[49] 15 CFR 14.24(b), 24.25(g).

[50] 15 CFR 14.2(aa), 24.25(b). Program income includes, among other things, income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, and from the sale of commodities or items fabricated under a grant agreement. 15 CFR 14.2(aa), 24.25(a). In general, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award. 15 CFR 14.25(f), 24.25(c).

[51] 15 CFR 14.25(h), 24.25(h).

[52] *See, e.g.,* 2 CFR 215.24; 15 CFR 14.24, 24.25.

[53] "To enable timeliness of awards, agencies should engage in aggressive outreach to potential applicants to begin application planning activities, including the process of Central Contractor Registration (CCR) and obtaining a Dun and Bradstreet Universal Numbering System (DUNS) number." Updating Implementing Guidance for the American Recovery and Reinvestment Act of 2009 (OMB M–09–15 April 3, 2009), *available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf.*

2. DUNS Number

All applicants should obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number as soon as possible after the release of this NOFA.[54] Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com.*

C. Choosing the Proper Agency and Category for an Application

1. Broadband Infrastructure

a. Choosing BIP or BTOP

Applicants that are eligible for both BIP and BTOP have the option to apply to either agency for funding for a project. However, applicants should apply to only one agency for a given project. NTIA strongly recommends that applicants that are current RUS loan or grant recipients, as well as any applicant whose project is for a Last Mile area that is at least 75 percent rural, should apply to BIP for funding. This recommendation is necessary to improve the efficiency of both BIP and BTOP and to leverage the core expertise of the agencies. The agencies will coordinate to identify potential service area overlaps, and will resolve such conflicts in the manner that best satisfies the statutory objectives of both programs.

b. Transferability

Under this NOFA, the Assistant Secretary may refer to RUS any CCI application that NTIA has determined not to fund but that may be consistent with BIP requirements.

c. Comprehensive Community Infrastructure

Applications for CCI projects should provide a broadband infrastructure solution that addresses the major needs of communities the project intends to serve. Priority will be given to projects that include a Middle Mile component. The project should meet the significant needs of the community, which in the first instance should include providing broadband service to community anchor institutions, such as community colleges, schools, libraries, medical and healthcare providers, community support organizations, and public safety entities. CCI projects should be technically feasible, sustainable, and scalable, and address BTOP's priority needs, including offering substantial economic, educational, healthcare, and public safety benefits relative to the costs of providing service. NTIA will give strong preference to CCI applications that satisfy each of the priorities set forth in Section II.B.

To the extent that a CCI project contains a Last Mile component in rural areas, the additional costs of offering service to residential consumers and non-community anchor institutions may not exceed more than 20 percent of the total eligible costs of the project. Additionally, the applicant must demonstrate the cost reasonableness and effectiveness of the Last Mile component of its project. Specifically, applicants must ensure that this aspect of the proposal yields total eligible project costs that are less than $10,000 per household or per subscriber, unless the applicant can demonstrate why it should be permitted to exceed this ceiling. NTIA will look more favorably upon applications with lower costs per household or per subscriber.

2. Public Computer Centers

Applications for PCC projects must expand public computer center capacity, including at community colleges and public libraries.[55] They must provide broadband access or improve broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities, and people with disabilities. Projects must create or expand a public computer center meeting a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for healthcare delivery, children, and vulnerable populations. As described below, NTIA will consider information related to the demographics, size, and scope of the populations to be served, as well as the capacity of and the training provided by the proposed centers.

3. Sustainable Broadband Adoption

Applications for SBA projects should demonstrate a sustainable increase in demand for and subscribership to broadband services. Projects should meet a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for healthcare delivery, children, and vulnerable populations. Projects should describe the barriers to adoption in a given area, especially among vulnerable populations, and propose an innovative and persuasive solution to achieve increased adoption. Applicants might show how variations on one or more proven demand stimulation strategies—such as awareness-building, development of relevant content, and demand aggregation—would promote sustainable adoption. NTIA expects a high degree of verification that will demonstrate the effectiveness of various approaches to building sustainable broadband adoption, including market research and surveys.

D. Contents of the Application

1. Comprehensive Community Infrastructure Applications

A complete CCI application will include the elements listed below. As required by the Recovery Act, NTIA is required to make certain information about applications available in a publicly accessible database.[56] Thus, NTIA will publicly display application elements containing such information on the applicant database at *http://www.broadbandusa.gov.* See Section X.J. for a discussion of NTIA's treatment of confidential materials.

The following application elements will be publicly displayed on the applicant database:

a. The identity of the applicant and general applicant and project information;

b. An executive summary of the project;

c. Information regarding the proposed funded service area; and

d. The Federal grant request and cost match.

The following elements will not be included in the publicly accessible applicant database:

a. A description of the applicant's nondiscrimination, interconnection, and network management plans;

b. Details on local community involvement and partnerships with government, community, and community anchor institutions, and involvement of socially and economically disadvantaged small business concerns (SDB) as defined in Section III of this NOFA;

c. A description of how the applicant will advance the objectives of the Recovery Act, as well as the specific objectives of BTOP;

d. A description of the proposed service offerings, including the pricing of the services and information on available services in the area;

[54] *Id.*

[55] Recovery Act Tit. I, 123 Stat. at 128.

[56] Specifically, NTIA is required to create an application database that includes at least a list of each entity that has applied for a BTOP grant, a description of each application, and the status of each application. Recovery Act sec. 6001(i)(5), 123 Stat. at 515. After award, NTIA is required to make certain additional information available about the grants (*e.g.,* the name of each entity receiving funds, the purpose for which the entity is receiving funds, and the quarterly reports). *Id.*

e. Technical details of the proposed project;
f. A timeline for the implementation of the project, including key milestones for implementation of the project, preparations, and risk factors;
g. Information regarding the organization's capacity and readiness;
h. Details on the project budget and funding, including the level of need for Federal funding, details on other Federal funding received by the applicant, and information regarding matching funds;
i. Pro forma financial analysis related to the sustainability of the project across an eight-year forecast period;
j. Completion of the Environmental Questionnaire; and
k. The following supplemental attachments as applicable:
i. Historical financial statements and Certified Public Accountant (CPA) audits if applicable;
ii. Proposed service offerings;
iii. Competitor data;
iv. Network diagram and system design;
v. Maps of the proposed service areas;
vi. Build out timeline;
vii. Management team resumes and organization chart;
viii. List of community anchor institutions;
ix. Governance and key partnerships;
x. Pro forma financial projections and subscriber estimates; and
xi. Authorized Organization Representation and Compliance and Assurance Certification.

2. Public Computer Centers Applications

A complete PCC application will include the elements listed below. As noted above, NTIA is required by the Recovery Act to make certain information about applications available in a publicly accessible database. Thus, NTIA will publicly display application elements containing such information on the applicant database at *http://www.broadbandusa.gov.* See Section X.J. for a discussion of NTIA's treatment of confidential materials.

The following application elements will be publicly displayed on the applicant database:
a. The identity of the applicant and general applicant and project information;
b. An executive summary of the project; and
c. The Federal grant request and cost match.

The following elements will not be included in the publicly accessible applicant database:
a. A description of how the applicant will advance the objectives of the Recovery Act, as well as the specific objectives of BTOP;
b. A summary of the viability of the project;
c. Proposed budget and sustainability information;
d. Completion of an environmental checklist or the Environmental Questionnaire; and
e. The following supplemental attachments:
i. Governance and key partnerships;
ii. Historical financial statements, as applicable;
iii. Public center detail;
iv. Management team resumes and organization chart;
v. SF–424 budget;
vi. Detailed budget; and
vii. Authorized Organization Representative and Compliance and Assurance Certification.

3. Sustainable Broadband Adoption Applications

A complete SBA application will include the elements listed below. As noted above, NTIA is required by the Recovery Act to make certain information about applications available in a publicly accessible database. Thus, NTIA will publicly display application elements containing such information on the applicant database at *http://www.broadbandusa.gov.* See Section X.J. for a discussion of NTIA's treatment of confidential materials.

The following elements will be publicly displayed on the applicant database:
a. The identity of the applicant and general applicant and project information;
b. An executive summary of the project; and
c. The Federal grant request and cost match.

The following elements will not be included in the publicly accessible applicant database:
a. A description of how the applicant will advance the objectives of the Recovery Act, as well as the specific objectives of BTOP;
b. A summary of the viability of the project;
c. Proposed budget and sustainability information;
d. Completion of an environmental checklist and applicable certifications; and
e. The following supplemental attachments:
i. Governance and key partnerships;
ii. Historical financial statements, as applicable;
iii. Management team resumes and organization chart;
iv. SF–424 budget;
v. Detailed budget; and
vi. Authorized Organization Representative and Compliance and Assurance Certification.

4. Supplementary Information Requests for Due Diligence

As discussed in Section II.C. above, those applications that are considered to be most highly qualified (*i.e.,* receiving the highest scores) will advance to due diligence and will be processed with priority given to projects that best conform with the statutory purposes and program priorities described in Section II. In due diligence, applicants may be asked to submit additional information, as appropriate, to clarify or to further substantiate the representations made in their application and allow Federal staff to evaluate fully the proposed project with respect to the eligibility factors, general Program requirements, evaluation criteria, and selection factors specified in this NOFA. Due diligence applies to all three categories of projects.

E. Filing Instructions

Electronic submissions of applications will allow for the expeditious review of an applicant's proposal consistent with the goals of the Recovery Act. As a result, all applicants are required to submit their applications electronically at *https://applyonline.broadbandusa.gov.* The electronic application system will provide a date-and-time-stamped confirmation number that will serve as proof of submission. Please note that applications will not be accepted via paper, facsimile machine transmission, electronic mail, or other media format. Applicants, however, may request a waiver of these filing instructions pursuant to Section X.N. of this NOFA.

F. Submission Dates and Times

All applications for funding BTOP projects must be submitted between February 16, 2010, at 8 a.m. Eastern Standard Time (EST) and March 15, 2010, at 5 p.m. Eastern Daylight Time (EDT).

G. Authorization

As required by Section IX.C.5.a. of this NOFA, all applicants will be required to submit a certification by an Authorized Organization Representative at the time the application is submitted for filing.

H. Material Representations

The application, including all certifications and assurances, and all forms submitted as part of the application will be treated as a material

representation of fact upon which NTIA will rely in awarding grants.

I. Material Revisions

An applicant shall not be permitted to make any material revision to its application after the submission deadline. NTIA may request or accept clarifications, revisions or submissions for completeness that are non-material.

VII. Application Review Information

A. Evaluation Criteria

The evaluation criteria used by expert reviewers to review and analyze BTOP applications are grouped into four categories: (1) Project Purpose; (2) Project Benefits; (3) Project Viability; and (4) Project Budget and Sustainability. Each application will be evaluated against the following objective criteria, and not against other applications.

1. Comprehensive Community Infrastructure

a. Project Purpose (20 Points)

i. *Fit with Statutory Purposes.* Applications will be evaluated with respect to each of BTOP's statutory purposes.[57] Reviewers will consider, relative to each purpose, whether the applicant is addressing a compelling problem of the sort that the statute is intended to resolve, whether the applicant has offered an effective solution to that problem, and whether the proposed solution is of broad significance and includes developments that can be replicated to improve future projects. Additional consideration also will be given to applicants that address more than one statutory purpose and project category (*e.g.,* CCI, PCC, or SBA) in a convincing manner. Reviewers also will consider the ability of the project to enhance broadband service for healthcare delivery, education, and children as contemplated by the Recovery Act.[58]

ii. *Fit with BTOP Priorities.* Applications will be evaluated with respect to each of the BTOP Priorities and factors set forth in Section II.B. Reviewers will consider the priorities assigned for CCI projects, and additional consideration will be given for projects that satisfy more priorities. Additional consideration will be given to applicants satisfying the factors used to assess whether the application meets Program objectives.

iii. *Potential for Job Creation.* The application will be scored on the project's potential to create jobs, particularly jobs created directly by the project. Reviewers will assess the methodology used to calculate job estimates, the number and quality of the jobs created, and how the project balances job creation with cost efficiency.

iv. *Recovery Act and Other Governmental Collaboration.* Applicants will be evaluated on their collaboration with Recovery Act or other State or Federal development programs that leverage the impact of the proposed project. Examples include the Department of Energy's Smart Grid Investment Program, the Department of Health and Human Services' Beacon Community Cooperative Agreement Program, the Department of Housing and Urban Development's Public Housing Capital Fund, the Department of Transportation's Capital Assistance for High Speed Rail Corridors and Intercity Passenger Service program, and other investments where collaboration would lead to greater project efficiencies. In each case, the applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful.

v. *Indian Tribes and Socially and Economically Disadvantaged Small Businesses.* Reviewers will grant consideration to applicants that are Indian tribes or that certify that they meet the statutory definition of a socially and economically disadvantaged small business concern (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP), or that have established agreements to partner or contract with Indian tribes or socially and economically disadvantaged businesses.[59]

b. Project Benefits (20 Points)

i. *Level of Need in the Proposed Funded Service Area.* Applications will be scored on the level of need for the proposed network in the proposed funded service area. Reviewers will consider whether there are service providers already present in all or part of the area, as well as the pricing, coverage, and available capacity of those providers. Reviewers also will consider what proportion of the projected end users are located in unserved or underserved areas and may take into account any comments submitted by existing broadband service providers in response to the announcement described in Section V.D.3.d. of this NOFA in making this evaluation. Reviewers may consider other details that are pertinent to determining the degree of need for the project in the area(s) (*e.g.,* unemployment rates or median income levels). In addition, reviewers also will consider applicants' explanation of why their proposed project is well-suited to address the needs of the proposed funded service area(s).

ii. *Impact on the Proposed Funded Service Area(s).* Applications will be scored on how great an impact they would have on the proposed funded service area(s). Reviewers will consider the extent to which the proposed project will comprehensively meet, whether directly or indirectly, the key broadband needs of the communities within the proposed funded service area, particularly the need for Middle Mile capacity. This should include consideration of services for the community anchor institutions in the area(s), and access, transport, and wholesale services for other broadband service providers. Reviewers should give particular weight to services provided to community anchor institutions, especially those in unserved and underserved areas, as well as any community colleges within the proposed funded service area, whether or not they are located in unserved and underserved areas. Reviewers may take into account any comments submitted by existing broadband service providers in response to the announcement described in Section V.D.3.d. of this NOFA in making the evaluation of a proposed funded service area as unserved or underserved, as applicable. Reviewers also should consider the extent to which the project will provide, directly or indirectly, residential and business broadband services within the proposed funded service area(s).

iii. *Network Capacity and Performance.* Applicants will be evaluated on the ability of the proposed network to provide sufficient capacity, as well as scalability, to meet the comprehensive needs of the communities in the proposed funded service area(s). The Middle Mile components of the network should provide capacity sufficient to serve the

[57] *See* Recovery Act sec. 6001(b), 123 Stat. at 512–13 (stating the purposes of the program are to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in State- or Federally-designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

[58] *See id.* sec. 6001(h)(2)(C), 123 Stat. at 515.

[59] 15 U.S.C. 637(a)(4) (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP).

anticipated Last Mile networks, community anchor institutions, and public safety entities, and the number of end users served by them, as projected by the applicant, taking into consideration the nature of the services for which these institutions and end users are likely to seek to utilize the network. Applications that include Last Mile components also will be evaluated on the extent to which the advertised speed for the network's highest offered speed tier exceeds the minimum speed requirement for broadband service (768 kbps downstream and 200 kbps upstream). Networks with higher end-user speeds will receive greater consideration. Proposed networks with high latency will be viewed unfavorably. Applicants may gain additional consideration if the applicant can demonstrate a clear and affordable upgrade path for the network.

iv. *Affordability of Services Offered.* Projects will be evaluated on the pricing of the services offered compared to existing broadband services in the proposed funded service area(s) or based on nationwide averages. Applicants should demonstrate that this pricing is competitive and affordable to their target markets. However, pricing levels also should be reasonable and market-based, so as to maximize the efficient use of Federal grant funds.

v. *Nondiscrimination, Interconnection, and Choice of Provider.* Applications will be scored on the extent to which the applicant commits to exceeding the minimum requirements for interconnection and nondiscrimination established in Section V.D.3. of this NOFA. Additional consideration will be given for displaying the network's nondiscrimination and interconnection policies in a prominent location on the service provider's Web page, and providing notice to customers of changes to these policies. Additional consideration will be given to applicants that commit to offering wholesale access to network elements and project facilities at reasonable rates and terms. Additional consideration also will be given to applicants that commit to binding private arbitration of disputes concerning the awardees' interconnection obligations as explained in Section V.D.3. of this NOFA. Reviewers also will consider whether the application proposes to construct infrastructure and implement a business plan that would allow more than one provider to serve end users in the proposed funded service area(s). Reviewers also may consider other factors to assess the degree of openness of the network.

c. Project Viability (30 Points)

i. *Technical Feasibility of the Proposed Project.* Applications will be scored on the comprehensiveness and appropriateness of the technical solution and the clarity, level of detail, coherence, and cost-effectiveness of the system designs.

ii. *Applicant's Organizational Capability.* Reviewers will assess whether the applicant has the organizational capability necessary to undertake and complete the project. Reviewers will consider the years of experience and expertise of the project management team and the past track record of the organization with projects of a similar size and scope, as well as the organization's capacity and readiness.

iii. *Level of Community Involvement in the Project.* Reviewers will evaluate linkages to unaffiliated organizations in the project area (from the public, non-profit, and private sectors), particularly community anchor institutions and public safety organizations, as an ongoing and integral part of the project planning and operation. Applicants should demonstrate that each linkage is substantial and meaningful.

d. Project Budget and Sustainability (30 Points)

i. *Reasonableness of the Budget.* Reviewers will evaluate the reasonableness of the budget based on its clarity, level of detail, comprehensiveness, appropriateness to the proposed technical and programmatic solutions, the reasonableness of its costs, and whether the allocation of funds is sufficient to complete the tasks outlined in the project plan. To the extent that a CCI project includes a Last Mile component, the cost per household or cost per subscriber should not exceed $10,000. Additional consideration will be given to applicants that present cost per household or cost per subscriber proposals below the $10,000 maximum based on a sliding scale.

ii. *Sustainability of the Project.* Applicants must convincingly demonstrate the ability of the project to be sustained beyond the funding period. Reviewers will consider business plans, market projections, third-party funding commitments, and other data as may be appropriate to the nature of the applicant and the proposed project.

iii. *Leverage of Outside Resources.* Reviewers will consider whether the applicant has demonstrated the ability to provide, from non-Federal sources, funds required to meet or exceed the 20 percent matching funds requirement unless a waiver of that requirement has been requested. Additional consideration will be given to applicants that provide a cost match of 30 percent or greater of the total eligible costs of a project. Reviewers also will evaluate whether the applicant has tailored the proportion of Federal funding to the level that is necessary to make the project economically feasible and sustainable. Reviewers will give additional consideration to proposals that provide cash matches. For purposes of this evaluation, applicants that have received a full or partial waiver of the cost-matching requirement will be treated as having provided a 20 percent non-cash match.

2. BTOP Public Computer Center Projects

a. Project Purpose (20 Points)

i. *Fit with Statutory Purposes.* Applications will be evaluated with respect to each of BTOP's statutory purposes.[60] Reviewers will consider, relative to each purpose, whether the applicant is addressing a compelling problem of the sort that the statute is intended to resolve, whether the applicant has offered an effective solution to that problem, and whether the proposed solution is of broad significance and includes developments that can be replicated to improve future projects. Additional consideration also will be given to applicants that address more than one statutory purpose and project category (*e.g.,* CCI, PCC, or SBA) in a convincing manner. Reviewers also will consider the ability of the project to enhance broadband service for healthcare delivery, education, and children as contemplated by the Recovery Act.[61]

ii. *Potential for Job Creation.* The application will be scored on the project's potential to create jobs, particularly for jobs created directly by the project. Reviewers will assess the methodology used to calculate job estimates, the number and quality of the jobs created, and how the project balances job creation with cost efficiency.

[60] *See* Recovery Act sec. 6001(b), 123 Stat. at 512–13 (stating the purposes of the program are to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in State- or Federally-designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

[61] *See id.* sec. 6001(h)(2)(C), 123 Stat. at 515.

iii. *Recovery Act and Other Governmental Collaboration.* Applicants will be evaluated on their collaboration with Recovery Act or other State or Federal development programs that leverage the impact of the proposed project. Examples include the Department of Energy's Smart Grid Investment Program, the Department of Housing and Urban Development's Public Housing Capital Fund, and other investments where collaboration would lead to greater project efficiencies. In each case, the applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful.

iv. *Indian Tribes and Socially and Economically Disadvantaged Small Businesses.* Reviewers will grant consideration to applicants that are Indian tribes or certify that they meet the statutory definition of a socially and economically disadvantaged small business concern (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP), or that have established agreements in principle to partner or contract with Indian tribes or such socially and economically disadvantaged businesses.

b. Project Benefits (20 Points)

i. *Availability to the Public.* Applications will be scored on the availability of the computer center to the public. Reviewers will consider the capacity of the computer center, its hours of availability, any membership or usage fees charged, restrictions on usage, the proportionality of the computer center's capacity and hours of availability to the population the applicant proposes to serve, public outreach, and the computer center's accessibility to persons with disabilities, accounting for both the physical accessibility of the facility and the accessibility of the computer equipment and software.

ii. *Training and Educational Programs Offered.* Applicants will be scored on the availability, accessibility, and quality of training and educational programs offered through the computer center. Reviewers will consider the degree to which the programs meet the documented needs of the community.

iii. *Availability and Qualifications of Consulting and Teaching Staff.* Applications will be evaluated on the strength of the consulting and teaching staff at the computer center. Reviewers will consider the qualifications and training required of such staff as well as whether the number of available staff is sufficient for the capacity of the computer center.

iv. *Projects in Community Colleges.* Reviewers will grant consideration to applicants that will create computer centers in community colleges, especially where the applicant can demonstrate that such computer centers will deliver substantive benefits to the college's core mission.

c. Project Viability (30 Points)

i. *Technical Feasibility of the Proposed Project.* Applications will be scored on the comprehensiveness and appropriateness of the technical solution and the clarity, level of detail, and coherence of the system designs.

ii. *Applicant's Organizational Capability.* Reviewers will assess whether the applicant has the organizational capability necessary to undertake and complete the project. Reviewers will consider the years of experience and expertise of the project management team, and the past track record of the organization with projects of a similar size and scope, as well as the organization's capacity and readiness.

iii. *Level of Community Involvement in the Project.* Reviewers will evaluate linkages to unaffiliated organizations in the project area (from the public, nonprofit, and private sectors), particularly community anchor institutions and public safety organizations, as an ongoing and integral part of the project planning and operation. Applicants should demonstrate that each linkage is substantial and meaningful.

d. Project Budget and Sustainability (30 Points)

i. *Reasonableness of the Budget.* Reviewers will evaluate the reasonableness of the budget based on its clarity, level of detail, comprehensiveness, appropriateness to the proposed technical and programmatic solutions, the reasonableness of its costs, and whether the allocation of funds is sufficient to complete the tasks outlined in the project plan.

ii. *Sustainability of the Project.* Applicants must convincingly demonstrate the ability of the project to be sustained beyond the funding period. Reviewers will consider past performance of the applicant, community and institutional support for the project, third-party funding commitments, and other data as may be appropriate to the nature of the applicant and the proposed project.

iii. *Leverage of Outside Resources.* Reviewers will consider whether the applicant has demonstrated the ability to provide, from non-Federal sources, funds required to meet or exceed the 20 percent matching funds requirement unless a waiver of that requirement has been requested. Reviewers also will give additional consideration to proposals that provide cash matches. For purposes of this evaluation, applicants that have received a full or partial waiver of the cost-matching requirement will be treated as having provided a 20 percent non-cash match.

3. BTOP Sustainable Broadband Adoption Projects

a. Project Purpose (20 Points)

i. *Fit with Statutory Purposes.* Applications will be evaluated with respect to each of BTOP's statutory purposes.[62] Reviewers will consider, relative to each purpose, whether the applicant is addressing a compelling problem of the sort that the statute is intended to resolve, whether the applicant has offered an effective solution to that problem, and whether the proposed solution is of broad significance and includes developments that can be replicated to improve future projects. Additional consideration also will be given to applicants that address more than one statutory purpose and project category (*e.g.,* CCI, PCC, or SBA) in a convincing manner. Reviewers will also consider the ability of the project to enhance broadband service for healthcare delivery, education, and children as contemplated by the Recovery Act.[63]

ii. *Potential for Job Creation.* The application will be scored on the project's potential to create jobs, particularly jobs created directly by the project. Reviewers will assess the methodology used to calculate job estimates, the number and quality of the jobs created, and how the project balances job creation with cost efficiency.

iii. *Recovery Act and Other Governmental Collaboration.* Applicants will be evaluated on their collaboration with Recovery Act or other State or Federal development programs that leverage the impact of the proposed

[62] *See* Recovery Act sec. 6001(b), 123 Stat. at 512–13 (stating the purposes of the program are to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in State- or Federally-designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

[63] *See id.* sec. 6001(h)(2)(C), 123 Stat. at 515.

project. Examples include the Department of Energy's Smart Grid Investment Program, the Department of Housing and Urban Development's Public Housing Capital Fund, the Department of Transportation's Capital Assistance for High Speed Rail Corridors and Intercity Passenger Service program, and other investments where collaboration would lead to greater project efficiencies. In each case, the applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful.

iv. *Indian Tribes and Socially and Economically Disadvantaged Small Businesses.* Reviewers will grant consideration to applicants that are Indian tribes or that certify that they meet the statutory definition of a socially and economically disadvantaged small business concern (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP), or that have established agreements in principle to partner or contract with Indian tribes or such socially and economically disadvantaged businesses.

b. Project Benefits (20 Points)

i. *Number of New Subscribers.* Applications will be scored on the number of new broadband subscribers and other regular users the project will generate. Reviewers will take into consideration both the overall number of new subscribers and users and the proportion that these new subscribers and users represent of the number of non-subscribers and non-users in the relevant area. Reviewers also will consider the applicant's plan to effectively track and measure the benefits generated by the project.

ii. *Cost Per New User.* Applications will be evaluated on the cost-effectiveness of the program. Reviewers will consider the cost per projected new subscriber or other regular user, taking into account the applicant's explanation of why the approach selected is a cost-effective approach given the particular circumstances of the project.

iii. *Innovation.* Applications will be evaluated on the degree to which the project demonstrates replicable new ideas, approaches, and methods to encourage sustainable broadband adoption.

iv. *Support for Vulnerable Populations.* Reviewers will evaluate applications on their level of support for vulnerable populations. In this regard, reviewers will assess both the numbers of people in vulnerable populations likely to be affected by the project as well as the steps that the applicant plans to take to engage and address the specific needs of those populations.

c. Project Viability (30 Points)

i. *Operational Feasibility of the Proposed Project.* Reviewers will assess the operational details of the project. Applicants will be scored on the clarity and detail of their project plan and how convincing the rationale behind the plan is.

ii. *Applicant's Organizational Capability.* Reviewers will assess whether the applicant has the organizational capability necessary to undertake and complete the project. Reviewers will consider the years of experience and expertise of the project management team and the past track record of the organization with projects of a similar size and scope, as well as the organization's capacity and readiness.

iii. *Level of Community Involvement in the Project.* Reviewers will evaluate linkages to unaffiliated organizations in the project area (from the public, non-profit, and private sectors), particularly community anchor institutions and public safety organizations, as an ongoing and integral part of the project planning and operation. Applicants should demonstrate that each linkage is substantial and meaningful.

d. Project Budget and Sustainability (30 Points)

i. *Reasonableness of the Budget.* Reviewers will evaluate the reasonableness of the budget based on its clarity, level of detail, comprehensiveness, appropriateness to the proposed technical and programmatic solutions, the reasonableness of its costs, and whether the allocation of funds is sufficient to complete the tasks outlined in the project plan.

ii. *Sustainability of the Project Impact.* Reviewers will consider whether the increases in broadband adoption rates in the project area caused by the project will be sustained beyond the conclusion of the project.

iii. *Leverage of Outside Resources.* Reviewers will consider whether the applicant has demonstrated the ability to provide, from non-Federal sources, funds required to meet or exceed the 20 percent matching funds requirement unless a waiver of that requirement has been requested. Reviewers also will give additional consideration to proposals that provide cash matches. For purposes of this evaluation, applicants that have received a full or partial waiver of the cost-matching requirement will be treated as having provided a 20 percent non-cash match.

VIII. Anticipated Announcement and Award Dates

NTIA intends to announce BTOP Round 2 awards on a rolling basis starting in June 2010. All grants will be awarded by September 30, 2010.

IX. Award Administration Information

A. Award Notices

Applicants will be notified in writing by the Department of Commerce's (DOC) Grants Officer if their application is selected for an award. The DOC's Grants Officer notification will come from either the National Institute for Standards and Technology (NIST) or the National Oceanic and Atmospheric Administration (NOAA), both of which function as Grants Offices for the BTOP Program. If the application is selected for funding, the DOC's Grants Officer will issue the grant award (Form CD–450), which is the authorizing financial assistance award document, either electronically if from NOAA or in writing if from NIST. By signing the Form CD–450, the awardee agrees to comply with all award provisions, terms, and conditions. The awardee must sign and return the Form CD–450 to NIST or submit the executed form to NOAA by electronic means without modification within 30 days of receipt.

If an applicant is awarded funding, neither the DOC nor NTIA is under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment of an award or to extend the period of performance is at the discretion of the DOC and of NTIA.

B. Administrative Requirements

Administrative and national policy requirements for BTOP grant funding, *inter alia,* are contained in the *Pre-Award Notification Requirements for Grants and Cooperative Agreements* (DOC Pre-Award Notification),[64] as amended. All BTOP applicants are required to comply with all applicable provisions set forth in the DOC Pre-Award Notification.

C. Award Terms and Conditions

1. Scope

Awardees and subrecipients are required to comply with the obligations set forth in the Recovery Act and the requirements established herein. Any obligation that applies to the awardee

[64] The DOC Pre-Award Notification was published in the **Federal Register** on February 11, 2008. 73 FR 7696.

shall extend for the life of the award-funded facilities.

2. Sale or Lease of Project Assets

a. Restriction on Assets

The sale or lease of any portion of the award-funded broadband facilities or equipment during the life of the facilities or equipment is prohibited, except as provided herein. Nothing in this section is meant to limit CCI awardees from leasing facilities to another service provider for the provision of broadband services, nor is this section meant to restrict a transfer of control of the awardee.[65] Awardees are required to comply with all applicable regulations regarding the disposition of real property and equipment.[66]

b. Petition for Waiver

NTIA will consider a petition for waiver of the above restriction if: (a) The transaction is for adequate consideration; (b) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and (c) the transaction would be in the best interests of those served by the project. The petition for waiver may be submitted at any time during the life of the award-funded facilities and equipment, and it must include supporting documentation and justification regarding why the petition should be granted.

3. Access to Records for Audits, Site Visits, Monitoring, and Law Enforcement Purposes

The Inspector General of the DOC, or any of his or her duly authorized representatives, and NTIA representatives, or any of their duly authorized representatives, shall have access to and the right to inspect the broadband system and any other property funded by the grant, any and all books, records, accounts, invoices, contracts, leases, payrolls, time sheets, canceled checks, statements, and other documents, papers, and records of the parties to a grant, including their subsidiaries, if any, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, site visits, excerpts, transcripts, copies, or other examinations as authorized by law. An audit of an award may be conducted at any time.[67]

4. Broadband Data Collection

All CCI awardees that offer Internet access service to the public for a fee must agree to participate in the State Broadband Data and Development Grant Program pursuant to the BDIA and Section 6001(l) of the Recovery Act.

5. Certifications

a. The applicant must certify that he or she is the duly Authorized Organization Representative (AOR) and has been authorized to submit the application on its behalf.

b. The AOR must certify that he or she has examined the application, that all of the information and responses in the application, including certifications, and forms submitted, all of which are part of the grant application, are material representations of fact and are true and correct to the best of his or her knowledge; that the entity(ies) that is requesting grant funding pursuant to this application as well as any subgrantees and subcontractors will comply with the terms, conditions, purposes, and Federal requirements of the grant program; that no kickbacks were paid to anyone; and that false, fictitious, or fraudulent statements or claims on this application are grounds for denial or termination of a grant award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and civil violations of the False Claims Act.

c. The AOR must certify that the entity(ies) he or she represents have and will comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, codes, orders, and programmatic rules and requirements relating to the project. The AOR must acknowledge that failure to do so may result in rejection or deobligation of the grant or loan award. The AOR must acknowledge that failure to comply with all Federal and program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

d. The AOR must certify that the entity(ies) he or she represents has and will comply with all applicable administrative and Federal statutory, regulatory, and policy requirements set forth in the Department of Commerce Pre-Award Notification;[68] the DOC Financial Assistance Standard Terms and Conditions;[69] the DOC American Recovery and Reinvestment Act Award Terms (April 9, 2009);[70] and any Special Award Terms and Conditions that are included by the Grants Officer in the award.

e. The AOR must certify that any funds awarded to the entity(ies) he or she represents as a result of this application will not: (a) Result in any unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area that would be served by the project described in this application; (b) duplicate any funds such entity(ies) receive under Federal universal service support programs administered by the Universal Service Administration Corporation (USAC); or (c) duplicate any funds such entity(ies) receive through grant or loan programs administered by RUS.

f. The AOR must certify that the entity(ies) he or she represent has secured access to pay at least 20 percent of the total project cost or has petitioned the Assistant Secretary for a waiver of the matching requirement.

D. Reporting Requirements

1. General Recovery Act Requirements

Any grant awarded under this NOFA shall be subject to the applicable statutes and regulations regarding reporting on Recovery Act funds.[71] If Recovery Act funds are combined with other funds to fund or complete projects and activities, Recovery Act funds must be accounted for separately from other funds. Recipients of funds under this NOFA also must comply with the accounting requirements as established or referred to in this NOFA. For a complete list of the reporting requirements, see *http://www.FederalReporting.gov.*[72]

[65] Note that certain equipment is exempt from obligations to the Federal government and may be used and sold at the awardee's will. *See* 15 CFR 14.34(g), 24.32.

[66] *See, e.g.,* 15 CFR 14.32–14.34; 15 CFR 24.31–24.32.

[67] Note that Section 1515 of the Recovery Act also authorizes the Inspector General to examine records and interview officers and employees of the grantee and other entities regarding the award of funds. *See* Recovery Act sec. 1515, 123 Stat. at 289.

[68] *See* Department of Commerce Pre-Award Notification (Feb. 11, 2008) *available at http://oam.ocs.doc.gov/docs/GRANTS/GCA_manual.pdf.*

[69] *See* Department of Commerce Financial Assistance Standard Terms and Conditions (Mar. 8, 2009) *available at http://oamweb.osec.doc.gov/docs/GRANTS/DOC%2OSTCsMAR08Rev.pdf.*

[70] *See* U.S. Department of Commerce American Recovery and Reinvestment Act Award Terms (Apr. 9, 2009) *available at http://oam..ocs..doc.gov/docs/ARRA%20DOC%20Award%20Terms%20Final%205-20-09PDF.doc.pdf.*

[71] *See, e.g.,* Recovery Act sec. 1512(c), 123 Stat. at 287; 2 CFR part 176; OMB, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449 (Apr. 23, 2009); Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB M–09–21 June 22, 2009), *available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf.*

[72] *See infra* Section X.V.1.

2. BTOP-Specific Reporting Requirements

In addition to the general Recovery Act reporting requirements, BTOP award recipients also must report to NTIA on the information requested below.[73] The information requested will vary depending on the type of project being funded. Pursuant to the Recovery Act, NTIA will make these reports available to the public.[74]

a. All BTOP Award Recipients

All BTOP award recipients must report on:

i. The progress in achieving the project goals, objectives, and milestones as set forth in their applications;

ii. Expenditure of grant funds and the amount of remaining grant funds; and

iii. The amount of non-Federal investment being added to complete the project.

If a recipient is permitted by NTIA to complete its project after two years, then it must specifically state in the applicable quarter when it has met 67 percent of its milestones and received 67 percent of its award funds.[75] Reaching these thresholds will indicate that the recipient has "substantially completed" its project consistent with the Recovery Act.[76]

b. Comprehensive Community Infrastructure Award Recipients

Recipients receiving CCI grants must report on the following:

i. The terms of any interconnection agreements entered into during the reporting period;

ii. Any traffic exchange relationships (*e.g.,* peering) and terms;

iii. Any broadband equipment purchases;

iv. The total and peak utilization of access links;

v. The total and peak utilization of interconnection links to other networks;

vi. Internet protocol address utilization and IPv6 implementation;

vii. Any changes or updates to network management practices;

viii. Any average end-user and Middle Mile megabit per second increases;

ix. The total market potential for households, businesses, and community anchor institutions in the area served;

x. The number of households and businesses passed, subscribing to broadband service, subscribing to new broadband service, and receiving improved access;

xi. The number and type of community anchor institutions passed, subscribing to broadband service, subscribing to new broadband service, and receiving improved access;

xii. The advertised and averaged broadband speeds;

xiii. The number of existing network miles deployed, new network miles deployed, and new network miles leased;

xiv. For projects with a Middle Mile component, the "cost per mile," "cost per household," and, if applicable, "cost per tower" to offer broadband service;

xv. For projects with a Last Mile component, the "cost per household" and "cost per subscriber" to offer broadband service; and

xvi. The price of the broadband services.

c. Public Computer Center Award Recipients

Recipients receiving PCC grants must report on the following:

i. The number of new and upgraded public computer centers;

ii. The number of new and upgraded workstations available to the public;

iii. The total hours of operation per week that the public computer center(s) is open;

iv. The speed of broadband to the public computer center(s);

v. The primary uses of the public computer center(s);

vi. The average number of users per week in the public computer center(s);

vii. The total hours per week of training provided at the public computer center(s);

viii. The number and cost of any broadband equipment deployed; and

ix. The total project cost per workstation.

d. Sustainable Broadband Adoption Award Recipients

Recipients receiving SBA grants must report on the following:

i. The technology being fostered;

ii. Efforts to aggregate demand for each location, including the role of the local community;

iii. The increase in the number of households, businesses, and community anchor institutions subscribing to broadband service, and the methodology used to measure the increase;

iv. The number and type of awareness campaigns provided, including the total number of individuals reached;

v. The number and cost of any broadband customer premises equipment or end-user devices deployed;

vi. The total market potential for households, businesses, and community anchor institutions in the area served; and

vii. Other program elements as proposed by the applicant and agreed to by NTIA.

3. Reporting Deadlines

All reports are due ten days after the quarter in which the award was issued ends and, unless otherwise noted, each quarter thereafter until a final report is made at the end of three years or sooner depending on when the project is completed. The final report should summarize the recipient's quarterly filings and State whether the project's goals have been satisfied. Pursuant to OMB Guidelines, Recovery Act reports should be submitted electronically to *http://www.FederalReporting.gov.* The BTOP-specific reports should be sent to NTIA.

If the recipient fails to submit an acceptable quarterly report or audited financial statement within the timeframe designated in the grant award, NTIA may take appropriate actions, including suspension of payments, suspension of award, or termination.[77] Additional information regarding reporting requirements will be specified at the time the award is issued.

X. Other Information

A. Funding Rounds

This is the second of two announced funding rounds. NTIA does not anticipate further funding rounds, although it reserves the right to release a subsequent NOFA to ensure that all BTOP funds are awarded by September 30, 2010.

B. Discretionary Awards

The government is not obligated to make any award as a result of this announcement, and will fund only projects that are deemed likely to achieve the Program's goals and for which funds are available.

C. Third Party Beneficiaries

BTOP is a discretionary grant program that is not intended to and does not create any rights enforceable by third party beneficiaries, except sub-recipients or subcontractors.

D. Limitation on Expenditures

The Recovery Act imposes an additional limitation on the use of funds expended or obligated from appropriations made pursuant to its provisions. Specifically, for purposes of this NOFA, funds appropriated or otherwise made available under the Recovery Act may not be used by any State or local government, or any private

[73] *See id.* sec. 6001(i)(1)–(2), 123 Stat. at 515.

[74] *Id.* sec. 6001(i)(1), 123 Stat. at 515.

[75] *See supra* Section V.D.

[76] Recovery Act sec. 6001(d)(3), 123 Stat. at 513.

[77] DOC Grants Manual, ch. 11, sec. B.

entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.[78]

E. Recovery Act Logo

All projects that are funded by the Recovery Act shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. Some exclusions may apply. The Primary Emblem should not be displayed at a size less than six inches in diameter.

F. Environmental and National Historic Preservation Requirements

Awarding agencies are required to analyze the potential environmental impacts, as required by the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA), for applicant proposals and awardee projects seeking Recovery Act funding.[79] All CCI applicants and PCC applicants with projects containing construction and/or ground disturbing activities are required to complete the Environmental Questionnaire in the application and to submit all other required environmental documentation as necessary. All PCC applicants with projects that do not contain construction and/or ground disturbing activities and all SBA applicants are required to complete the DOC Environmental Checklist in the application.

It is the applicant's responsibility to obtain all necessary Federal, State, and local governmental permits and approvals necessary for the proposed work to be conducted. Applicants are expected to design their projects so that they minimize the potential for adverse impacts on the environment. Applicants also will be required to cooperate with NTIA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed projects. The failure to do so may be grounds for not making an award. Applications will be reviewed to ensure that they contain sufficient information to allow agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be submitted to NTIA, along with the recommendation for funding of the selected applications.

If additional information is required after an application is accepted for funding, funds can be withheld by NTIA under a special award condition requiring the awardee to submit additional environmental compliance information sufficient for the agency to make an assessment of any impacts that a project may have on the environment.

G. Davis-Bacon Wage Requirements

Pursuant to Section 1606 of the Recovery Act, any project using Recovery Act funds requires the payment of not less than the prevailing wages "at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor," in accordance with 40 U.S.C. 3142(b), for "all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government."[80] With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

H. Financial and Audit Requirements

To maximize the transparency and accountability of funds authorized under the Recovery Act, all applicants are required to comply with the applicable regulations set forth in OMB's Interim Final Guidance for Federal Financial Assistance.[81]

Recipients that expend $500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the U.S. Government Accountability Office's Government Auditing Standards, located at *http://www.gao.gov/govaud/ybk01.htm,* and OMB Circular A–133, Audits of States, Local Governments, and Nonprofit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html* . For-profit awardees must comply with the Program specific audit requirements set forth in OMB Circular A–133, Subpart B, § __.235. Awardees are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

I. Deobligation

NTIA reserves the right to deobligate awards made under this NOFA to recipients that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, and to award these funds competitively to new or existing applicants.

J. Confidentiality of Applicant Information

Applicants are encouraged to identify and label any confidential and proprietary information contained in their applications. NTIA will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. 552), the Trade Secrets Act, as amended (18 U.S.C. 1905), and the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*). Applicants should be aware, however, that the Recovery Act requires substantial transparency. For example, NTIA is required to make publicly available on the Internet a list of each entity that has applied for a grant, a description of each application, the status of each application, the name of each entity receiving funds, the purpose for which the entity is receiving the funds, each quarterly report, and other information regarding awardees.[82]

K. Policy on Sectarian Activities

NTIA encourages applications from faith-based organizations. On December 22, 1995, NTIA issued a *Notice* in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an application will be eligible for a grant under the Program where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested.[83]

L. Disposition of Unsuccessful Applications

Applications accepted for review for BTOP will be retained for two years, after which they will be destroyed.

M. State Certifications

With respect to funds made available under the Recovery Act to State or local governments for infrastructure investments, the governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. This certification must include a description of the investment, the estimated total cost, and the amount of funds to be

[78] *Id.* sec. 1604, 123 Stat. at 303.

[79] In addition, there are documents relating to NEPA and NHPA requirements that have been developed specifically for BTOP that are outlined more fully in the BTOP Grant Guidance.

[80] Recovery Act sec. 1606, 123 Stat. at 303.

[81] *See* OMB, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449.

[82] *See* Recovery Act sec. 6001(i)(5), 123 Stat. at 515.

[83] 60 FR 66491 (Dec. 22, 1995).

used, and must be posted on the recipient's Web site and linked to *http://www.recovery.gov.* A State or local agency may not receive infrastructure investment funding from funds made available under the Recovery Act unless this certification is made and posted.[84]

N. Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this NOFA. However, under extraordinary circumstances and when it is in the best interest of the Federal government, NTIA, upon its own initiative or when requested by an applicant, may waive any of the provisions in this NOFA. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the extraordinary circumstances for the request and be submitted with the application.

With respect to requests for waiver of Section VI.E. (filing instructions), further information regarding the procedures for seeking such waivers will be made available in the Grant Guidance.

O. Compliance With Applicable Laws

Any recipient of funds under this NOFA shall be required to comply with all applicable Federal and State laws, including but not limited to: (i) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.,* 7 CFR pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. 794 *et seq.;* 7 CFR part 15b); (iii) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.;* 45 CFR part 90); (iv) the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*); (v) the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6); and (vi) the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, and certain related Federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR part 1794.

P. Communications Laws

Awardees, and in particular, CCI awardees, will be required to comply with all applicable Federal and State communications laws and regulations as applicable, including, for example, the Communications Act of 1934, as amended (47 U.S.C. 151 *et seq.*); the Telecommunications Act of 1996, as amended (Pub. L. 104–104, 110 Stat. 56 (1996)); and the Communications Assistance for Law Enforcement Act (47 U.S.C. 1001 *et seq.*) (CALEA). For further information, *see http://www.fcc.gov.*

Q. Buy American Notice

1. General Prohibition and Waiver

None of the funds appropriated or otherwise made available by the Recovery Act may be used for the construction, alteration, maintenance, or repair of a public building or public work (as such terms are defined in 2 CFR 176.140) unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States.[85] On July 1, 2009, the Department of Commerce published a notice in the **Federal Register** stating that the Secretary of Commerce had determined that applying the Buy American provision for the use of certain broadband equipment in public BTOP projects would be inconsistent with the public interest.[86]

As explained below, to the extent that an applicant wishes to use broadband equipment or goods that are not covered by the Secretary's waiver, it may seek an additional waiver on a case-by-case basis as part of its application for Recovery Act funds.

2. OMB Buy American Notice Requirement

Pursuant to OMB guidance on the Recovery Act,[87] NTIA is required to provide notice as prescribed in 2 CFR 176.170.

§ 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in the solicitation:

(a) *Definitions. Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured goods, manufactured goods, public building* and *public work,* and *steel,* as used in this provision, are defined in 2 CFR 176.160(a).

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of Section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.160(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of Section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of Section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals.*

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron,

[84] *See* Recovery Act sections 1511, 1526, 123 Stat. at 287, 293.

[85] *Id.* sec. 1605, 123 Stat. at 303.

[86] *See* 74 FR 31402 (July 1, 2009).

[87] *See* 2 CFR part 176.

steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic or designated country items.

R. Executive Order 12866

This notice has been determined to be "economically significant" under Executive Order 12866.[88] The Recovery Act appropriates $4.7 billion to NTIA for broadband grants and other purposes. Awards must be made no later than September 30, 2010. In accordance with Executive Order 12866, NTIA updated its economic analysis, which was completed for the first round of funding and outlined the costs and benefits of implementing BTOP, to reflect the changes made to the Program for the second round of funding. The complete analyses are available from NTIA upon request.

S. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.[89]

T. Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment under the Administrative Procedure Act of 1946, as amended (5 U.S.C. 553) (APA). The APA has several exemptions to rulemaking requirements. Among them is an exemption for "good cause" found at 5 U.S.C. 553(b)(B), which allows effective government action without rulemaking procedures where withholding the action would be "impracticable, unnecessary, or contrary to the public interest."

The DOC has determined, consistent with the APA, that making these funds available under this NOFA for broadband development, as mandated by the Recovery Act, is in the public interest. Given the emergency nature of the Recovery Act and the extremely short time period within which all funds must be obligated, withholding this NOFA to provide for public notice and comment would unduly delay the provision of benefits associated with these broadband initiatives and be contrary to the public interest.

For the same reasons, NTIA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553(d)(3) or any other law, the analytical requirements of the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

U. Congressional Review Act

NTIA has submitted this NOFA to the Congress and the Government Accountability Office under the Congressional Review of Agency Rulemaking Act (Congressional Review Act), 5 U.S.C. 801 *et seq.* It has been determined that this NOFA is a "major action" within the meaning of the Act because it will result in an annual effect on the economy of $100,000,000 or more. This NOFA sets out the administrative procedures for making grants totaling approximately $2.6 billion to implement a nationwide broadband initiative to expand the reach and quality of broadband services in the United States.

With funds made available through the Recovery Act, BTOP will provide a total of $4.7 billion through NTIA to provide broadband grants throughout the United States for unserved and underserved communities, to increase public computer center capacity, and to encourage sustainable adoption of broadband services. The Recovery Act provides that BTOP awards must be made no later than September 30, 2010. Moreover, projects funded under the Program must be substantially completed no later than two years following the date of issuance of the award. A 60-day delay in implementing this NOFA pursuant to the Congressional Review Act would hamper NTIA's mission to provide expeditiously assistance to eligible entities to begin and complete projects within the statutory requirements of the Recovery Act.

Thus, NTIA finds good cause under 5 U.S.C. 808(2) that prior notice and public procedure are impracticable, unnecessary, and contrary to the public interest. To the extent that NTIA provided a 60-day delay in effectiveness pursuant to the Congressional Review Act, NTIA would not be able to execute the statutory duties required by the Recovery Act in a timely manner. This finding is consistent with the objectives of the Recovery Act, which specifically provides clear preferences for rapid agency action and quick-start activities designed to spur job creation and economic benefit. Accordingly, this NOFA shall take effect upon publication in the **Federal Register.**

V. Paperwork Reduction Act

1. Reporting and Registration Requirement Under Section 1512(c) of the Recovery Act

The Recovery Act requires the recipient of an award to complete projects or activities that are funded under the Recovery Act and to report on the use of Recovery Act funds provided through the award.[90] Information from these reports will be made available to the public. The recipient shall submit its first report no later than 10 calendar days after the end of the initial calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.[91] Thereafter, the recipient shall submit reports no later than the tenth day after the end of each calendar quarter.[92] The recipient and its sub-recipients must maintain current registrations in the CCR (*http://www.ccr.gov*) at all times during which they have active Federal awards funded with Recovery Act funds. A DUNS number is one of the requirements for registration in the CCR. The recipient shall report the information described in Section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at *http://www.FederalReporting.gov* unless the information is pre-populated.

2. NTIA's Additional Paperwork Reduction Act Analysis

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from NTIA. Data furnished by the applicants will be used to determine eligibility for Program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in Program benefits being withheld or denied.

The collection of information is vital to NTIA to ensure compliance with the provisions of this NOFA and to fulfill the requirements of the Recovery Act. In summary, the collection of information is necessary in order to implement the Program.

[88] Exec. Order No. 12,866, 58 FR 51735 (Sept. 30, 1993).

[89] Exec. Order No. 13,132, 64 FR 43255 (Aug. 4, 1999).

[90] Recipients who fail to submit reports pursuant to Section 1512(c) of the Recovery Act are considered to be non-compliant. Non-compliant recipients, including those who are persistently late or negligent in their reporting obligations, are subject to Federal action, up to and including the termination of Federal funding or the ability to receive Federal funds in the future. Memorandum for the Heads of Executive Departments and Agencies re: Improving Compliance in Recovery Act Recipient Reporting (OMB M–10–05 November 30, 2009), *available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-05.pdf.*

[91] Recovery Act sec. 1512(c), 123 Stat. at 287.

[92] *Id.*

The following estimates are based on the average over the first three years the Program is in place.

Comprehensive Community Infrastructure

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 225 hours per response.

Respondents: States, local governments, and any agency, subdivision, instrumentality, or political subdivision thereof; the District of Columbia; a territory or possession of the United States; an Indian tribe (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); a native Hawaiian organization; a nonprofit foundation, a non-profit corporation, a non-profit institution, or a non-profit association; other non-profit entities; for-profit corporations; limited liability companies; and cooperative or mutual organizations.

Estimated Number of Respondents: 1,394.

Estimated Number of Responses per Respondent: 1.27.

Estimated Number of Responses: 1,770.

Estimated Total Annual Burden (hours) on Respondents: 398,250.

Public Computer Center

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 128 hours per response.

Respondents: States, local governments, and any agency, subdivision, instrumentality, or political subdivision thereof; the District of Columbia; a territory or possession of the United States; an Indian tribe (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); a native Hawaiian organization; a non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association; other non-profit entities; for-profit corporations; limited liability companies; and cooperative or mutual organizations.

Estimated Number of Respondents: 472.

Estimated Number of Responses per Respondent: 1.23.

Estimated Number of Responses: 581.

Estimated Total Annual Burden (hours) on Respondents: 74,368.

Sustainable Broadband Adoption

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 151 hours per response.

Respondents: States, local governments, and any agency, subdivision, instrumentality, or political subdivision thereof; the District of Columbia; a territory or possession of the United States; an Indian tribe (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); a native Hawaiian organization; a non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association; other non-profit entities; for-profit corporations; limited liability companies; and cooperative or mutual organizations.

Estimated Number of Respondents: 382.

Estimated Number of Responses per Respondent: 1.4.

Estimated Number of Responses: 535.

Estimated Total Annual Burden (hours) on Respondents: 80,785.

The grant application forms for BTOP CCI, PCC, and SBA projects and the subsequent data collection will be submitted to OMB for review under the Paperwork Reduction Act of 1995. OMB control numbers will be assigned and published in separate **Federal Register** notices. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

W. Recovery Act

Additional information about the Recovery Act is available at *http://www.Recovery.gov*.

X. Authorized Signatories

Only authorized grant officers can bind the Government to the expenditure of funds.

Appendix to Notice of Funds Availability—Broadband Technology Opportunities Program Policy Justification

Streamlining the Application

During the initial round of funding, applicants had a choice to complete a Broadband Infrastructure application, a Public Computer Center (PCC) application, or a Sustainable Broadband Adoption (SBA) application, depending on the type of project being proposed. Those applicants considered highly qualified after completing Step One of the review process were required to submit additional information during the Step Two "due diligence" review to substantiate the representations provided in the application.[93] During the initial round of funding, some stakeholders, especially those applicants completing the Broadband Infrastructure application, stated that completing the initial application was overly burdensome due to the type and amount of questions asked and the number of attachments required. RUS and NTIA tentatively concluded that the application process should be streamlined and invited public comment in the RFI.[94]

Commenters generally support the current two-step review process and the level of information and supporting documentation that NTIA requires.[95] Only a small minority of commenters suggest doing away with the two-step review process in favor of a simplified one-step process modeled after NTIA's Technologies Opportunities Program.[96] Additionally, while a minority of commenters advocate increasing the information requirements of Step One in order to validate the legitimacy of applications,[97] most commenters urge that NTIA require less information initially and defer the collection of supplementary budget and financial information until the Step Two due diligence review.[98] Commenters also argue that applicants should not be required to obtain engineering certifications,[99] environmental reviews,[100] or antenna sites and backhaul facilities[101] until Step Two. To minimize the burden of the application and review process, commenters recommend that NTIA increase the amount of time available to applicants to submit due diligence materials.[102]

NTIA concludes that it will modify aspects of the two-step review process to collect the most essential information upfront in the application, with the option to collect additional data during the due diligence review, as needed.

Commenters also offer numerous technical changes that would help streamline the application submission process during this round of funding. Commenters recommend that the Easygrants® System be tested for

[93] *See* 74 FR at 33107.

[94] *See* 74 FR 58940, 58941 (Nov. 16, 2009).

[95] *See, e.g.*, RVW, Inc. at 1 (Nov. 30, 2009); Merit Network at 1 (Nov. 30, 2009); City of Grover Beach at 1 (Nov. 30, 2009); Nemont Tel. Coop. at 1 (Nov. 30, 2009).

[96] *See, e.g.*, Hous. Opportunities & Concepts at 1 (Nov. 25, 2009); Wireless Internet Serv. Providers Ass'n (WISPA) at 3–6 (Nov. 30, 2009).

[97] *See, e.g.*, Nemont Tel. Coop. at 1; Mont. Indep. Telecomms. Sys. at 3 (Nov. 30, 2009); Nat'l Rural Telecomms. Coop. & DigitalBridge Commc'ns at 2 (Nov. 30, 2009).

[98] *See, e.g.*, Fla.'s Heartland REDI at 1–2 (Nov. 30, 2009); Am. Library Ass'n at 5–6 (Nov. 30, 2009); Wis. Dep't of Pub. Instruction at 2 (Nov. 30, 2009); Sch., Health, & Libraries Broadband Coal. at 8 (Nov. 30, 2009).

[99] *See, e.g.*, Commonwealth of Pa. at 1–3 (Nov. 25, 2009); WISPA at 3–6; E. Or. Telecom at 1 (Nov. 19, 2009).

[100] *See, e.g.*, Ctr. for Soc. Inclusion at 2 (Nov. 30, 2009); Rural Broadband Corp. at 11–13 (Nov. 30, 2009); Commonwealth of Pa. at 1–3.

[101] *See, e.g.*, Penasco Valley Tel. Coop. at 2 (Nov. 30, 2009).

[102] *See, e.g.*, Vantage Point Solutions at 10–11 (Nov. 30, 2009); Nat'l Educ. Broadband Serv. Ass'n at 3 (Nov. 30, 2009); Internet2 at 26–27 (Nov. 30, 2009); Rural Broadband Corp. at 6.

stability and usability [103] and modified to accept alternative documents, such as graphical project timelines.[104] Multiple respondents advocate improving the mapping tool by creating separate versions for Last Mile and Middle Mile applications or by allowing applicants to submit mapping data in a number of different forms, including computer-aided design (CAD) or geographic information system (GIS) format.[105]

Commenters suggest achieving consistency between the application forms and guidance materials [106] and eliminating redundant questions, particularly those duplicating the Executive Summary requirements.[107] Commenters also suggest that eliminating or altering a number of attachments, including the engineering certification [108] and financial documentation,[109] would significantly improve the applicant experience.

NTIA agrees with commenters that the application process can be more user-friendly. Accordingly, it makes numerous adjustments to the online application system to streamline the intake of information and reduce applicant burden. These steps include separating the BTOP infrastructure application from the BIP infrastructure application, consistent with the independent administration of the BIP and BTOP programs, separating the PCC application from the SBA application, as well as eliminating the requirement to use the mapping tool to create proposed funded service areas. NTIA also makes it easier for applicants filing applications in multiple project categories to link these applications in furtherance of NTIA's focus on comprehensive communities. NTIA further simplifies the application requirements, including eliminating the submission of an engineering certification form with the initial application.

A majority of the commenters advocate abandoning Census blocks in favor of other means of specifying proposed funded service areas.[110] Commenting municipalities and cities unanimously express their dissatisfaction with the use of Census block data, citing it as a cumbersome method of reporting proposed funded service area designations.[111] Multiple commenters offer zip codes, city boundaries, or even latitude and longitude coordinates as less burdensome alternatives for applicants.[112] Several commenters propose using Census tract data as a less burdensome alternative to Census block data, in part because broadband service providers are already required to report their subscriber and demographic information according to Census tracts in order to file FCC Form 477.[113]

NTIA agrees with commenters that requiring applicants to provide proposed funded service areas by Census block data is overly burdensome, especially when applicants could use other methods to indicate these areas. In this funding round, NTIA will instead require applicants to indicate their proposed funded service area using Census block groups or Census tracts.

Relationship Between BIP and BTOP

Because the Recovery Act prohibits a project from receiving funding from NTIA in areas where RUS has funded a project, the First NOFA required applicants whose proposed funded service areas were at least 75 percent rural to submit infrastructure applications to RUS for consideration under BIP, with the option of additional consideration under BTOP. The First NOFA provided that NTIA would not fund such an application unless RUS had declined to fund it. In response to informal comments from stakeholders during the initial round of funding, the agencies' RFI invited public comment on whether the agencies should continue to require that these kinds of rural infrastructure applications be submitted to RUS first or whether the agencies should permit applicants to file largely rural applications directly to NTIA without also having to submit them to RUS.[114]

The majority of commenters agree that rural applicants should be permitted to apply directly to NTIA for BTOP grants without being required first to apply to RUS for BIP loans or grants.[115] The most widely cited rationale was the needless burden imposed on applicants to provide the additional financial analysis required by the RUS loan application for rural projects that do not qualify as remote and unserved or are not viable with only 50 percent grant funding.[116] Commenters also cite the inefficiency of requiring RUS to review proposals that are not even viable for BIP.[117]

A majority of commenters favor the continued use of a common BIP–BTOP application to avoid the duplicative effort of completing multiple applications.[118] A few of these commenters favor maintaining the approach taken in the initial round of funding that required concurrent joint applications and reserving to RUS the first option to fund eligible proposals.[119] The chief benefit adduced in support of this position is RUS's expertise in evaluating rural applications so as to avoid redundant awards to "active" RUS borrowers.[120] Commenters further recommend that the agencies implement a "check box" by which an applicant may request immediate consideration by NTIA because its rural project requires more than a 50 percent grant to be viable or seeks to address one of NTIA's broadband objectives [121] and allow applicants to produce only one financial analysis to demonstrate an ability to support either a 50 percent contribution (as required for BIP) or a 20 percent contribution (as required for BTOP) to a project.[122]

In this funding round, RUS and NTIA conclude that applicants that are eligible for both BIP and BTOP have the option to apply to either agency for funding for the same project, but applicants should apply to only one agency for a given project. Applicants who are current RUS borrowers or grantees, applicants who are proposing a Last Mile service area that is 75 percent or more rural, or applicants whose Last Mile component (to residential consumers and non-community anchor institutions) exceeds 20 percent of total eligible project costs are strongly encouraged to apply to RUS for funding under BIP.

Mindful of the statutory prohibition against duplicative funding, several parties suggest that RUS and NTIA might coordinate their funding determinations to leverage Federal resources most efficiently and effectively by having NTIA fund only grants and RUS fund only loans for rural projects; [123] awarding preference for BIP loans to applicants that apply to RUS first; [124] considering projects that are 75 percent rural for BTOP grant-only financing to leverage existing infrastructure and cooperative relationships (*e.g.*, wireless network *via* rural electric cooperative); [125] and avoiding the appearance of duplicative funding by not funding in areas where BIP loans are active or have been recently approved.[126]

NTIA is in accord with the views of commenters who point out that the agencies are statutorily prohibited from funding

[103] *See, e.g.*, Tex. A&M at 1 (Nov. 29, 2009); City of Grover Beach at 1.

[104] *See, e.g.*, City of Seattle at 3 (Nov. 30, 2009); Penasco Valley Tel. Coop. at iv, 3; City of N.Y. at 3 (Nov. 30, 2009).

[105] *See, e.g.*, Rural Broadband Now! at 5 (Nov. 30, 2009); Nat'l Educ. Broadband Serv. Ass'n at 4 (Nov. 30, 2009); Mid-Rivers Commc'ns at 3–4 (Dec. 1, 2009).

[106] *See, e.g.*, Mass. Executive Office of Hous. and Econ. Dev. at 5 (Nov. 30, 2009); NATOA at 20 (Nov. 30, 2009).

[107] *See, e.g.*, FiberTower Corp. at 3–4 (Nov. 30, 2009); Cal. Broadband Coop. at 3 (Nov. 30, 2009).

[108] *See, e.g.*, Ass'n of Commc'ns Engineers at 1–2 (Nov. 30, 2009); WHRO–TV at 1 (Nov. 30, 2009).

[109] *See, e.g.*, Hostos Cmty. Coll. at 1 (Nov. 30, 2009); City of Philadelphia at 4 (Nov. 30, 2009); Broadband Satellite Commenters at 10 (Nov. 30, 2009).

[110] *See, e.g.*, NCTH-Cleartalk at 1 (Nov. 21, 2009); Commonwealth of Pa. at 4; Satellite Indus. Ass'n at 4 (Nov. 30, 2009); New Am. Found. at 21 (Nov. 30, 2009).

[111] *See, e.g.*, Montgomery County at 2 (Nov. 30, 2009); Oakland County at 1 (Nov. 30, 2009); City of N.Y. at 2; City of San Francisco at 3 (Nov. 30, 2009).

[112] *See, e.g.*, Open Range Commc'ns at 4 (Nov. 30, 2009); Ctr. of Soc. Inclusion at 2; Harris Corp at iii (Nov. 30, 2009).

[113] *See, e.g.*, John Staurulakis, Inc. at 14 (Nov. 30, 2009); Rural Broadband Corp. at 7.

[114] *See* 74 FR at 58941.

[115] *See, e.g.*, Mass. Executive Office of Hous. and Econ. Dev. at 3–4; Am. Library Ass'n at 7.

[116] *See, e.g.*, TCA at 1–2 (Nov. 30, 2009).

[117] *See, e.g.*, XO Commc'ns at 2 (Nov. 30, 2009); TCA at 1–2.

[118] *See, e.g.*, Tex. Statewide Tel. Coop. at 5 (Nov. 25, 2009).

[119] *See, e.g.*, Vantage Point Solutions at 5–7; Rural Cmty. Assistance P'ship at 2 (Nov. 19, 2009); RVW Inc. at 2; Mid-Rivers Commc'ns at 6–7 (Dec. 1, 2009); S.D. Telecomms. Ass'n at 5, 11 (Nov. 30, 2009).

[120] *See, e.g.*, Mid-Rivers Commc'ns at 6.

[121] *See, e.g.*, Nat'l Rural Telecomms. Coop. & DigitalBridge Commc'ns Corp. at 6–7 (Nov. 30, 2009).

[122] *See, e.g.*, John Staurulakis, Inc. at 18; TCA at 1–2.

[123] *See, e.g.*, E. Shore of Va. Broadband Auth. at 2 (Nov. 30, 2009).

[124] *See, e.g.*, Penasco Valley Tel. Coop. at 5.

[125] *See, e.g.*, TransWorld Network at 3 (Nov. 24, 2009).

[126] *See, e.g.*, Mid-Rivers Commc'ns at 6.

projects in the same area and that such duplicative funding would be wasteful and inconsistent with the objectives of the Recovery Act. Thus, as in the first funding round, RUS and NTIA will not fund infrastructure projects in the same service area. The agencies will coordinate to identify potential service area overlaps and will resolve such conflicts in the manner that best satisfies the statutory objectives of both programs.

Transparency and Confidentiality

Consistent with the Administration's policy and the Recovery Act's objective to ensure greater transparency in government operations, RUS and NTIA invited public comment on whether the agencies should permit greater access, consistent with applicable Federal laws and regulations, to certain applicant information by other applicants, policymakers, and the public, including State and tribal governments.[127] In the RFI, the agencies tentatively concluded that the application's Executive Summary should be made publicly available in this round of funding.[128]

The overwhelming majority of commenters support the RFI's tentative recommendation to make the Executive Summary available to the public, but differ as to how much applicant information should be made public.[129] The majority of these commenters recommend that applicants be permitted to designate trade secrets, financial projections, and other proprietary information as confidential.[130] The majority of commenters caution, however, that should confidentiality protections not be provided, applicants would hold back critical information needed for an adequate review of the applications.[131] A minority of commenters support making the entire application public and available online without confidentiality protections.[132] Some States propose a compromise position whereby NTIA would publish expanded Executive Summaries disclosing pertinent facts (targeted area, type of technology used, project cost and revenue projections) and withhold only proprietary or patented technology from public disclosure.[133]

NTIA agrees with commenters who advocate more transparency throughout the application and evaluation processes. During this funding round, NTIA will post an announcement identifying each infrastructure application received, along with a list of the Census block groups or tracts that each application proposes to serve through its project, in addition to the information it is required to publicly disclose pursuant to the Recovery Act.

States advocate full access to entire applications, including mapping data, for purposes of State consultation.[134] Similarly, tribal commenters recommend that, due to historic preservation and tribal sovereignty concerns, NTIA and RUS timely alert relevant tribes about applications that propose to serve their tribal lands.[135] In addition, several commenters contend that transparency should extend to the public notice comment and State consultation processes by making comments from existing service providers and State and tribal entities public.[136]

NTIA is sensitive to the needs of States and tribes when reviewing applications that propose to serve areas within their jurisdictions. NTIA will share with each relevant State and tribe applicants' data that are available on the publicly searchable database. Additional information may be requested directly from applicants by each State or tribe. In addition, NTIA will make the comments of the States and tribes available on the publicly searchable database, with the exception of any confidential information that the comments may contain. NTIA also will make certain information submitted by existing broadband service providers publicly available as part of the announcement process for applicants' proposed funded service areas.

Funding Priorities and Comprehensive Communities

During the initial round of funding, RUS and NTIA allocated a total of $4 billion in funding for various project categories, including Last Mile infrastructure, Middle Mile infrastructure, Public Computer Center, and Sustainable Broadband Adoption projects. In response to numerous suggestions concerning how the NOFA could be modified to ensure that Recovery Act funds make the greatest possible impact, the agencies' RFI invited commenters to provide quantitative estimates of the projected benefits of adopting a more targeted funding approach during this round of funding.[137] NTIA and RUS also expressly requested comment on whether the agencies should focus on or limit funding to projects that will deliver Middle Mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities.[138]

Approximately one-third of commenters who address the funding priorities section of the RFI recommend targeting community anchor institutions for special consideration in this round of funding.[139] These commenters suggest that certain institutions, such as public safety agencies,[140] educational institutions,[141] and health service providers,[142] should receive greater funding priority in order to reflect their impact on economic development and their greater need for or use of broadband services. Many commenters advocating more targeted funding for community anchor institutions suggest that they should not need to meet the unserved/underserved criteria in order to qualify for funding.[143] One commenter suggests an entirely separate application track for community anchor institutions.[144] Supporters of this targeted funding approach agree that any definition of community anchor institutions should include K–12 schools,[145] libraries,[146] higher education facilities,[147] and healthcare facilities.[148] In addition to these entities, which were explicitly noted as priorities in the NOFA for the initial round of funding, some commenters suggest that NTIA use a more expansive definition of community anchor institution that encompasses public access media, performance spaces, and other community organizations.[149] Commenters also suggest focusing increased funding to small businesses [150] and public housing.[151]

A handful of organizations disagree that any one application type should be explicitly targeted for funding, even if it proposes to connect community anchor institutions or serve a "vulnerable" population.[152] In particular, these dissenting commenters advance the opinion that while community anchor institutions should be eligible for funding, they are not necessarily any more meritorious than other eligible entities.[153]

NTIA agrees with commenters that stress the importance of connecting broadband to community anchor institutions. Schools,

[127] *See* 74 FR at 58942.

[128] *Id.*

[129] *See, e.g.*, Stratum Broadband at 8 (Nov. 14, 2009).

[130] *See, e.g.*, Fairpoint Commc'ns at 5 (Nov. 30, 2009).

[131] *See, e.g.*, Nat'l Rural Telecomms. Coop. and DigitalBridge Commc'ns Corp. at 8.

[132] *See, e.g.*, New Am. Found. at 8.

[133] *See, e.g.*, Commonwealth of Pa. at 5.

[134] *See, e.g.*, Nat'l Ass'n of State Chief Info. Officers at 2 (Nov. 30, 2009).

[135] *See, e.g.*, Forest County Potawatomi at 2 (Nov. 30, 2009).

[136] *See, e.g.*, Motorola at 6 (Nov. 30, 2009); Rural Broadband Now! at 8.

[137] *See* 74 FR at 58942.

[138] *Id.*

[139] *See, e.g.*, The Bill & Melinda Gates Found. at 1–2 (Nov. 30, 2009); Media Alliance at 2 (Nov. 25, 2009); Pub. Broad. Serv. at 1–5 (Nov. 30, 2009); Mass. Executive Office of Hous. and Econ. Dev. at 6; Mid Am. Reg'l Council at 2; Corp. for Educ. Initiatives in Cal. at 1 (Nov. 28, 2009); Am. Library Ass'n at 3.

[140] *See, e.g.*, Motorola at 8–9; Mass. Executive Office of Hous. and Econ. Dev. at 6–7.

[141] *See, e.g.*, Nat'l Educ. Broadband Serv. Ass'n at 11; Corp. for Educ. Initiatives in Cal. at 1.

[142] *See, e.g.*, Mayo Clinic at 3 (Nov. 24, 2009).

[143] *See, e.g.*, City of N.Y. at 2, City of Philadelphia at 4–6 (Nov. 30, 2009); Sch., Health, & Libraries Broadband Coal. at 18.

[144] *See, e.g.*, The Bill & Melinda Gates Found. at 1.

[145] *See, e.g.*, Hot Springs Greater Learning Found. at 3 (Nov. 30, 2009); The Bill & Melinda Gates Found. at 1; Corp. for Educ. Initiatives in Cal. at 1.

[146] *See, e.g.*, The Bill & Melinda Gates Found. at 1; Corp. for Educ. Initiatives in Cal. at 1; Am. Library Ass'n at 3; Nat'l Educ. Broadband Serv. Ass'n at 5–6.

[147] *See, e.g.*, Hot Springs Greater Learning Found. at 2; The Bill & Melinda Gates Found. at 1; Nat'l Rural Telecomms. Coop. & DigitalBridge Commc'ns Corp. at 9.

[148] *See, e.g.*, Mayo Clinic at 2; Univ. of Cal. Davis Med. Sys. at 2 (Nov. 30, 2009); Wash. State Law and Justice Org. at 3.

[149] *See, e.g.*, Media Alliance at 2; Pub. Broad. Serv. at 1–5; Corp. for Educ. Initiatives in Cal. at 1.

[150] *See, e.g.*, Towerstream at 3–4 (Nov. 30, 2009); Asian Am. Justice Ctr., League of United Latin Am. Citizens, Minority Media & Telecomms. Council, Nat'l Urban League & One Econ. Corp. at 5 (Nov. 30, 2009).

[151] *See, e.g.*, One Econ. Corp. at 4.

[152] *See, e.g.*, Towerstream at 2; Open Range Commc'ns at 6; Utopian Wireless at 7.

[153] *See, e.g.*, Towerstream at 2; Telecom Transp. Mgmt. at 7; Internet2 at 24–25.

libraries, colleges and universities, medical and healthcare providers, public safety entities, and other community support organizations increasingly rely on Internet connectivity to serve their constituencies and their communities. Expanding broadband capabilities for community anchor institutions will result in substantial benefits for the entire community, delivering improved education, healthcare, and economic development. Broadband connections to these facilities will not only enhance their services and effectiveness, but can also provide potential points of interconnection for Last Mile service directly to homes and businesses. For these reasons, NTIA focuses funding in this NOFA towards projects that connect community anchor institutions.

To leverage connections to community anchor institutions, a number of commenters explicitly support the prioritization of Comprehensive Communities.[154] Many supporters of a Middle Mile comprehensive community priority in this round of funding suggest that Middle Mile funding should be contingent upon a commitment from a Last Mile provider.[155] A smaller handful of commenters note that cooperation among Middle Mile and Last Mile providers should be encouraged but not required.[156] In opposition, some commenters argue that it may be too onerous for community anchor institutions such as schools and hospitals to obtain a Last Mile commitment.[157]

The minority of commenters who voice skepticism towards a Comprehensive Community approach to funding worry about the threat a Middle Mile priority would pose to the funding of Last Mile projects.[158] In addition to the relationship between Middle Mile and Last Mile projects, many commenters oppose the creation of set-asides for one type of application.[159]

NTIA agrees with commenters that support targeting the funding available in this round towards comprehensive communities with an emphasis on projects that emphasize Middle Mile broadband capabilities. Preliminary findings by the FCC's National Broadband Plan Task Force indicate that broadband service in unserved and underserved areas of the United States is limited due to insufficient capacity and to significantly higher costs of deploying Middle Mile services in some areas.[160] NTIA finds that the cost of Middle Mile service, particularly in unserved and underserved areas, stifles broadband expansion for those that need it most. Insufficient Middle Mile broadband service not only limits the availability and affordability of end-user broadband connectivity for consumers and businesses, but it also diminishes the effectiveness of community anchor institutions in fulfilling their missions.[161]

For these reasons, NTIA seeks to focus on these types of projects by adopting a "comprehensive communities" approach to awarding BTOP infrastructure grants, which prioritizes Middle Mile projects integrated with community anchor institutions, including community colleges, or Last Mile service providers as a means of maximizing the leverage of taxpayer investments.

Commenters put forth a number of key criteria that NTIA should consider in its evaluation of Comprehensive Community projects, including cost effectiveness,[162] technology approaches,[163] the size of the matching funds,[164] and support from community anchor institutions.[165] Most commenters suggest evaluating projects based on the extent to which the applicant proposes to connect institutions that serve a vulnerable population group,[166] such as a historically black university or an institution serving primarily to Hispanic groups.[167] A smaller number of commenters suggest that NTIA evaluate the number of community anchor institutions connected by the project.[168] The proposal to use sustainability and public-private partnerships as potential criteria for evaluating Comprehensive Communities did not receive much support.[169]

NTIA agrees with many of the criteria suggested by commenters to evaluate Comprehensive Community Infrastructure projects. Evaluation criteria in this funding round will prioritize applications that include a Middle Mile component and demonstrate commitments to serve community anchor institutions, including community colleges, and incorporate public-private partnerships and public safety entities, along with the other project priorities and additional factors that are set forth in Section II. of this NOFA.

Program Definitions—"Unserved" and "Underserved"

More than seventy commenters offer suggestions for clarifying the definitions of "unserved" and "underserved" used in the First NOFA. Many of these commenters contend that the current definitions are too restrictive and recommend that NTIA craft a broader standard.[170] A common concern among these commenters is that the current broadband penetration thresholds included in the definitions exclude many worthy projects located in urban areas.[171]

A substantial number of commenters advocate applying the definitions of "unserved" and "underserved" differently to different types of applicants.[172] Several commenters request that community anchor institutions [173] and projects that propose to serve vulnerable communities,[174] no matter where they are located, be exempt from having to meet the unserved or underserved definitions. A few commenters suggest that NTIA use different definitions depending on whether an applicant applies as an Infrastructure, PCC, or SBA project.[175]

Several commenters recommend that the socioeconomic status of an area be considered in determining whether that area is unserved or underserved. Specifically, several commenters express concern with using Census blocks to define an unserved or underserved area in the previous round and recommend that NTIA require applicants to use socioeconomic and demographic data instead to identify unserved and underserved areas.[176] Many commenters also suggest that the underserved and unserved definitions consider the effects of poverty on adoption, especially as it relates to the affordability of broadband in an area, and evaluate projects that propose to address these adoption barriers more positively.[177]

Finally, several commenters suggest that NTIA use actual guaranteed speeds as opposed to advertised speeds to determine whether an area is considered underserved.[178] Commenters are divided

[154] *See, e.g.*, Sch., Health, & Libraries Coal. at 15; Am. Library Ass'n at 8; Corp. for Educ. Initiatives in Cal. at 1.

[155] *See, e.g.*, S. C. Broadband Coal. at 3 (Nov. 30, 2009); Mayo Clinic at 3; Univ. of Cal. Davis Med. Sys. at 2.

[156] *See, e.g.*, The Bill & Melinda Gates Found. at 5; Mass. Executive Office of Hous. and Econ. Dev. at 7.

[157] *See, e.g.*, Sch., Health, & Libraries Broadband Coal. at 17; Am. Library Ass'n at 8.

[158] *See, e.g.*, Nat'l Telecomms. Coop. Ass'n at 4 (Nov. 30, 2009); Mont. Indep. Telecomms. Sys. at 4; Nat'l Pub. Broadband at 1 (Nov. 25, 2009); City of N.Y. at 4–5.

[159] *See, e.g.*, Commonwealth of Pa. at 9; RVW, Inc at 2.

[160] *FCC Identifies Critical Gaps in Path to Future Universal Broadband,* News Release (Nov. 18, 2009).

[161] *See, e.g.*, The Bill & Melinda Gates Found. at 6–7 (public libraries); May Clinic at 3 (telemedicine); Motorola at 8–9 (public safety).

[162] *See, e.g.*, NTCH-Cleartalk at 1; Spacenet, Inc. at 6 (Nov. 30, 2009); Rural Broadband Now! at 6–7.

[163] *See, e.g.*, NATOA at 12 (Nov. 30, 2009).

[164] *See, e.g.*, Inst. for Local Self-Reliance (ILSR) at 3 (Nov. 30, 2009).

[165] *See, e.g.*, Forest County Potawatomi at 3.

[166] *See, e.g.*, CBN Connect at 2; City of San Francisco at 3; The Bill & Melinda Gates Found. at 2.

[167] *See, e.g.*, Asian Am. Justice Ctr., League of United Latin Am. Citizens, Minority Media and Telecomms. Council, Nat'l Urban League, and One Econ. Group at 5–6.

[168] *See, e.g.*, City of San Francisco at 3; The Bill & Melinda Gates Found. at 2; Corp. for Educ. Initiatives in Cal. at 1.

[169] *But see, e.g.*, Stratum Broadband at 12.

[170] *See, e.g.*, City of N.Y. at 7; New Am. Found. at 20–21; Telecomms. Indus. Ass'n at 8 (Nov. 30, 2009); San Jose Hispanic Chamber of Commerce at 2 (Nov. 30, 2009); City of Chicago at 7; Broadband Satellite Commenters at 15 (Nov. 30, 2009); Nat'l Rural Telecomms. Coop. & DigitalBridge Commc'ns Corp. at 11.

[171] *See, generally*, E. Or. Telecom at 2; N.Y. State Ass'n of Counties at 2 (Nov. 30, 2009); City of N.Y. at 2.

[172] *See, e.g.*, Towerstream at 3–4; City of N.Y. at 2; San Jose Hispanic Chamber of Commerce at 2; FiberTower Corp. at 8–9.

[173] *See, e.g.*, New Am. Found. at 10; Telecomms. Indus. Ass'n at 14; Am. Library Ass'n at 15.

[174] *See, e.g.*, San Jose Hispanic Chamber of Commerce at 3; Digital Impact Group at 2; Trace Ctr., Univ. of Wis. at 1–3; Broadband for the Deaf & Hard of Hearing at 4.

[175] *See, e.g.*, Digital Impact Group at 2; State of Mich. at 11; City of Phoenix at 3.

[176] *See, e.g.*, Montgomery County, Md. at 2–3; NATOA at 6–7; Mid Am. Reg'l Council at 1.

[177] *See, e.g.*, Cricket Commc'ns at 7–8; Cmtys. Connect Network at 1–2; City of Philadelphia at 6–7.

[178] *See, e.g.*, Flow Mobile at 12; City of Seattle at 9–11; Inst. for Local Self-Reliance at 4; City of Portland, Or. at 2; City of Houston at 3; Wireless

whether NTIA should eliminate the provision that defined a service area as underserved or unserved if certain broadband speeds were unavailable, with some commenters recommending that speed be eliminated as a criterion,[179] but many more recommending that available speeds remain a focus for defining unserved and underserved areas.[180]

NTIA disagrees with commenters in a variety of respects. The First NOFA provided very specific definitions of what constitutes an unserved and underserved area for BTOP purposes. In NTIA's review of applications submitted by private companies, community anchor institutions, and other stakeholders in the first funding round, NTIA does not believe that its definitions proved to be overly restrictive or hindered applicants from applying. Additionally, NTIA finds that, for purposes of consistency between the two rounds of funding as well as between BTOP and the Broadband Mapping Program, the definitions of unserved and underserved should remain largely unchanged. NTIA has, however, removed the requirement that infrastructure projects connecting community anchor institutions, including community colleges, must be located in unserved or underserved areas. The Comprehensive Community Infrastructure project category will consider whether a proposed funded service area is unserved or underserved as an additional factor giving an application more priority in scoring. For all of these reasons, NTIA decides against substantially revising its definitions of unserved and underserved.

Announcement of Applicants' Proposed Funded Service Areas

The First NOFA allowed existing broadband service providers an opportunity to comment on an applicant's assertions that its proposed funded service areas are unserved or underserved.[181] During the initial round of funding, some stakeholders suggested that this rule may reduce incentives for applicants to participate in BIP and BTOP because of the risk that their applications may be disqualified from funding on the basis of information submitted by existing broadband service providers that they have no means to substantiate or rebut. The RFI sought comment on whether alternative verification methods could be established that would be fairer to both applicants and challengers, what type of information should be collected from the entity questioning the service area, and what information should be subject to public disclosure.[182]

Numerous commenters request a more transparent and defined process in which the agencies describe the procedures and criteria used to determine whether an applicant's proposed funded service area is unserved or underserved and make data submitted during the announcement process available to the public.[183] Further, to assuage concern that an application may be disqualified from funding based on information submitted during the announcement process, many respondents suggest that applicants be provided an opportunity to review and rebut the comments that existing broadband service providers submit.[184] In addition, many commenters suggest that data should be collected from a number of sources before NTIA renders a final determination as to whether broadband is already available, such as FCC Form 477 data.[185]

Commenters also provide suggestions as to what type of information should be gathered from existing broadband service providers seeking to submit comments. Commenters overwhelmingly urge NTIA to require that broadband service providers demonstrate that available broadband claims are based on actual speed [186] and coverage,[187] which is independently verifiable and not simply as advertised.[188] Further, a majority of commenters request that incumbents provide detail at the Census block level corresponding with the application.[189] Some respondents propose that NTIA require existing broadband service providers who comment on an application's proposed funded service area to supply the names and addresses of current subscribers within the designated area [190] or prove coverage by posting coverage availability on their Web site at all times.[191]

For this round of funding, NTIA will post an announcement identifying each CCI application it has received, along with a list of the Census block groups or tracts that each infrastructure application has proposed to serve through its project at *http://www.broadbandusa.gov* for a 15-day period. The announcement will provide existing broadband service providers with an opportunity to voluntarily submit to NTIA information about the broadband services that they currently offer in their respective service territories by Census block group or tract. If an existing broadband service provider submits a response outside the 15-day period, the information may not be considered by NTIA in its evaluation of an applicant's Last Mile or Middle Mile service area(s) as unserved or underserved, as applicable.

NTIA will consider such comments provided they include the information set forth in Section V.D.3 of the NOFA, some of which will be made public.

NTIA adopts this method of evaluating the unserved or underserved status of applicants' proposed funded service area as a means to improve the analysis and minimize the burden on applicants and commenters. NTIA also departs from the evaluation process that RUS will use in that it will no longer use the RUS mapping tool to have applicants and commenters draw service area maps or require existing broadband service providers to submit comments on each proposed funded service area specified in an application. As a result of these process enhancements, NTIA believes it can expedite the time period in which existing service providers have to submit their comments from 30 days to 15 days. This expedited schedule will allow NTIA to begin its evaluation of the unserved or underserved status of applications that enter due diligence much more quickly than in the previous round of funding.

Interconnection and Nondiscrimination Requirements

In the RFI, NTIA and RUS invited public comment on whether the interconnection and nondiscrimination requirements for infrastructure applicants in the initial round of funding should be changed.[192] Commenters generally suggest that NTIA maintain the same rules as those of the First NOFA with no modification to their scope or application.[193]

However, several commenters suggest modifying the scope and application of the nondiscrimination and interconnection requirements.[194] Commenters suggest minor adjustments that could be made to these requirements in order to advance certain market efficiencies,[195] including requiring grantees to provide fully functional and comprehensive operations support systems and associated Application Programming Interfaces for their wholesale services [196] and for NTIA to rephrase the network management and managed service exceptions in order to encourage companies to provide shared managed services.[197] Some commenters also request that certain applicants such as tribes [198] and municipalities [199] be exempt from the NOFA's nondiscrimination and

Commc'ns Ass'n Int'l at 5–8; NATOA at 10–11; City of Tacoma at 3; E. Shore of Va. Broadband Auth. at 3.

[179] *See, e.g.*, Commonwealth of Pa. at 13; Wireless Internet Serv. Providers at 13.

[180] *See, e.g.*, Flow Mobile at 12; City of Seattle at 6–7; Am. Cable Ass'n at 13–14; E. Shore of Va. Broadband Auth. at 3; Alcatel Lucent at 2–3.

[181] 74 FR at 33122.

[182] *See* 74 FR at 58943–44.

[183] *See, e.g.,* Flow Mobile at 14; Spacenet at 7; Mass. Executive Office of Hous. and Econ. Dev. at 8.

[184] *See, e.g.,* City of Chicago at 3; CONXX at 15; Rural Broadband Now! at 8; NATOA at 17.

[185] *See, e.g.,* Am. Cable Ass'n at 14–16; CONXX at 15; U.S. Telecom at 26; Univ. of Ark. Med. Serv. at 5; Stratum Broadband at 21–22.

[186] *See, e.g.,* New Am. Found. at 23; Inst. for Local Self-Reliance at 5; Merit Network at 8–9; Am. Fiber Sys. at 3; City of Grover Beach at 12.

[187] *See, e.g.,* Stratum Broadband at 22; NTCH–Cleartalk at 1; Am. Fiber Sys. at 3; City of Grover Beach at 12; CONXX at 15.

[188] *See, e.g.,* New Am. Found. at 23; Flow Mobile at 14; City of Grover Beach at 12.

[189] *See, e.g.,* Merit Network at 8–9; Open Range Commc'ns at 9; Stratum Broadband at 22; Commonwealth of Pa. at 13; Fairpoint Commc'ns.

[190] *See, e.g.,* Loudoun County, Va., OpenBand Multimedia, LLC & Roadstar Internet, Inc at 7; CONXX at 15.

[191] *See, e.g.,* Found. Telecomms. at 1.

[192] 74 FR at 58944.

[193] *See, e.g.,* Tex. Statewide Tel. Coop. at 12; New Am. Found. at 23; Vantage Point Solutions at 10; Eng'g Ass'n at 4; Harris Corp. at iv; CONXX at 16; City of San Francisco at 1; Am. Fiber Sys. at 4; E. Shore of Va. Broadband Auth. at 5; Mid-Rivers Commc'ns at 10; Commonwealth of Pa. at 14.

[194] *See, e.g.,* Earthlink and New Edge Network at 2; Stratum Broadband at 23–24.

[195] *Id.*

[196] *See, e.g.,* Earthlink and New Edge Network at 2.

[197] *See, e.g.,* Stratum Broadband at 23–24.

[198] *See, e.g.,* United Tribes Technical Coll. at 1.

[199] *See, e.g.,* City of Phoenix at 3.

interconnection requirements.[200] In opposition, some commenters request that the requirements be applied to every applicant, regardless of the nature of the entity.[201]

Commenters express concern that NTIA's requirements would not mirror the rules that are ultimately adopted in the Federal Communications Commission's (FCC) ongoing rulemaking proceeding regarding a Free and Open Internet.[202] These commenters argue that if the requirements applicable to BTOP applicants are inconsistent with those faced by other service providers, then these additional nondiscrimination obligations will prove burdensome or duplicative for broadband service providers receiving grant funds.[203] Commenters suggest that NTIA declare a sunset date for these requirements either when the FCC finalizes its network neutrality rules or at another reasonably foreseeable date.[204] Commenters also recommend that NTIA declare that compliance with the FCC rules would be sufficient to meet the requirements of BTOP.[205]

A few commenters oppose the First NOFA's nondiscrimination and interconnection requirements altogether.[206] These commenters argue that the scope of these requirements chilled participation in the Program during the initial round of funding[207] and that the requirements conflicted with a private company's ability to manage its own network.[208] Commenters also argue that the current approach to the requirements would pose an oversight problem for NTIA and RUS and recommend that compliance be left up to the grant recipients.[209]

A few commenters also recommend that NTIA clarify its interconnection requirements in order to minimize cost and controversy.[210] These commenters are especially concerned that the interconnection and nondiscrimination rules during the initial round of funding were unclear as applied to contractors or subcontractors.[211]

NTIA agrees with commenters that support maintaining the consistency of the interconnection and nondiscrimination requirements across the two rounds of funding. Leaving the requirements unchanged from the initial round of funding will help to facilitate the administration of the grants awarded during the first and second rounds and avoid imposing differing nondiscrimination and interconnection standards on recipients. Accordingly, NTIA has decided against making any significant revisions to this section. Any changes made to this section from the First NOFA are intended only to clarify and not change the applicants' obligations.

Sale of Project Assets

Section IX.C.2 of the NOFA generally prohibits the sale or lease of award-funded broadband facilities, unless the sale or lease meets certain conditions. Specifically, the agencies may approve a sale or lease if it is for adequate consideration, the purchaser agrees to fulfill the terms and conditions relating to the project, and either the applicant includes the proposed sale or lease in its application as part of its original request for grant funds or the agencies waive this provision for any sale or lease occurring after the tenth year from the date the grant, loan, or loan/grant award is issued.[212] Some stakeholders have suggested that this "ten-year holding rule" is overly restrictive and is a barrier to participation in BIP and BTOP.[213] The agencies invited public comment on whether and how this section should be revised to adopt a more flexible approach toward awardee mergers, consistent with USDA and DOC regulations, while still ensuring that awardees are not receiving excessive profit from the sale of award-funded assets.[214]

The clear majority of forty-seven parties who filed comments on the NOFA's conditions on the post-award sale or lease of project assets support a relaxation of these conditions.[215] Only a few commenters support retention of the rules.[216] Most commenters agree that the prohibitions on the sale or lease of project facilities are unreasonably broad because they fail to provide flexibility for the government to consent to a reasonable lease or sale during the first ten years. One commenter voices a concern shared by many that the conditions restricting post-award sales or leases may inhibit obtaining funding for the project, explaining that "the 10-year prohibition on the sale of the funded assets also seems to cause a 'chilling effect' in terms of capital raising by applicants and may have caused many potential broadband providers to avoid BIP/BTOP entirely."[217]

Commenters supporting greater flexibility regarding the sale of assets recommend the following revisions: The second NOFA should allow the government to approve the sale or lease of project assets on a case-by-case basis;[218] the agencies should remove the 10-year limit and focus on unjust enrichment;[219] clarify that the project assets mean only those assets which are purchased directly from grant funds awarded and not * * * equipment or services purchased * * * with "matching funds;"[220] relax rules so that the agencies may approve sales, "as long as the successor agrees to the obligations of the program;"[221] allow for accelerated depreciation of assets;[222] restrictions should not apply to IRUs or leases to research and education networks;[223] and modify the policy to accommodate the sale or lease to accommodate the normal five-year replacement cycle of broadband equipment.[224]

NTIA agrees with the majority of commenters proposing to relax restrictions on the post-award sale or lease of project assets and revises this section accordingly. As a result, awardees may petition for a waiver authorizing the sale or lease of assets at any time during the life of the award-funded facilities and shall include supporting documentation and justification regarding why the petition should be granted.

Dated: January 15, 2010.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2010–1097 Filed 1–19–10; 11:15 am]

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[200] *See, e.g.,* Merit Networks at 9 (suggesting a balancing test when applying the nondiscrimination and interconnection requirements).

[201] *See, e.g.,* Org. for the Promotion & Advancement of Small Telecomms. Companies at 7–8; Indep. Tel. and Telecomms. Alliance at 10.

[202] *See, e.g.,* ADTRAN at 4–5; Telecomms. Indus. Ass'n at 18; Indep. Tel. and Telecomms. Alliance at 10; Open Range Commc'ns at 10–11; U.S. Telecom at 32.

[203] *See, e.g.,* ADTRAN at 2; Telecomms. Indus. Ass'n at 18; U.S. Telecom at 31–33.

[204] *See, e.g.,* Indep. Tel. and Telecomms. Alliance at 10; Open Range Commc'ns at 10–11; ADTRAN at 4–5.

[205] *See, e.g.,* ADTRAN at 4–5.

[206] *See, e.g.,* AT&T at 17–18; State of S.D. at 1; AzulStar at 4.

[207] *See, e.g.,* AT&T at 17–18.

[208] *See, e.g.,* State of S.D. at 1; AzulStar at 4.

[209] *See, e.g.,* AT&T at 18.

[210] *See, e.g.,* Stratum Broadband at 24; Alaska Commc'ns Sys. at 7–8; AT&T at 18–19; U.S. Telecom at 33–34; CONXX at 16.

[211] *Id.*

[212] *See* 74 FR at 58944.

[213] *See, e.g.,* KeyOn Commc'ns at 3; Commc'ns Finance Ass'n at 1.

[214] *See* 74 FR at 58944.

[215] *See, e.g.,* Cricket Commc'ns at 12; Stratum Broadband at 12; Flow Mobile at 15.

[216] Eng'g Ass'n, Inc. at 4; E. Shore of Va. Broadband Auth. at 5; Canby Telecom at 1; Mid-Rivers Commc'ns at 10.

[217] *See, e.g.,* KeyOn Commc'ns at 3; E. Shore of Va. Broadband Auth. at 5; Native Broadband Satellite at 8; Alaska Commc'ns Sys. at 8; Cricket Commc'ns at 12; Cal. Broadband Coop. at 5.

[218] *See, e.g.,* Rural Broadband Now at 9.

[219] *See, e.g.,* U.S. Telecom at 37–38.

[220] *See, e.g.,* Dixie Tech. Funding Agency at 15.

[221] *See, e.g.,* Monte R Lee & Co. at 8.

[222] *See, e.g.,* Senior Broadband/Internet Adoption Collaborative at 10.

[223] *See, e.g.,* Internet2 at 26–27.

[224] *See, e.g.,* TransWorld Network at 5.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

RIN 0572–ZA01

Broadband Initiatives Program

AGENCY: Rural Utilities Service, Department of Agriculture.

ACTION: Notice of Funds Availability (NOFA) and solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces its general policy and application procedures for the second round of funding under the broadband initiatives (the Second Round NOFA) established pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act) for the Broadband Initiatives Program (BIP) which provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In facilitating the expansion of broadband

communications services and infrastructure, BIP will advance the objectives of the Recovery Act by spurring job creation and the economy and by building technological infrastructure that will fuel long-term economic growth and opportunity.

DATES: Applications will be accepted for Last Mile and Middle Mile projects from February 16, 2010 at 8 a.m. Eastern Time (ET) until March 15, 2010 at 5 p.m. ET. The application window for Satellite, Technical Assistance, and Rural Library Broadband Projects will be announced in a separate request for proposal in the **Federal Register.**

Application Submission: The application packages for electronic submissions will be available at *http://www.broadbandusa.gov.*

Electronic submissions: Electronic submissions of applications will allow for the expeditious review of an Applicant's proposal, consistent with the goals of the Recovery Act. As a result, all Applicants for Last Mile, Middle Mile, and Satellite projects must file their application electronically. Electronic applications for Last Mile and Middle Mile projects must be submitted by 5 p.m. ET on March 15, 2010. The government electronic application system will provide a date and time stamped confirmation number that will serve as proof of submission. Only applications for Technical Assistance and Rural Library Broadband grants will be submitted in paper form. Paper applications for Technical Assistance and Rural Library Broadband grants will be available at *http://www.broadbandusa.gov* once the request for proposals has been published. Applicants filing paper copies should submit one original and one copy of the application for efficient processing.

Proof of Mailing. Paper applications for Technical Assistance and Rural Library Broadband grants must include proof of mailing consisting of one of the following: (i) A legibly dated U.S. Postal Service postmark. Please note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, Applicants should check with their local post office; (ii) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; or (iii) a dated shipping label, invoice, or receipt from a commercial carrier. Neither of the following will be accepted as proof of mailing: a private metered postmark; nor a mail receipt that is not dated by the U.S. Postal Service.

Mailing Address. Completed applications must be mailed, shipped, or sent overnight express to: Broadband Initiatives Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 1599, Room 2868, Washington, DC 20250.

Or hand-delivered to: Broadband Initiatives Program Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2868 Washington, DC 20250.

Contact Information: For general inquiries, contact David J. Villano, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), e-mail: *BroadbandUSA@usda.gov,* telephone:(877) 508–8364. For inquiries regarding BIP compliance requirements, including applicable Federal rules and regulations protecting against fraud, waste and abuse, contact *bipcompliance@wdc.usda.gov.* You may obtain additional information regarding applications for BIP via the Internet at *http://www.broadbandusa.gov.*

Authority: This notice is issued pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009) and the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance (CFDA) Number: Broadband Initiatives Program (BIP)—10.787.

Additional Items in Supplementary Information

I. Overview: Describes the purposes of the Recovery Act and the changes in BIP from the First Round NOFA.

II. Definitions: Sets forth the key statutory terms and other terms.

III. Funding Opportunity Description: Describes funding categories, requirements, and the amount of funds available for each category.

IV. Eligibility Information: Establishes eligibility criteria, eligibility factors, eligible and ineligible costs, and other eligibility requirements.

V. Application and Submission Information: Provides information regarding how to apply, application materials, and the application process.

VI. Application Evaluation Criteria: Establishes the evaluation criteria for application review.

VII. Waiver for Grants Capped at (75%) of Award for Last Mile and Middle Mile Projects: Establishes waiver procedures for larger grant component.

VIII. Award Administration Information: Provides award notice information, administrative and national policy requirements, terms and conditions, and other reporting requirements for award recipients.

IX. Other Information: Sets forth guidance on funding, compliance with various laws, confidentiality, discretionary awards, and authorized signatures.

I. Overview

A. Background

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law.[1] The essential goal of the Recovery Act is to provide a "direct fiscal boost to help lift our Nation from the greatest economic crisis in our lifetimes and lay the foundation for future growth."[2] Accordingly, the Recovery Act identifies five overall purposes: (1) To preserve and create jobs and promote economic recovery; (2) to assist those most impacted by the recession; (3) to provide investments needed to increase economic efficiency by spurring technological advances in science and health; (4) to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (5) to stabilize state and local government budgets.[3] The Recovery Act further instructs the President and the heads of Federal departments and agencies to manage and expend Recovery Act funds to achieve these five purposes, "commencing expenditures and activities as quickly as possible consistent with prudent management."[4]

Consistent with the purposes described above, the Recovery Act provided RUS with $2.5 billion to expand access to broadband services in rural America. The Recovery Act expanded RUS' existing authority to make loans and provided new authority to make grants for the purpose of facilitating broadband deployment in rural communities. The Recovery Act specifically made Federal assistance available for grants and loans to enhance service in areas which are at least 75 percent rural and "without sufficient access to high speed broadband service to facilitate rural economic development."

On July 9, 2009, RUS and the National Telecommunication Information Administration (NTIA) issued a joint Notice of Funds Availability at 74 FR 33104 governing the first round of Recovery Act broadband funding under BIP and NTIA's Broadband Technology Opportunity Program (BTOP). Under this first round Notice (the First Round

[1] American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

[2] President Obama, Statement on Signing the American Recovery and Reinvestment Act of 2009 (Feb. 17, 2009).

[3] Recovery Act sec. 3(a), 123 Stat. at 115–16.

[4] *See id.* § 3(b), 123 Stat. at 116.

NOFA), RUS made approximately $2,400,000,000 in funding available for BIP. Approximately 2,200 applications seeking $28 billion in Federal financial assistance were submitted in response to the First Round NOFA.

The First Round NOFA opened BIP to a wider range of Applicants and projects than the RUS' traditional programs. This enabled RUS to get a better understanding of the type of applications available to meet the need for broadband services in rural areas. With that experience, RUS, working in conjunction with NTIA's BTOP, is focusing the second round funding on rural economic development in addition to continuing the effort of the First Round NOFA to reach unserved and underserved areas. RUS has qualified for funding any rural area that does not have broadband service at the rate of 5 Megabits/second (Mbps) (upstream and downstream combined) in at least 50 percent of its area. RUS has determined that rural areas without service at 5 Mbps (upstream and downstream combined) lack high speed broadband service sufficient to facilitate rural economic development as required by the Recovery Act.

In this Second Round NOFA, RUS and NTIA have determined that the best use of limited funding is to have RUS and NTIA focus on funding different aspects of broadband infrastructure. RUS will concentrate on funding Last Mile projects. With decades of experience of financing telecommunications infrastructure in rural America, RUS is uniquely equipped to focus on Last Mile rural projects. However, it is still important for RUS to continue funding certain Middle Mile projects to ensure all proposed rural economic development strategies incorporating broadband technology are given full consideration by an Agency whose mission is rural development. As a result, RUS will still consider funding Middle Mile projects, but strongly encourages such projects only be undertaken by current RUS loan or grant recipients, given the complexity of such projects, the amount of time to close these deals with respect to RUS' statutory lien on project assets and any other debt or equity holders, and the limited timeframe available before Recovery Act funds expire. Additionally, NTIA has proposed in its second NOFA a Comprehensive Communities Infrastructure initiative that will fund Middle Mile infrastructure projects that include connections to community anchor institutions. As a result, RUS highly recommends that all other Middle Mile applicants consider applying to BTOP.

Based on these considerations and in consideration of the multitude of comments filed in response to the Request for Information released on November 10, 2009, at 74 FR 58940, RUS has determined to make the following changes:

B. Application Changes From the First Round NOFA

1. Funding Categories

a. Retained and Eliminated Categories

In the First Round NOFA, RUS made funds available for three types of projects: Last Mile, Middle Mile and Last Mile Remote. This NOFA has retained funding for Last Mile projects and Middle Mile Projects, and eliminated the funding category for Last Mile Remote projects.

b. New Categories

It is essential to make every effort in this NOFA to reach unserved premises. A separate Satellite Project category has been established to reach premises left unserved by other technologies.

Lastly, two funding purposes, Rural Library Broadband and Technical Assistance, have been added to allow Awardees the opportunity to adjust projects to include service to rural libraries and participation with rural economic development strategies.

2. Modification of Eligible Service Areas

In this Second Round of funding RUS has focused its efforts on rural economic development in addition to continuing to reach unserved rural areas. RUS has qualified for funding any rural area in which at least 50 percent of the premises in the area do not have access to broadband service at the rate of 5 Mbps (upstream and downstream combined). RUS has determined that these areas lack high speed broadband service sufficient to facilitate rural economic development as required by the Recovery Act. Service offerings must still be within proposed funded service areas which are at least 75 percent rural as required by the Recovery Act.

3. Change in Loan/Grant Award Allocation

The First Round NOFA provided that all successful applications would receive an award comprised of 50 percent loan and 50 percent grant (50/50 loan/grant combination), except for rural remote projects which could receive up to 100 percent grant funding. Rural remote areas were defined as those unserved 100 percent rural areas which were located 50 miles or more from non-rural areas. This Second Round NOFA, however, combines rural remote and rural non-remote funding and therefore has a standard award of 75/25 grant/loan combination. It is important to note that applicants requesting a larger loan component will be awarded more points in the scoring system and may have a greater likelihood of being funded. Applicants may request more than a 75 percent grant component by submitting a waiver request to the Administrator, which demonstrates their need for additional grant funding in accordance with the requirements of this Second Round NOFA. The waiver request will be addressed at the time any award is offered. The Administrator has the authority to award grants up to 100 percent.

4. No Joint RUS/NTIA Application

Because the Recovery Act prohibits a project from receiving funding from NTIA in areas where RUS has funded a project, the first NOFA required Applicants to submit infrastructure applications consisting of proposed funded service areas which were at least 75 percent rural to RUS to be considered under BIP, with the option of additional consideration under BTOP. The first NOFA provided that NTIA would not fund such an application unless RUS had declined to fund it. In response to comments from stakeholders during the initial round of funding, the agencies' Request For Information invited public comment on whether the agencies should continue to require that these kinds of rural infrastructure applications be submitted to RUS first or whether the agencies should permit Applicants to file rural applications directly to NTIA without also having to submit them to RUS.[5]

The majority of commenters agree that rural Applicants should be permitted to apply directly to NTIA for BTOP grants without being required to first apply to RUS for BIP loans or grants.[6] The most widely cited rationale was the burden imposed on Applicants to provide the additional financial analysis required by the RUS loan application for rural projects that do not qualify as remote and unserved or are not viable with only 50 percent grant funding.[7] Commenters also cite the inefficiency of requiring RUS to review proposals that are not viable for BIP.[8]

A majority of commenters favor the continued use of a common BIP–BTOP

[5] *See* 74 FR at 58941.

[6] *See, e.g.,* Massachusetts Executive Office of Housing and Economic Development at 3–4; American Library Association at 7.

[7] *See, e.g.,* TCA at 1–2 (Nov. 30, 2009).

[8] *See, e.g.,* XO Communications at 2 (Nov. 30, 2009); TCA at 1–2.

application to avoid the duplicative effort of completing multiple applications.[9] A few of these commenters favor maintaining the initial round of funding's BIP-first rule requiring concurrent joint applications and reserving to RUS the first option to fund eligible proposals.[10] The chief benefit adduced in support of this position is RUS' expertise in evaluating rural applications so as to avoid redundant awards to "active" RUS borrowers.[11] Commenters further recommend that the agencies implement a "check box" by which an Applicant may request immediate consideration by NTIA because its rural project requires more than a 50 percent grant to be viable or seeks to address one of NTIA's broadband objectives.[12] They also recommend allowing Applicants to produce only one financial analysis to demonstrate an ability to support either a 50 percent contribution (as required for BIP) or a 20 percent contribution (as required for BTOP) to a project.[13]

RUS and NTIA agree with the majority of commenters who argue that the "BIP-first" requirement of the initial funding round added an additional unnecessary burden for many Applicants. In this funding round, RUS and NTIA conclude that Applicants that are eligible for both BIP and BTOP funding may elect to apply directly to either NTIA for BTOP grants or RUS for BIP loans or loan/grants. However, both agencies strongly recommend that current RUS loan or grant recipients apply to BIP. Applicants may not apply to both agencies for the same grant project or for a substantially similar project.

RUS believes that the elimination of joint applications will significantly streamline RUS' internal review of applications. Moreover, the joint application process was burdensome on the Applicants. Eliminating this option is critical to ensuring that RUS is able to carry out its review in a timely manner, and that applications will be funded before the statutory deadline of September 30, 2010.

5. Elimination of Two-Step Application Process

The first round NOFA provided for a two-step application process. Under this process, the bulk of the materials required from the Applicant were sought with the application. Once this material was evaluated, RUS made an initial determination as to whether the application would likely be funded. If so, the application was moved into a second review process in which additional information was requested from the Applicant. The Applicant was given an additional 30 days to provide it.

Although commenters generally had few problems with the two-step review process, several commenters argued persuasively that doing away with the two-step review process in favor of a simplified one-step process would streamline the application process.

After an evaluation of the first round applications and consideration of the comments received, RUS determined that a one-step application process will best streamline BIP. Removal of the second step simplifies the application process, and adds valuable time to both the application window and the Agency review process. This clearly promotes the submission of more solid applications.

6. Cost Effectiveness/Reasonableness

To effectively leverage Recovery Act broadband funds for last mile projects, RUS will limit Federal assistance to no more than $10,000 per premises passed, unless a waiver is requested from the Administrator. The Administrator will consider such requests based on whether the application provides assistance to a significant number of critical community facilities, supports a recognized rural regional development plan, supports public safety projects, enhances broadband service to rural libraries, supports persistent poverty counties or substantially unserved areas, including Indian country. If the waiver request is denied, any award may be made contingent on improving cost effectiveness, or the application may be placed in the second review process and the Applicant will have an opportunity to revise its proposal.

7. Elimination of Census Block Reporting

The First Round NOFA required that Applicants report their proposed funded service territories on a census block basis. It was thought that this level of granularity was necessary to evaluate applications; however, reporting at the census block level imposed a significant burden on Applicants.

A majority of the commenters advocate abandoning Census blocks in favor of other means of specifying proposed funded service areas.[14] Commenting municipalities and cities unanimously express their dissatisfaction with the use of Census block data, citing it as a cumbersome method of reporting proposed funded service area designations.[15] Multiple commenters offer zip codes, city boundaries, or even latitude and longitude coordinates as less burdensome alternatives for Applicants.[16] Several commenters propose using Census tract data as a less burdensome alternative to census block data, in part because broadband service providers are already required to report their subscriber and demographic information according to census tracts in order to file FCC Form 477.[17]

For the Second Round NOFA, RUS has eliminated census block reporting. This requirement created unnecessary problems in the application process. Moreover, the present state of the mapping tool already identifies the affected census blocks as the Applicant draws its service territory. The elimination of this burden will allow Applicants to focus more time on the technical issues and feasibility of their application.

8. Elimination of Paper Applications for Last Mile and Middle Mile Projects

The First Round NOFA required that most applications for BIP be filed electronically. However, it provided an exception for certain Applicants to file their applications on paper.[18] For the Second Round NOFA, RUS has eliminated paper applications for Last Mile and Middle Mile projects. RUS did not receive many paper applications in round one. Nevertheless, since paper applications have to be manually input into the electronic application system, their processing considerably slowed

[9] *See, e.g.,* Texas Statewide Telephone Cooperative at 5 (Nov. 25, 2009).

[10] *See, e.g.,* Vantage Point Solutions at 5–7; Rural Community Assistance Partnership at 2 (Nov. 19, 2009); RVW Inc. at 2; Mid-Rivers Communications at 6–7 (Dec. 1, 2009); South Dakota Telecommunications Association at 5, 11 (Nov. 30, 2009).

[11] *See, e.g.,* Mid-Rivers Communications at 6.

[12] *See, e.g.,* National Rural Telecommunications Cooperative and DigitalBridge Communications Corp. at 6–7 (Nov. 30, 2009).

[13] *See, e.g.,* John Staurulakis, Inc. at 18; TCA at 1–2.

[14] *See, e.g.,* NCTH-Cleartalk at 1 (Nov. 21, 2009); Commonwealth of Pennsylvania at 4; Satellite Industry Association at 4 (Nov. 30, 2009); New America Foundation at 21 (Nov. 30, 2009).

[15] *See, e.g.,* Montgomery Co. at 2 (Nov. 30, 2009); Oakland Co. at 1 (Nov. 30, 2009); City of New York at 2; City of San Francisco at 3 (Nov. 30, 2009).

[16] *See, e.g.,* Open Range Communications at 4 (Nov. 30, 2009); Center of Social Inclusion at 2; Harris Corp at iii (Nov. 30, 2009).

[17] *See, e.g.,* John Staurulakis, Inc. at 14 (Nov. 30, 2009); Rural Broadband Corp. at 7.

[18] Applicants requesting less than $1 million in assistance (in the form of grants, loans, or a combination of grants and loans) were allowed to file their applications in a paper format for the first round NOFA, if filing electronically would impose a hardship on the Applicants. Applicants whose authorized representatives were individuals with disabilities were also allowed to file their applications in a paper format irrespective of the funding size of their request.

RUS' application review process and diverted limited resources. Since Last Mile, Middle Mile, and Satellite projects are anticipated to be the most lengthy and complex applications, as well as constituting the largest pool of applications, RUS now requires that they be submitted in electronic form. A major justification identified in the First Round NOFA for allowing the submission of paper applications concerned the need to provide an alternative means of submitting applications by individuals with disabilities. RUS has determined that the electronic application intake system that will be used during the second round of funding complies with the requirements of the Rehabilitation Act.

9. Reconsideration of Applications

a. Second Review

If RUS expects to have excess funding capacity in the Second Round NOFA, the RUS Administrator may permit Applicants to adjust applications for reconsideration that would otherwise not be funded. RUS will reconsider only such applications which can be updated, reviewed and awarded funds before the expiration of Recovery Act funding, contain specific and limited adjustments, and promote significant economic rural development, as determined by the Administrator. Those applications that are considered for Second Review will not be permitted to redo the application, but only provide the supplemental information the Agency has requested. This will require a very stringent timeline for the Applicant and RUS. Any application that is processed under this procedure will be funded only after all properly submitted applications have been funded and will be subject to all applicable requirements under this NOFA.

b. Transferability

Under this NOFA, RUS will accept applications from NTIA that it determines it will not fund, but that may be consistent with RUS' BIP requirements and priorities. RUS will handle such applications, if timely received from NTIA, under its Second Review process outlined in this NOFA.

10. Administrator's Discretion

RUS has determined that in the Second Round NOFA, the Administrator will have the opportunity to exercise discretion in the application evaluation process in several ways to ensure the best mix of approved applications consistent with the purposes of BIP. One of the ways to exercise such discretion is for the Administrator to have the ability to separately award priority points and larger grant components to applications that provide significant assistance to critical community facilities (including libraries), promote rural economic development, support persistent poverty counties, serve chronically underserved areas, demonstrate cost effectiveness, offer low-cost service options, and/or provide for geographic diversity.

II. Definitions

The terms and conditions provided in this NOFA are applicable to and for purposes of this NOFA only. Unless otherwise provided in the award documents, all financial terms not defined herein shall have the meaning as defined by Generally Accepted Accounting Principles.

Administrator means the RUS Administrator, or the Administrator's designee.

Applicant means an entity requesting an award under this NOFA, and where applicable, the First Round NOFA.

Award documents mean, as applicable, the grant documents, loan documents, or loan/grant combination documents.

Award means a grant, loan, or loan/grant combination made under this NOFA.

Awardee means a grantee, borrower, or borrower/grantee under this NOFA.

BIP means the Broadband Initiatives Program, administered by the RUS, under the Recovery Act.

Broadband means providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.

Build-out means the construction or improvement of facilities and equipment as specified in an Applicant's application.

CALEA means the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1001 *et seq.*

Composite economic life means the weighted (by dollar amount of each class of facility) average economic life of all classes of facilities financed under this NOFA.

Critical community facilities means public facilities that provide community services essential for supporting the safety, health, and well-being of residents, including, but not limited to, emergency response and other public safety activities, hospitals and clinics, libraries and schools.

Current ratio means the current assets divided by the current liabilities.

Economic life means the estimated useful service life of an asset as determined by RUS.

Forecast period means the time period used by RUS to determine if an application is financially feasible. Financial feasibility of an application is based on five-year projections.

GAAP means generally accepted accounting principles.

Grant agreement means the agreement between RUS and the Awardee for grants awarded under this NOFA, including any amendments thereto, available for review at *http://www.broadbandusa.gov.*

Grant documents mean the grant agreement and security documents between the RUS and the Awardee and any associated documents pertaining to the grant.

Grant funds mean Federal funds provided pursuant to a grant made under this NOFA.

High Speed Access means high speed broadband service to facilitate rural economic development, or service at the rate of at least 5 Mbps (upstream and downstream combined).

Interconnection Point means the termination point of a Middle Mile project.

Last Mile project means any terrestrial infrastructure project the predominant purpose of which is to provide broadband service to end users or end-user devices (including households, businesses, public safety entities, and critical community facilities).

Loan means any loan made under this NOFA.

Loan contract means the loan agreement between RUS and the Awardee, including all amendments thereto, available for review at *http://www.broadbandusa.gov.*

Loan documents mean the loan contract, note(s), and security documents between the Awardee and RUS and any associated documents pertaining to the loan.

Loan/grant means any loan/grant combination made under this NOFA.

Loan/grant contract means the loan/grant contract between RUS and the Awardee, including all amendments thereto available at *http://www.broadbandusa.gov.*

Loan/grant documents mean the loan/grant contract, note(s), and security documents between the Awardee and RUS and any associated documents pertaining to the loan/grant.

Middle Mile project means any broadband infrastructure project the predominant purpose of which is to provide interoffice transport, backhaul,

internet connectivity, or special access (including point-to-point projects), which furthers rural economic development, submitted in an application or co-application.

Pre-application expense means any reasonable expense incurred after the release of this NOFA to prepare an application or to respond to RUS inquiries about the application, including engineering costs and accountant/consultant fees.

Proposed funded service area means, for Last Mile projects, the contiguous area (either in all or part of an existing service area or a new service area) where the Applicant is requesting funds to provide broadband service pursuant to this NOFA. An Applicant may propose to serve more than one proposed funded service area. For Middle Mile projects, the proposed funded service area shall be the locations of the proposed interconnection points.

RE Act means the "Rural Electrification Act of 1936," as amended (7 U.S.C. 901 *et seq.*).

Recovery Act means the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

Rural area means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within: (1) a city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or (2) an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial census of the Bureau of the Census.

Rural Library means a library in a rural area.

RUS Accounting Requirements shall mean compliance with U.S. GAAP, acceptable to RUS, as well as compliance with the requirements of the applicable regulations: 7 CFR 3015, 3016, or 3019 (for BIP Awardees in these CFRs the term grant recipient shall also mean loan recipient and loan/grant recipient) or the system of accounting prescribed by RUS Bulletin 1770B–1.

Satellite Project means any project to provide satellite broadband service to unserved rural premises (including households, businesses, public safety entities, and critical community facilities), either by funding customer-premises equipment, terrestrial equipment, and/or discounted broadband service for at least one year.

Security document means any mortgage, deed of trust, security agreement, financing statement, or other document that RUS determines is necessary to perfect its interest in the security for a loan, grant, or loan/grant.

Service area means the area, including the proposed funded service area, where the Applicant offers or intends to offer any service.

TIER means times interest earned ratio. TIER is the ratio of an Applicant's net income (after taxes) plus (adding back) interest expense, all divided by interest expense (existing and any new interest expense including the interest expense associated with the proposed loan).

Unserved area means a service area with no access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed (set forth in the definition of broadband in this section). A premises has access to broadband service if it can readily subscribe to that service upon request.

III. Funding Opportunity Description

A. Funding Categories

1. Last Mile Projects

Applications for Last Mile projects must predominantly provide broadband service directly to the premises or to end users. Only those applications whose proposed funded service area contains 75 percent or more rural areas, within which not more than 50 percent of the premises in the rural areas have High Speed Access will be considered for funding. The standard award is a grant/loan combination of 75 percent grant and 25 percent loan. Applicants may request a waiver for more than 75 percent grant in accordance with Section VII of this NOFA, or may request a greater percentage of loan.

2. Middle Mile Projects

RUS strongly encourages applications for Middle Mile projects from current RUS loan and grant recipients. Such projects are complex and more difficult to close, especially given the limited timeframe available before Recovery Act funds expire.

Applicants must propose that at least 75 percent of the interconnection points be in rural areas with no more than 50 percent of the premises having High Speed Access. The communities in which the interconnection points terminate shall be used to determine the percentage of High Speed Access. For those interconnection points which do not terminate in any recognizable community, the nearest Census Designated Place shall be used. Middle Mile projects must provide interoffice transport, backhaul, internet connectivity, or special access (including point-to-point projects). The standard award is a grant/loan combination of 75 percent grant and 25 percent loan. Applicants may request a waiver for more than 75 percent grant in accordance with Section VII of this NOFA, or may request a greater percentage of loan.

3. Satellite Projects

Given the importance of efforts to reach unserved premises, a separate Satellite Project category has been established to reach premises left unserved by other technologies. Subsequent to the opening of the window for Last Mile and Middle Mile projects, the Agency will publish a Request for Proposals for Satellite Projects, including the announcement of the funding allocation.

Applicants must propose to serve only unserved rural premises in any of the regions listed in Section IX.T of this NOFA. Applicants may propose to serve more than one region; however, Applicants must submit applications which are broken out for each region. Only one Applicant will be selected to serve a region.

At a minimum, an application must commit to providing broadband service, to providing customer-premises equipment (CPE) to subscribers at no cost (including no costs for installation, activation, or other hidden fees) and to providing to such subscribers at least a 25 percent reduction in the Applicant's service rates as of December 1, 2009, for a term of at least one year.

Subsequent to the opening of the window for Last Mile and Middle Mile projects, the Agency will publish a Request for Proposals for Satellite grants, including the announcement of the funding allocation and the requirements of the application. The funding award for Satellite Projects is grant funding.

4. Technical Assistance Grants

Awardees under the First Round NOFA or Applicants under this NOFA may submit a request for an additional grant for funding for the purpose of developing regional broadband development strategies in rural areas. Technical Assistance grants may be used for the development of a USDA-recognized regional strategy. Under this program, Technical Assistance Awardees will work in public/private partnerships to develop a USDA-approved regional plan to provide broadband service in rural areas that remain critically unserved. In addition, in order to foster cross collaboration with other related Federal programs,

Technical Assistance plans may be used by Applicants for submission to other Federal agencies, including programs of the Department of Transportation, Homeland Security, the Federal Communications Commission (FCC), and Telemedicine Program of the Indian Health Service. By fostering the development of rigorous regional broadband strategies, RUS anticipates that Technical Assistance Awardees will also be able to submit more focused applications in the future to RUS Infrastructure Telecommunications, RUS' Rural Broadband Access, Community-Oriented Connectivity Broadband, and Distance Learning and Telemedicine grant and loan programs.

Grants for Technical Assistance will be made in an amount up to $200,000. RUS, in its discretion, may decrease the requested award amount based on its evaluation of an application and based on the level of funding available for this program.

Subsequent to the opening of the window for Last Mile and Middle Mile projects, the Agency will publish a Request for Proposals for Technical Assistance grants, including the announcement of the funding allocation and the requirements of the application. Applications for Technical Assistance grants will be accepted in paper-form only (the Easy Grants System will not be used to accept Technical Assistance grant applications), as set forth in the Request for Proposals.

5. Rural Library Broadband Grants

Awardees from the First Round NOFA or Applicants under this NOFA may submit a request for a grant to reimburse the associated costs for connecting any rural library in their proposed funded service area, being constructed, or to be constructed, with funding from an award from USDA's Community Facilities program of the Rural Housing Service. Such costs need not have been addressed in the original application submitted under the First Round NOFA or Second Round NOFA.

Subsequent to the opening of the window for Last Mile and Middle Mile projects, the Agency will publish a Request for Proposals for Rural Library Broadband grants, including the announcement of the funding allocation and the requirements of the application. Applications for Rural Library Broadband grants will be accepted in paper-form only, as set forth in the Request for Proposals.

B. Available Funds

1. General

Approximately $2,200,000,000 in funding has been set aside for funding opportunities under this NOFA.[19]

2. Funding Limits

Award amounts under this NOFA will be limited as follows:

a. Last Mile Projects

Up to $1,700,000,000 is available for loans or loan/grant combinations for Last Mile projects.

b. Middle Mile Projects

Up to $300,000,000 is available for loans or loan/grant combinations for Middle Mile projects.

c. Satellite Project, Rural Library Broadband, and Technical Assistance Projects

Up to $100,000,000 is available for grants for Satellite projects, as well as any and all funds not obligated for Last Mile and Middle Mile projects; and up to $5,000,000 is available for grants for Rural Library Broadband and Technical Assistance projects.

d. Reserve

Up to $95,000,000 is available for a reserve.

3. Repooling

RUS retains the discretion to divert funds from one category of projects to another.

4. Award Period

All awards must be made and funding obligated by September 30, 2010. While the completion time will vary depending on the complexity of the project, award recipients must substantially complete projects supported by this program within two years, and projects must be fully completed within three years of the date of issuance of the award.

5. Type of Funding Instrument

The funding instruments will be grants, loans, and loan/grant combinations.

IV. Eligibility Information

A. General

Applicants must satisfy the following eligibility requirements to qualify for funding.

[19] This amount may be increased to include unobligated funds from the First Round NOFA.

B. Eligible Entities

1. Last Mile and Middle Mile Projects

The following entities are eligible to apply for assistance:

a. States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof;

b. A territory or possession of the United States;

c. An Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b));

d. A native Hawaiian organization;

e. A non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association;

f. Other non-profit entities;

g. For-profit corporations;

h. Limited liability companies; and

i. Cooperative or mutual organizations.

2. Satellite Projects

a. A satellite Internet Service Provider (ISP);

b. A reseller of satellite ISP service;

c. A distributor or dealer of satellite ISP service; and

d. A consortium of a, b, or c above.

C. Application Eligibility Factors for Last Mile and Middle Mile Projects

The following eligibility factors establish basic requirements that all Applicants must comply with in order to be eligible for an award. Applicants failing to comply with these requirements will not have their applications considered.

1. Fully Completed Application

Applicants must submit a complete application and provide all supporting documentation required for the application.

2. Timely Completion

A project is eligible only if the application demonstrates that the project can be "substantially completed" within two years of the date of issuance of the award and fully complete within three years of the date of the award. A project is considered "substantially complete" when an Awardee has received 67 percent of its award funds.

3. Technical Feasibility

Only projects that RUS determines to be technically feasible will be eligible for an award under this NOFA. Applicants will be required to submit a system design, network diagram and project timeline, certified by a professional engineer, for any application requesting funds over $1 million.

4. Nondiscrimination and Interconnection [20]

All Applicants must commit to the following Nondiscrimination and Interconnection Obligations: (a) Adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05–151, adopted August 5, 2005) or any subsequent ruling or statement; (b) not favor any lawful Internet applications and content over others; (c) display any network management policies in a prominent location on the service provider's Web page and provide notice to customers of changes to these policies (Awardees must describe any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage illegal or harmful content); (d) connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and (e) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic. Applicants must disclose their proposed interconnection, nondiscrimination and network management practices with the application.

All these requirements shall be subject to the needs of law enforcement and reasonable network management. Thus, Awardees may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching (including content delivery networks) and application-neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content, and other harmful activities.

In addition to providing the required connection to the Internet, Awardees may offer managed services, such as telemedicine, public safety communications, distance learning, and virtual private networks that use private network connections for enhanced quality of service, rather than traversing the public Internet. In evaluating the reasonableness of network management techniques, RUS will be guided by any applicable rules or findings established by the FCC, whether by rulemaking or adjudication.

[20] Nothing herein shall be construed to affect the jurisdiction of the Federal Communications Commission with respect to such matters.

An Awardee may satisfy the requirement for interconnection by negotiating in good faith with all parties making bona fide requests. The Awardee and requesting party may negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection. If the Awardee and requesting party cannot reach agreement, they may voluntarily seek an interpretation by the FCC of any FCC rules implicated in the dispute. If an agreement cannot be reached within 90 days, the party requesting interconnection may notify RUS in writing of the failure to reach satisfactory terms with the Awardee. The 90-day limit is to encourage the parties to resolve differences through negotiation.

With respect to non-discrimination, those who believe an Awardee has failed to meet the non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in the dispute. If the FCC chooses to take no action, those seeking recourse may notify RUS in writing about the alleged failure to adhere to commitments of the award.

Entities that successfully reach an agreement to interconnect with a system funded under BIP may not use that interconnection agreement to provide services that duplicate services provided by projects funded by outstanding telecommunications loans made under the RE Act. Further, interconnection may not result in a BIP-funded facility being used for ineligible purposes under the Recovery Act.

These conditions apply to the Awardee and will remain in effect for the life of the Awardee's federally funded facilities and equipment used in the project. These conditions will not apply to any existing network arrangements or to non-Awardees using the network. Note, however, that the Awardee may negotiate contractual covenants with other broadband service providers engaged to deploy or operate the network facilities and pass these conditions through to such providers. Awardees that fail to accept or comply with the terms listed above may be considered in default of their loan or grant agreements. RUS may exercise all available remedies to cure the default.

5. Service Areas

a. Eligible Service Areas for Last Mile and Middle Mile Projects

Applications for Last Mile projects must predominantly provide broadband service directly to the premises or to end users in a proposed funded service area(s) that is/are 75 percent or more rural, within which not more than 50 percent of the premises in the rural areas have High Speed Access.

Applications for Middle Mile projects must provide interoffice transport, backhaul, internet connectivity or special access to interconnection points. At least 75 percent of the interconnection points must be in rural areas with no more than 50 percent of the premises having High Speed Access. The communities in which the interconnection points terminate shall be used to determine the percentage of High Speed Access. For those interconnection points which do not terminate in any recognizable community, the nearest Census Designated Place shall be used.

b. Ineligible Service Areas for Last Mile and Middle Mile Projects

i. Overlapping Service Areas

RUS will not fund more than one project to serve any given geographic area. If more than one application would serve any overlapping geographic area, the application with the highest score will be funded; other applications for the same area will be rejected in their entirety unless RUS, in its discretion, determines that the extent of the overlap is *de minimis,* or less than 25 percent of each application's entire proposed funded service area. Notwithstanding, RUS, in its discretion, may readjust the proposed funded service area in any offer of funding to eliminate overlapping areas between one or more applications in order to promote rural economic development. The Agency's proposal for service area readjustment may include a requirement that the Applicant will not compete in the excluded service area.

For the purposes of the Agency's determination of overlap, funding categories will not be subject to overlap analysis. For example, Last Mile projects shall not be considered to overlap with Middle Mile projects.

ii. Incumbent Service Areas

For all applications, the existing service area of RUS borrowers in which they provide broadband service shall not be eligible. These areas can be found at *http://www.broadbandUSA.gov.* In addition, the service areas of Awardees under the first round BIP/BTOP NOFA shall also be ineligible for funding.

6. Fully Funded

A project is eligible only if, after approval of the award, all project costs can be fully funded. To demonstrate this, Applicants must include with the application evidence of all funding,

other than the RUS award, necessary to support the project, such as bank account statements or firm letters of commitment from equity participants or other lenders documenting the timely availability of funds. Equity partners that are not specifically identified by name will not be considered in the financial analysis of the application.

7. Financial Feasibility and Sustainability

Only projects that RUS determines to be financially feasible, and/or sustainable will be eligible for an award under this NOFA. A project is financially feasible when the Applicant is able to generate sufficient revenues to cover its expenses, has sufficient cash flow to service its debts and obligations as they come due, and meet the minimum TIER requirement of one and generate a minimum current ratio of one by the end of the forecast period, as determined by RUS. In addition, the project must also demonstrate a positive cash balance for each year of the forecast period.

8. Leveraging of Recovery Act Funds

In order to leverage funds to provide Federal assistance cost-effectively to the maximum number of eligible projects so as to ensure that as many households as possible that do not have sufficient access to high speed broadband will receive service, RUS has determined to limit Federal assistance under this NOFA for Last Mile projects to $10,000 per premises passed in the proposed funded service area, unless a waiver is requested from the Administrator. The Administrator may waive this funding limitation if he determines that the application provides assistance to a significant number of critical community facilities, supports a recognized rural regional development plan, supports public safety projects, enhances broadband service to rural libraries, or supports persistent poverty counties or chronically unserved areas such as Indian country. If the waiver request is denied, any award may be made contingent on improving cost effectiveness, or the application may be placed in the second review process and the Applicant will have an opportunity to revise its proposal. To calculate the cost per premises passed, the Applicant shall divide the total award requested in the application by the total number of premises passed with facilities funded by an award.

9. Service Requirements

Projects must provide broadband service proposed in the application for the composite economic life of the facilities, as approved by RUS, or as provided in the Award Documents for 100 percent grants, starting from the date of project completion.

D. Eligible Cost Purposes

1. General

Award funds must be used only to pay for eligible costs. Eligible costs must be consistent with the cost principles identified in the applicable OMB circulars.[21] In addition, costs must be reasonable, allocable, necessary to the project, and comply with the Recovery Act requirements. Any application that proposes to use any portion of the award funds for any ineligible cost will be rejected.

2. Eligible and Ineligible Costs

a. Last Mile and Middle Mile Projects

i. Eligible Infrastructure Award Expenses

Award funds may be used to pay for the following expenses:

AA. To fund the construction or improvement of all facilities required to provide broadband service, including facilities required for providing other services over the same facilities, and including equipment required to comply with CALEA;

BB. To fund the cost of leasing facilities required to provide broadband service if such lease qualifies as a capital lease under GAAP. Award funds may be used to fund the cost of a capital lease for no longer than the first three years after the date of the Award Documents; and

CC. To fund reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses may be reimbursed if they are incurred after the publication date of this NOFA.

ii. Ineligible Infrastructure Award Expenses

Award funds may not be used for any of the following purposes:

AA. To fund operating expenses of the Applicant;

BB. To fund costs incurred prior to the date on which the application is submitted, with the exception of eligible pre-application expenses;

CC. To fund an acquisition, including the acquisition of the stock of an affiliate, or the purchase or acquisition of any facilities or equipment of an affiliate. Due to the competitive nature of the application process, if affiliated transactions are contemplated in the application, approval of the application does not constitute approval to enter into affiliated transactions;

DD. To fund the purchase or lease of any vehicle other than those used primarily in construction or system improvements;

EE. To fund broadband facilities leased under the terms of an operating lease;

FF. To fund merger or consolidation of entities;

GG. To fund costs incurred in acquiring spectrum as part of an FCC auction or in a secondary market acquisition; and

HH. To fund the costs of a satellite launch, construction, purchase, or leasing of transponder space.

b. Eligible Satellite Award Expenses

An eligible Satellite project award may be used by the Applicant:

i. To fund customer-premises equipment up to $750 per subscriber (inclusive of the CPE, installation, and activation fees);

ii. To reduce the monthly service cost; and/or

iii. To fund the construction of terrestrial ground facilities, including equipment required to comply with CALEA.

c. Eligible Rural Library Broadband Grants Expenses

Award funds may be used by the Applicant to pay for the costs of the last mile connection to the rural library.

d. Eligible Technical Assistance Grants Expenses

Award funds may be used by the Applicant to fund the provision of technical assistance for the development of a regional broadband plan. Such technical assistance must include both planning and economic expertise.

[21] For example, there is a set of Federal principles for determining eligible or allowable costs. Allowability of costs will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by state, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31. *See* 7 CFR 3015, 3016, or 3019 (governing the Department of Agriculture's implementation of OMB requirements).

V. Application and Submission Information

A. Request for Application Package

Complete application packages, including required Federal forms and instructions, will be available at *http://www.broadbandusa.*gov. Additional information can be found in the *Application Guidelines* at *http://www.broadbandusa.gov.* This Web site will be updated regularly.

Applicants that are eligible for both BIP and BTOP have the option to apply to either agency for funding for the same project. However, applicants should apply to only one agency for a given project. RUS strongly recommends that applications for Middle Mile projects that are current RUS loan or grant recipients and applications with Last Mile projects that propose funding service areas that are 75 percent or more rural should apply to BIP for funding. RUS strongly recommends that applicants with Middle Mile projects that are not current RUS loan or grant recipients or applicants with Last Mile projects that propose service areas that are less than 75 percent rural should apply to BTOP for funding. This recommendation is necessary to improve the efficiency of both BIP and BTOP and to leverage the core expertise of the agencies. The RUS and NTIA will coordinate to identify potential service area overlaps, and will resolve such conflicts in the manner that best satisfies the statutory objectives of both programs.

B. Registration

1. DUNS Number

All Applicants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com.*

2. Central Contractor Registration (CCR)

All Applicants must provide a CCR (CAGE) number evidencing current registration in the CCR database. If the Applicant does not have a current CCR (CAGE) number, the Applicant must register in the CCR system available at *http://www.ccr.gov/StartRegistration.aspx. Applicants are encouraged to register early due to potential delays in registration.*

C. Contents of the Application

1. Requirements for Single Applications from Same Entity for Last Mile and Middle Mile Projects

A complete application will include the following:

a. The identity of the Applicant and general Applicant and project information including:

i. A description of the project that will be made public consistent with the requirements of the Recovery Act; and

ii. The estimated dollar amount of the funding request;

b. An executive summary of the project as detailed in the application;

c. A description of the proposed funded service area including the number of premises passed including the number of critical community facilities, and public safety entities to be passed and/or involved in the project;

d. Subscriber projections including the number of subscribers for broadband, video and voice services and any other service that may be offered;

e. The number of jobs the project is expected to create or save;

f. A map, as furnished on *http://www.broadbandUSA.gov* of the proposed funded service areas indentifying the unserved areas and the areas without High Speed Access;

g. The names of the communities, census designated places or other areas, including tribal lands, within the proposed funded service area; information as to whether the communities and areas identified above are rural or non-rural; the methodology for making the above classifications; and for Middle Mile projects, identification of the locations of the interconnection points.

h. A description of the proposed service offerings, and the associated pricing plan, that the applicant proposes to offer, as well as the advertised prices of service offerings by competitors in the same area and; an explanation of why the proposed service offerings are affordable;

i. A description of the applicant's nondiscrimination, interconnection, and network management plans;

j. A system design which includes a description of the proposed technology used to deliver the broadband service demonstrating that all premises in the proposed funded service area will be offered broadband service, a network diagram, a timeline including key milestones for implementation of the project, and a construction schedule all of which must be certified by a professional engineer who is certified in at least one of the states where there is project construction, if the funding request exceeds $1,000,000, unless the Administrator determines that such certification is not possible; an estimate of the cost of the project per household; a depreciation schedule for the facilities proposed for funding, a description of the necessary work force needed to build and operate the system, whether the applicant is seeking a waiver of the Buy American provision; and whether the project allows more than one provider to serve end users; a list of all required licenses and regulatory approvals needed for the proposed project; and how much the applicant will rely on contractors or vendors to deploy the network facilities;

k. Resumes of key management personnel, a description of the organization's readiness to manage a broadband services network, and an organizational chart showing any parent organizations and/or subsidiaries and affiliates;

l. A legal opinion (as set forth in the application) that: (1) Addresses the applicant's ability to enter into the award documents; (2) describes all pending litigation matters; and (3) addresses the applicant's ability to pledge security as required by the award documents;

m. Evidence of other Recovery Act awards, or collaboration with other Recovery Act awardees;

n. Summary and itemized budgets of the infrastructure costs of the proposed project, including if applicable, the ratio of loans to grants, and any other source of outside funding, especially any other Recovery Act funds under other Federal programs, and an explanation of the cost per premises passed;

o. A detailed description of working capital requirements and the source of these funds;

p. Historical financial statements, Certified Public Accountant (CPA) audits if applicable, for the previous two calendar years;

q. Pro Forma financial analysis, prepared in conformity with U.S. GAAP and the Agency's guidance on grants accounting, found at *http://www.usda.gov/RUS/pasd/auditreg.htm,* related to the sustainability of the project, including subscriber estimates and other proposed service offerings in addition to broadband Internet access; annual financial projections including balance sheets, income statements, and cash flow statements and supporting assumptions for a five-year forecast period as applicable; and a list of committed sources of capital funding;

r. Attachments required in the application;

s. A self-scoring sheet, analyzing the objective scoring criteria set forth in this NOFA;

t. The pricing package being offered to critical community facilities, or socially and economically disadvantaged small business concern (SDB) as defined under section 8(a) of the Small Business Administration, if any;

u. A list of all the Applicant's outstanding and contingent obligations, including copies of existing notes, loan and security agreements, and guarantees;

v. If an SDB, evidence that the applicant is an SDB;

w. A completed Environmental Questionnaire, other documentation requests, and required environmental authorizations and permits, including those required by the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*) (NHPA), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1534 *et seq.*) (ESA) as applicable;

x. A description of measurable service metrics and target service level objectives (SLOs) (*e.g.,* the speed with which new service will be established, service availability, and response time for reports of system failure at a residence) that will be provided to the customer, and a description of the approach and methodology for monitoring ongoing service delivery and service quality for the services being employed;

y. Any waiver requests for projects proposing more than the $10,000 per premises funding limitation, or for applications requesting more than 75% grant; and

z. Certification from the applicant that agreements with or obligations to investors do not breach the obligations to the government under the draft Award Documents.

2. Requirements for Multiple Applications From Same Entity for Last Mile and Middle Mile Projects

a. All of the requirements specified in paragraph (1) of this section, unless specifically provided for in paragraph (b).

b. For existing companies, consolidated pro forma financial statements that include a baseline financial statement for existing operations, which start with the prior two years of the company's financial position, for a five year projected period, with an additional set of financial statements that layer each of the operations for the addition applications into the baseline statements. In addition, a reconciliation schedule supporting the consolidation of the individual pro forma financial statements for revenue, capital spending, operating expenses, BIP funding and external funding for the company. For Start-up operations, consolidated pro forma financial statements that include the financial statements of the operation included in the application as the baseline financial statements, with an additional set of financial statements that layer each of the operations for the additional applications into the baseline statements. In addition, a reconciliation schedule supporting the consolidation of the individual pro forma financial statements for revenue, capital spending, operating expenses, BIP funding and external funding for the company.

c. A commitment from all investors indicating their willingness to commit funds even if all applications are not funded.

3. Requirements for Applications for Satellite Projects

A complete application will include the following:

a. The identity of the Applicant and general Applicant and project information including:

i. A description of the project that will be made public consistent with the requirements of the Recovery Act;

ii. The Congressional Districts affected by the project;

b. An executive summary of the project;

c. A description of the Applicant's ability to cover an entire region;

d. A description of the proposed service offerings and associated pricing plans, which must include a reduction of at least 25 percent of the Applicant's service rates in effect as of December 1, 2009 for at least one year, the provision of no cost CPEs (including no installation, activation, or other hidden fees), and how its rates will be affordable to low-income households. A copy of the service rate plans in effect on December 1, 2009, must also be included;

e. Resumes of key management personnel, a description of the organization's readiness to manage a broadband services network, and an organizational chart showing any parent organizations and/or subsidiaries and affiliates;

f. A legal opinion (as set forth in the application) that: (1) Addresses the Applicant's ability to enter into the award documents; (2) describes all pending litigation matters; and (3) addresses the Applicant's ability to pledge security as required by the award documents;

g. An itemized budget of the costs of the proposed project;

h. Pro Forma financial analysis related to the sustainability of the project, including subscriber estimates and proposed service offerings in addition to broadband Internet access; annual financial projections including balance sheets, income statements, and cash flow statements and supporting assumptions for a five-year forecast period as applicable; and a list of committed sources of capital funding;

i. Historical financial statements, Certified Public Accountant (CPA) audits if applicable, for the previous two calendar years;

j. Certifications required in the application;

k. The pricing package being offered to critical community facilities, if any;

l. A list of all its outstanding and contingent obligations, including copies of existing notes, loan and security agreements, and guarantees;

m. A detailed description of working capital requirements and the source of these funds;

n. A completed Environmental Questionnaire, other documentation requests, and required environmental authorizations and permits, including those required by the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*) (NHPA), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1534 *et seq.*) (ESA) as applicable; and

o. A description of measurable service metrics and target service level objectives (SLOs) (*e.g.,* the speed with which new service will be established, service availability, and response time for reports of system failure at a residence) that will be provided to the customer, and a description of the approach and methodology for monitoring ongoing service delivery and service quality for the services being employed.

D. Material Representations

The application, including certifications, and all forms submitted as part of the application will be treated as a material representation of fact upon which RUS will rely in awarding grants.

VI. Application Evaluation Criteria

A. Evaluation Criteria for Last Mile and Middle Mile Projects

Each application will be scored against the following objective criteria, and not against other applications.

1. Proportion of Rural Residents Served in Unserved Areas (10 Points)

Points will be awarded for serving rural residents located in unserved areas. For every 10 percent of unserved households compared to the total households to be served that will receive broadband service, 1 point will be awarded up to a maximum of 10 points. For Middle Mile projects, this will be based on the location of the interconnection points.

2. Rural Area Targeting (10 Points)

Points will be awarded for exceeding the 75 percent rural area service requirement. For every 5 percent increase in the total proposed funded service area that is above 75 percent rural, 2 points will be awarded up to a maximum of 10 points. For Middle Mile projects, this will be based on the location of the interconnection points.

3. Distance From Non-Rural Areas (5 Points)

Up to 5 points will be awarded for proposed funded service areas that are at least 10 miles from the closest non-rural area. For each additional 10 miles that at least one proposed funded service area is located away from the closest non-rural area, 1 additional point will be awarded up to a total of 5 points. For Applicants with multiple service areas, this calculation will be based on the service area closest to the non-rural area. For Middle Mile projects, this will be based on the location of the interconnection points.

4. Title II Borrowers (8 Points)

Eight points will be awarded to applications which are submitted by entities which have borrowed under Title II of the RE Act.

5. Other Recovery Act Awards (5 Points)

Points will be awarded for cooperation with other Recovery Act programs, where collaboration would lead to greater project efficiencies. In each case, the Applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful. Five points will be awarded for any cooperation with a Recovery Act award.

6. Performance of the Offered Service (10 Points)

a. Last Mile Projects

For wireline projects that are constructed to deliver a minimum of 5 Mbps service to the premises (upstream and downstream combined), 5 points will be awarded. For fixed wireline projects that are constructed to deliver a minimum of 20 Mbps service to the premises (upstream and downstream combined), 10 points will be awarded. For wireless projects that are constructed to deliver a minimum of 3 Mbps service to the end user (upstream and downstream combined), 8 points will be awarded. For mobile wireless projects that are constructed to deliver a minimum of 3 Mbps service to the end user (upstream and downstream combined), 10 points will be awarded. For combination systems, scoring will be based on the predominant technology used.

b. Middle Mile Projects

For Middle Mile projects that are constructed to deliver 100 Mbps service to all interconnection points in their network, 10 points will be awarded.

7. Service to Critical Community Facilities and SDBs (6 Points)

For applications that are proposing to offer discounted rate packages to all critical community facilities in the proposed funded service area(s) that are at least 25 percent lower than the proposed base rate packages for at least 3 years, 4 points will be awarded. For applications that are proposing to offer discounted rate packages at least 25 percent lower than the proposed base rate packages to SDBs in the proposed funded service area for at least three years, 2 points will be awarded.

8. Applicant's Organizational Capability (10 Points)

Up to 10 points will be awarded based on the strength of the project's management team. RUS will evaluate past performance and accomplishments and award points accordingly. Details of these requirements will be in the Application Guide.

9. Socially and Economically Disadvantaged Small Business Concern (3 Points)

Three points will be awarded to Applicant SDBs.

10. Leverage of Outside Resources (10 Points)

Up to 10 points will be awarded based on the amount of outside resources contributed to the total financing provided under BIP:

a. 10 points if this ratio is 100 percent.[22]

b. 7 points if this ratio is between 75 percent and 99 percent.

c. 5 points if this ratio is between 50 percent and 74 percent.

d. 3 points if this ratio is between 25 percent and 49 percent.

e. 0 points if the ratio is less than 25 percent.

Outside resources are limited to new investments that are proposed to support the project and do not include any existing assets that the Applicant already owns or has rights to or any revenues generating from the operations.

11. Extent of Grant Funding (15 Points)

Up to 15 points will be awarded based on the amount of grants funds requested in relation to the total amount of the award requested:

a. 0 points if requesting a grant greater than 70 percent.

b. 5 point if requesting a grant between 51 and 70 percent.

c. 10 points if requesting a grant between 16 and 50 percent.

d. 15 points if requesting a grant between 0 and 15 percent.

12. Cost Effectiveness (8 Points)

For Last Mile projects, up to 8 points will be awarded for projects that promote cost effectiveness of Federal assistance, based on cost per premises passed. To calculate the cost per premises passed, the Applicant shall divide the total award requested in the application by the total number of premises passed.

a. 2 points if cost per premises passed is less than $8,000.

b. 4 points if cost per premises passed is less than $7,000.

c. 6 points if cost per premises passed is less than $6,000.

d. 8 points if cost per premises passed is less than $5,000.

B. Administrator's Bonus Points (10 points)

The Administrator, at his discretion, can award up to a maximum of 10 bonus points to applications that provide significant assistance to critical community facilities (including libraries), promote rural economic

[22] This ratio is calculated by the amount of new equity that the applicant proposes to support the project compared to the requested amount of the award. For example, if the applicant proposes $1 million in outside equity and requests $1 million in assistance, the ratio is $1 million/$1 million, or 100 percent. If the applicant proposes $500,000 in outside equity and requests $1 million in assistance, the ratio is $500,000/$1 million, or 50 percent. This scoring criterion is intended to encourage a public/private partnership.

development, support persistent poverty counties, serve chronically underserved areas, demonstrate cost effectiveness, offer low-cost service options, and/or provide for geographic diversity. However, the Administrator's points may not raise an Applicant's score to more than 100 points.

VII. Waiver for Grants Capped at 75% of Award for Last Mile and Middle Mile Projects

A. Waiver Request

All Applicants may request a grant that does not exceed 75 percent of eligible projects. An Applicant may apply for a loan for any eligible project costs not covered by a grant under this NOFA. Applicants requesting more than a 75 percent grant component must request a waiver from the Administrator, demonstrating their need for additional grant funding, as well as the factors set forth in paragraph B of this section. If the waiver request is denied, the application may be adjusted by the Agency if an award is offered or may be placed in the second review process and the Applicant will have an opportunity to revise its funding request. The Administrator may award grants up to 100 percent.

B. Administrator's Waiver for Grants above 75% Waiver Considerations

The Administrator may grant a request for waiver for a larger grant component based on the following factors:

1. Distance From Non-Rural Areas

The Administrator will consider the distance from the focus of the proposed funded service areas from the closest non-rural area.

2. Rural Area Targeting

The Administrator will consider the percentage of the proposed funded service area that is above the 75 percent requirement.

3. Density

The Administrator will consider the density of the proposed funded service area, calculated from the population and area totals of all proposed funded service areas taken from the mapping tool.

4. Median Household Income

The Administrator will consider the median household income of the proposed funded service area, comparing the county median household income to that of the State median income level. For applications serving multiple counties, the Administrator will weigh the percentages of all counties.

5. Unemployment

The Administrator will consider the state unemployment level compared to the National Unemployment Level in the state of the proposed funded service area. For applications serving multiple states, the Administrator will weigh the percentages in each State.

C. Notice of Proposed Funded Service Areas for Last Mile and Middle Mile Projects

RUS will post a Public Notice of the proposed funded service areas of each Last Mile application, and the communities in which the interconnection points terminate for Middle Mile applications, as outlined in Section IV.C.5.a(i), at *http://www.broadbandusa.gov* for a 30 day period. The Public Notice will provide existing service providers an opportunity to submit to the agencies information regarding their service offerings. The information submitted by an existing service provider will be treated as proprietary and confidential to the extent permitted under applicable law.

D. Evaluation and Processing Procedures

1. Last Mile and Middle Mile Projects—First Review

Applications for Last Mile and Middle Mile projects will be evaluated using the criteria stated in Section VII.A of this NOFA. Public comments received with respect to an application's proposed funded service area will be reviewed and evaluated. Eligibility of proposed funded service areas may be verified by Agency field staff. RUS reserves the right to ask Applicants for clarifying information and additional verification of assertions in the application. For those applications that RUS has determined eligible for funding, RUS will send award documents. Applications meeting the guidelines set forth in paragraph D.2 below may be requested to provide additional information to the Agency for a second review.

2. Last Mile and Middle Mile Projects—Second Review

Subject to available funding, Applicants with applications that have not been approved under the first review, may be requested to provide additional information if the application: (a) Can be revised, reviewed, and awarded funds before the expiration of Recovery Act funding, (b) contains specific and limited adjustments; and (c) promotes significant economic rural development, as determined by the Administrator.

Such Applicants will have no more than 15 days within which to provide the additional information. Applicants will not be permitted to redo the application, but only provide the supplemental information the Agency has requested. The application with the additional information will be reviewed under the same standard as the first review. Any application that is processed under this procedure will be funded only after all properly submitted applications have been funded and will be subject to all applicable requirements under this NOFA. For those applications which the Agency has decided to fund, award documents will be sent.

3. Transfer of Applications

For applications that NTIA determines it will not fund, but that may be consistent with RUS' BIP requirements and priorities, NTIA will transfer to BIP for consideration of funding. Notwithstanding, NTIA makes no representation that the application is eligible under the requirements of BIP. Any decision on the funding of such transfers shall ultimately be in the sole discretion of RUS. RUS will handle such applications, if timely received from NTIA, under its Second Review process outlined above.

4. Satellite Projects

The United States will be divided into eight service area regions eligible for Satellite applications. Applicants must propose serving only unserved rural premises in any of the eight regions listed in Section IX.T in this NOFA; provided, however, unserved rural premises in proposed funded service areas of Awardees under the First Round NOFA and this NOFA shall not be eligible for services from satellite projects. Applicants may submit an application for more than one region; however, each region in the application must be broken out, so that the Agency can analyze the proposal for each region individually. Applicants are encouraged to serve all unserved rural premises throughout the region on a first-come, first-served basis until the award funds are expended.

Applications will be evaluated using the criteria set forth herein and in the Request for Proposals. Procedures for selection of Awardees to provide satellite service will be set forth in the Request for Proposals to be published at a later date. The deadline for satellite application submissions will be provided in that Request.

5. Technical Assistance Grants

Applications for Technical Assistance grants will be evaluated on the extent to which the Awardee of the First Round NOFA or Applicants under this NOFA has considered developing a USDA-approved regional planning organization(s), the strength and scope of the regional broadband development strategy, and the proposed broadband service to be brought to rural areas that remain critically unserved. The proposal should provide various strategies and the anticipated costs of each. Applicants may request up to $200,000. RUS, in its discretion, may decrease the requested award amount based on its evaluation of the application and the level of funding available for this program.

6. Regional Library Broadband Grants

Applications for Regional Library Broadband grants will be accepted from Awardees of the First Round NOFA or Applicants under this NOFA to cover the costs associated with connecting any rural library in their proposed funded service area, that is either being constructed, or to be constructed, with funding from USDA's Community Facilities Program of the Rural Housing Service. Such costs need not have been addressed in the original application submitted under the First Round NOFA or Second Round NOFA. Applications need only address the rural libraries involved, the cost of providing a broadband connection and the date by which such service will be provided. RUS, in its discretion, may increase or decrease the requested award amount based on its evaluation of the reasonableness of the costs and the level of funding available for this program.

VIII. Award Administration Information

A. Award Notices

Successful Applicants will receive award documents from RUS following award notification. Applicants may view sample award documents at *http://www.broadbandusa.gov.*

B. Administrative Requirements

1. Pre-award conditions

No funds will be disbursed under this program until all other sources of funding have been obtained and any other pre-award conditions have been met. Failure to obtain one or more sources of funding committed to in the Application or to fulfill any other pre-award condition within 30 days of award announcement will result in withdrawal of the award.

2. Failure To Comply With Award Requirements

If an Awardee fails to comply with the terms of the award as specified in the award documents, RUS may exercise rights and remedies.

3. Advance Procedures

RUS loan and grant advances are made at the request of the Awardee according to the procedures stipulated in the award documents. Loan/grant combination funds are advanced in proportion to the amount of the award made in the form of loans and grants.

4. Contracting

Contracting is to be done at the Awardee's discretion, using private contracts or RUS' form contracts. However, equal employment opportunity, civil rights, and the requirements of this NOFA must still be met.

5. Accounting, Monitoring, and Reporting Requirements

Awardees must follow RUS' accounting, monitoring, and reporting requirements. These requirements, which are specified in the award documents, include, but are not limited to, the following:

a. Awardees must adopt a GAAP system of accounts acceptable to RUS, and which complies with RUS Accounting Requirements, as defined herein;

b. Awardees must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting, and a management letter in accordance with the requirements of 7 CFR part 1773. The CPA conducting the annual audit is selected by the Awardee and must be approved by RUS as set forth in 7 CFR 1773.4;

c. Awardees must submit to RUS the information as specified in Section VIII.D.2 of this NOFA;

d. Awardees must comply with all reasonable RUS requests to support ongoing monitoring efforts. The Awardee shall afford RUS, through its representatives and representatives of the USDA Office of Inspector General reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the broadband system, and any other property encumbered by the mortgage or security agreement, and any or all books, records, accounts, invoices, contracts, leases, payrolls, timesheets, cancelled checks, statements, and other documents, electronic or paper of every kind belonging to or in the possession of the Awardee or in any way pertaining to its property or business, including its subsidiaries, if any, and to make copies or extracts therefrom.

6. Assistance Instruments

a. Terms and conditions of grants or loan/grant combinations are set forth in the non-negotiable standard grant or loan/grant contract, note, and/or mortgage found at *http://www.broadbandusa.gov.*

b. Terms and conditions of loans are set forth in the non-negotiable standard loan contract, note, and/or mortgage found at *http://www.broadbandusa.gov.*

c. Loan and grant documents appropriate to the project must be executed prior to any advance of funds.

d. Sample loan documents and grant agreements can be found at *http://www.broadbandusa.gov.*

7. Loan and Loan/Grant Terms and Conditions

The following terms shall apply to the loans, as well as other terms that are specified in the loan documents:

a. Interest Rate

Loans shall bear interest at a rate equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity. The applicable interest rate will be set at the time of each advance.

b. Repayment Period

Unless the Applicant requests a shorter repayment period, broadband loans must be repaid with interest within a period that, rounded to the nearest whole year, is equal to the expected Composite Economic Life of the assets to be financed, as determined by RUS based upon acceptable depreciation rates.

c. Amortization Period

Interest begins accruing on the date of each loan advance and interest payments are due monthly. After one year from the first advance, monthly principal payments will be established in an amount that amortizes the outstanding balance over the remaining term of the loan.

d. Fidelity Bonding

Applicants must agree to obtain a fidelity bond for 15 percent of the award amount. The fidelity bond must be obtained as a condition of award closing. RUS may reduce the percentage required if it determines that 15 percent is not commensurate with the risk involved.

e. Security

The portion of the award must be adequately secured, as determined by RUS.

i. The loan and loan/grant combination must be secured by the assets purchased with the loan or loan/grant funds, as well as all other assets of the Applicant and any other co-signer of the loan documents that are available to be pledged to RUS.

ii. RUS must be given an exclusive first lien, in form and substance satisfactory to RUS, on all of the assets purchased with the loan or loan/grant funds. RUS may share its first lien position with one or more lenders on a *pari passu* basis if security arrangements are acceptable to RUS.

iii. Unless otherwise approved by RUS, all property purchased with award funds must be owned by the Awardee.

iv. In the case of awards that include financing of facilities that do not constitute self-contained operating systems, the Applicant shall furnish assurances, satisfactory to RUS, that continuous and efficient service at the broadband funding speed will be rendered.

C. Award Terms and Conditions

1. Scope

Awardees, including all contractors and subcontractors, are required to comply with the obligations set forth in the Recovery Act and the requirements established herein. Any obligation that applies to the Awardee shall extend for the life of the awarded-funded facilities.

2. Sale or Lease of Project Assets

The sale or lease of any portion of the award-funded broadband facilities shall be governed by the applicable Award Document and the Department's grant regulations at 7 CFR 3015, 3016, and 3019. Unless otherwise permitted in the Award Document, project assets cannot be sold while the loan is outstanding. Terms under which grant assets can be sold are outlined in the Department's grant regulations cited above.

3. Certifications

a. The Applicant must certify that he or she is authorized to submit the application on behalf of the eligible entity(ies) listed on the application; that the Applicant has examined the application, that all of the information in the application, including certifications and forms submitted, all of which are part of the application, are material representations of fact and true and correct to the best of his or her knowledge; that the entity(ies) that is requesting funding pursuant to the application and any subawardees will comply with the terms, conditions, purposes, and Federal requirements of the program; that no kickbacks were paid to anyone; and that a false, fictitious, or fradulent statement or claim on this application is grounds for denial or termination of an award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and civil violations of the False Claims Act (31 U.S.C. 3729 *et seq.*);

b. The Applicant certifies that the entity(ies) he or she represents have and will comply with all applicable Federal, state, and local laws, rules, regulations, ordinances, codes, orders, and programmatic rules and requirements relating to the project.[23] The Applicant acknowledges that failure to do so may result in rejection or deobligation of the award. The Applicant acknowledges that failure to comply with all Federal and program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities;

D. Reporting Requirements

1. General Recovery Act Requirements

a. OMB Reporting Requirements Implementing the Recovery Act

Any grant, loan, or loan/grant combination awarded under this NOFA shall be subject to the applicable statutes and regulations regarding reporting on Recovery Act funds.[24] If Recovery Act funds are combined with other funds to fund or complete projects and activities, Recovery Act funds must be accounted for separately from other funds and reported to RUS or any Federal web site established for Recovery Act reporting purposes. Moreover, recipients of funds under this NOFA must also comply with the accounting requirements as established or referred to in this NOFA.

b. Required Data Elements

The Awardee and each contractor engaged by the Awardee must submit the following information to the relevant Agency:

i. The total amount of Recovery Act funds received;

ii. The amount of Recovery Act funds received that were expended or obligated to projects or activities;

iii. A detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including (1) the name of the project or activity; (2) a description of the project or activity; (3) an evaluation of the completion status of the project or activity; (4) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (5) for infrastructure investments made by state and local governments, the purpose, total cost, and rationale of the Agency for funding the infrastructure investment with Recovery Act funds, and name of the person to contact at the Agency if there are concerns with the infrastructure investment; and

iv. Detailed information on any subcontracts or subgrants awarded by the Awardee to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, 120 Stat. 1186 (to be codified at 31 U.S.C. 6101 note), allowing aggregate reporting on awards below $25,000 or to individuals.[25]

Awardees that must report information according to paragraph b(iv) of this section (re: subcontracts or subgrants) must register with the CCR database (*http://www.ccr.gov/*) or complete other registration requirements as determined by the Director of OMB.

c. Reporting Deadlines

Recovery Act reports are due to the agencies 10 days after the quarter in which the award was issued ends and, unless otherwise noted, each quarter thereafter in which the Awardee receives financial assistance. The final report should summarize the Awardee's quarterly filings and state whether the project's goals have been satisfied. Pursuant to OMB Guidelines, reports should be submitted electronically to *http://www.federalreporting.gov.* If the Awardee fails to submit an acceptable quarterly report or audited financial statement within the timeframe designated in the grant or loan award, the agencies may suspend further payments until the Awardee complies with the reporting requirements. Additional information regarding reporting requirements will be specified at the time the award is issued.

2. BIP-Specific Reporting Requirements

In addition to the general Recovery Act reporting requirements, BIP Awardees shall also report on the information requested below:

[23] *See* Recovery Act sec. 6001(e)(4), 123 Stat. at 514.

[24] *See, e.g.,* 2 CFR part 176; OMB, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449 (Apr. 23, 2009); Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB M–09–21 June 22, 2009); and Updated Guidance on the American Recovery and Reinvestment Act of 2009 (OMB M–10–08 Dec. 18, 2009).

[25] Recovery Act sec. 1512(c), 123 Stat. at 287.

a. Awardees must submit to RUS 30 calendar days after the end of each calendar year quarter, balance sheets, income statements, statements of cash flow, rate package summaries, and the number of customers taking broadband service on a per community basis utilizing RUS' Broadband Collection and Analysis System (BCAS). BCAS is an electronic reporting system that is accessed through the Internet.

b. Annually on January 31, starting the first January 31 after completion of the project, Awardees must submit to RUS, using the electronic reporting system provided by RUS:

i. Number of households and businesses subscribing to broadband service;

ii. Number of households and businesses subscribing to broadband service that receive improved access; and

iii. Number of educational, library, healthcare, and public safety providers receiving either new or improved access to broadband service.

c. Awardees shall specifically state in the applicable quarter when they have received 67 percent of the award funds. Reaching this threshold will indicate that the Awardee has substantially completed its project.

d. The obligation to report under this section shall exist while the Awardee has an outstanding loan/grant combination, or for a grant only, for five years from the date of the completion of the project.

IX. Other Information

A. Funding Rounds

This is the final funding round for BIP.

B. Discretionary Awards

The government is not obligated to make any award as a result of this announcement, and will fund only projects that are deemed likely to achieve the program's goals and for which funds are available.

C. Limitation on Expenditures

The Recovery Act imposes an additional limitation on the use of funds expended or obligated from appropriations made pursuant to its provisions. Specifically, for purposes of this NOFA, none of the funds appropriated or otherwise made available under the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.[26]

[26] *Id.* Sec.1604, 123 Stat. at 303.

D. Recovery Act Logo

All projects that are funded by the Recovery Act shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. Some exclusions may apply. The Primary Emblem should not be displayed at a size less than six inches in diameter.

E. Environmental and National Historic Preservation Requirements

Awarding agencies are required to analyze the potential environmental impacts, as required by the NEPA and the NHPA for Applicant projects or proposals seeking Recovery Act funding. All Applicants are required to complete the Environmental Questionnaire under the description of program activities and to submit all other required environmental documentation with the application.

It is the Applicant's responsibility to obtain all necessary Federal, State, and local governmental permits and approvals necessary for the proposed work to be conducted. Applicants are expected to design their projects so that they minimize the potential for adverse impacts to the environment. Applicants also will be required to cooperate with the granting agencies in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed projects. The failure to do so may be grounds for not making an award.

Applications will be reviewed to ensure that they contain sufficient information to allow Agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be submitted to the agencies, along with the recommendation for funding of the selected applications. Applicants proposing activities that cannot be covered by existing environmental compliance procedures will be informed after the technical review stage whether NEPA compliance and other environmental requirements can otherwise be expeditiously met so that a project can proceed within the timeframes anticipated under the Recovery Act.

If additional information is required after an application is accepted for funding, funds can be withheld by the agencies under a special award condition requiring the Awardee to submit additional environmental compliance information sufficient for the Agency to make an assessment of any impacts that a project may have on the environment.

F. Davis-Bacon Wage Requirements

Pursuant to section 1606 of the Recovery Act, any project using Recovery Act funds requires the payment of not less than the prevailing wages for "all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government." [27]

G. Financial and Audit Requirements

To maximize the transparency and accountability of funds authorized under the Recovery Act, all Applicants are required to comply with the applicable regulations set forth in OMB's Interim Final Guidance for Federal Financial Assistance.[28]

Recipients that expend $500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the U.S. General Accountability Office, Government Auditing Standards, located at *http://www.gao.gov/govaud/ybk01.htm,* and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Awardees are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

H. Deobligation

The RUS reserves the right to deobligate awards to recipients under this NOFA that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, and award these funds competitively to new or existing Applicants prior to September 30, 2010.

I. Confidentiality of Applicant Information

Applicants are encouraged to identify and label any confidential and proprietary information contained in their applications. The Agency will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. 552), the Trade Secrets Act, as amended (18 U.S.C. 1905), the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*), and CALEA (47 U.S.C. 1001 *et seq.*). Applicants should be aware, however, that the Recovery

[27] *Id.* Sec. 1606, 123 Stat. at 303.

[28] *See* OMB, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449 (Apr. 23, 2009).

Act requires substantial transparency. For example, RUS is required to make publicly available on the Internet a list of each entity that has applied for a grant, a description of each application, the status of each application, the name of each entity receiving funds, the purpose for which the entity is receiving the funds, each quarterly report, and other information.[29]

J. Disposition of Unsuccessful Applications

Applications accepted for review for Fiscal Year 2010 BIP will be retained for two years, after which they will be destroyed.

K. State Certifications

With respect to funds made available under Recovery Act to state or local governments for infrastructure investments, the governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. This certification must include a description of the investment, the estimated total cost, and the amount of funds to be used, and must be posted on the recipient's Web site and linked to *http://www.recovery.gov.* A state or local Agency may not receive infrastructure investment funding from funds made available under the Recovery Act unless this certification is made and posted.[30]

L. Compliance With Applicable Laws

Any recipient of funds under this NOFA shall be required to comply with all applicable Federal and state laws, including but not limited to: i. The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.,* 7 CFR part 15); ii. section 504 of the Rehabilitation Act (29 U.S.C. 794 *et seq.;* 7 CFR part 15b); iii. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.;* 45 CFR part 90); iv. Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR part 102). *See* 7 CFR parts 15 and 15b and 45 CFR part 90, RUS Bulletin 1790–1 ("Nondiscrimination among Beneficiaries of RUS Programs"), and RUS Bulletin 20–15:320–15 ("Equal Employment Opportunity in Construction Financed with RUS Loans"). The RUS Bulletins are available at *http://www.broadbandusa.gov.;* v. The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*); vi. The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6); and vii. The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related Federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR part 1794. A more complete list of such requirements can be found in the applicable grant agreement or loan contract.

M. Communications Laws

Awardees, and in particular, Broadband Infrastructure Awardees, will be required to comply with all applicable Federal and State communications laws and regulation as applicable, including, for example, the Communications Act of 1934, as amended, (47 U.S.C. 151 *et seq.*) the Telecommunications Act of 1996, as amended (Pub. L. 104–104, 110 Stat. 56 (1996), and CALEA. For further information, *see http://www.fcc.gov.*

N. Buy American Notice

1. General Prohibition and Waiver

None of the funds appropriated or otherwise made available by the Recovery Act may be used for the construction, alteration, maintenance, or repair of a public building or public work (as such terms are defined in 2 CFR 176.140) unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States.[31] On July 1, 2009, the Department of Agriculture published a notice in the **Federal Register** at 74 FR 31402 stating that the Secretary of Agriculture has determined that applying the Buy American provision for the use of certain broadband equipment in public BIP projects would be inconsistent with the public interest.

As explained below, to the extent that an Applicant wishes to use broadband equipment or goods that are not covered by the Secretary's waiver, it may seek an additional waiver on a case-by-case basis as part of its application for Recovery Act funds.

2. OMB Buy American Notice Requirement

Pursuant to OMB guidance on the Recovery Act,[32] RUS is required to provide notice as prescribed at 2 CFR 176.170.

Section 176.170: Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in the solicitation:

(a) *Definitions. Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured good, manufactured good, public building* and *public work,* and *steel,* as used in this provision, are defined in 2 CFR 176.160(a).

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective Applicant shall include the information and applicable supporting data required by 2 CFR 176.160 (c) and (d) in the request. If an Applicant has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the Applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals.*

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American

[29] *See* Recovery Act sec. 6001(i)(5), 123 Stat. at 515.

[30] *See id.* §§ 1511, 1526, 123 Stat. at 287, 293.

[31] *Id.* Sec 1605, 123 Stat. at 303.

[32] *See* 2 CFR part 176.

notice in the request for applications or proposals, the Applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the Applicant shall submit a separate cost comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the Applicant shall be required to furnish such domestic or designated country items.

O. Executive Order 12866

This notice has been determined to be "economically significant" under Executive Order 12866. The Recovery Act also appropriates $2.5 billion to RUS for broadband grants and loans. Awards must be made no later than September 30, 2010. In accordance with Executive Order 12866, an economic analysis was completed outlining the costs and benefits of implementing each of these programs. The complete analysis is available from RUS upon request.

P. Executive Order 13132

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Q. Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment. The Administrative Procedure Act of 1946, as amended (5 U.S.C. 553) (APA), has several exemptions to rulemaking requirements. Among them is an exemption for "good cause" found at 5 U.S.C. 553(b)(B), which allows effective government action without rulemaking procedures where withholding the action would be "impracticable, unnecessary, or contrary to the public interest."

USDA has determined, consistent with the APA that making these funds available under this NOFA for broadband development, as mandated by the Recovery Act, is in the public interest. Given the emergency nature of the Recovery Act and the extremely short time period within which all funds must be obligated, withholding this NOFA to provide for public notice and comment would unduly delay the provision of benefits associated with these broadband initiatives and be contrary to the public interest.

For the same reasons, the Agency finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553(d)(3) or any other law, the analytical requirements of the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

R. Paperwork Reduction Act

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from RUS by e-mailing *BroadbandUSA@usda.gov.* Data furnished by the Applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

The collection of information is vital to RUS to ensure compliance with the provisions of this Notice and to fulfill the requirements of the Recovery Act. The information collection requirements contained in the NOFA have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0142.

The agency expects to request emergency clearance from OMB and to publish a notice seeking public comment on the information collection requirements of the Satellite, Technical Assistance, and Libraries programs at a later date.

S. Recovery Act

Additional information about the Recovery Act is available at *http://www.Recovery.gov.*

T. Satellite Regions

Region 1	Region 2	Region 3	Region 4	Region 5	Region 6
State	State	State	State	State	State
Washington	Montana	Colorado	Michigan	Tennessee	Maryland
Oregon	Wyoming	New Mexico	Indiana	Mississippi	Delaware
California	North Dakota	Kansas	Ohio	Alabama	New Jersey
Nevada	South Dakota	Oklahoma	Kentucky	Georgia	New York
Idaho	Nebraska	Texas	West Virginia	Florida	Connecticut
Utah	Minnesota	Missouri	Pennsylvania	South Carolina	Rhode Island
Arizona	Iowa	Arkansas	Virginia	North Carolina	Massachusetts
	Wisconsin	Louisiana			New Hampshire
	Illinois				Vermont
					Maine

Region Seven—Alaska

Region Eight—Hawaii

U. Authorized Signatories

Only authorized grant and loan officers can bind the Government to the expenditure of funds.

Dated: January 15, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–1099 Filed 1–19–10; 11:15 am]

BILLING CODE 3410–15–P

Federal Register

Friday,
January 22, 2010

Part III

The President

Proclamation 8473—Martin Luther King, Jr., Federal Holiday, 2010

Proclamation 8474—Religious Freedom Day, 2010

Notice of January 20, 2010—Continuation of the National Emergency with Respect to Terrorists who Threaten to Disrupt the Middle East Peace Process

Federal Register
Vol. 75, No. 14
Friday, January 22, 2010

Presidential Documents

Title 3—

The President

Proclamation 8473 of January 15, 2010

Martin Luther King, Jr., Federal Holiday, 2010

By the President of the United States of America

A Proclamation

The Reverend Dr. Martin Luther King, Jr., challenged our Nation to recognize that our individual liberty relies upon our common equality. In communities marred by division and injustice, the movement he built from the ground up forced open doors to negotiation. The strength of his leadership was matched only by the power of his words, which still call on us to perfect those sacred ideals enshrined in our founding documents.

"We have an opportunity to make America a better Nation," Dr. King said on the eve of his death. "I may not get there with you. But I want you to know tonight that we, as a people, will get to the promised land." Though we have made great strides since the turbulent era of Dr. King's movement, his work and our journey remain unfinished. Only when our children are free to pursue their full measure of success—unhindered by the color of their skin, their gender, the faith in their heart, the people they love, or the fortune of their birth—will we have reached our destination.

Today, we are closer to fulfilling America's promise of economic and social justice because we stand on the shoulders of giants like Dr. King, yet our future progress will depend on how we prepare our next generation of leaders. We must fortify their ladders of opportunity by correcting social injustice, breaking the cycle of poverty in struggling communities, and reinvesting in our schools. Education can unlock a child's potential and remains our strongest weapon against injustice and inequality.

Recognizing that our Nation has yet to reach Dr. King's promised land is not an admission of defeat, but a call to action. In these challenging times, too many Americans face limited opportunities, but our capacity to support each other remains limitless. Today, let us ask ourselves what Dr. King believed to be life's most urgent and persistent question: "What are you doing for others?" Visit www.MLKDay.gov to find Martin Luther King, Jr., Day of Service projects across our country.

Dr. King devoted his life to serving others, and his message transcends national borders. The devastating earthquake in Haiti, and the urgent need for humanitarian support, reminds us that our service and generosity of spirit must also extend beyond our immediate communities. As our Government continues to bring our resources to bear on the international emergency in Haiti, I ask all Americans who want to contribute to this effort to visit www.WhiteHouse.gov/HaitiEarthquake. By lifting up our brothers and sisters through dedication and service—both at home and around the world—we honor Dr. King's memory and reaffirm our common humanity.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 18, 2010, as the Martin Luther King, Jr., Federal Holiday. I encourage all Americans to observe this day with appropriate civic, community, and service programs in honor of Dr. King's life and lasting legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–1368
Filed 1–21–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8474 of January 15, 2010

Religious Freedom Day, 2010

By the President of the United States of America

A Proclamation

Long before our Nation's independence, weary settlers sought refuge on our shores to escape religious persecution on other continents. Recognizing their strife and toil, it was the genius of America's forefathers to protect our freedom of religion, including the freedom to practice none at all. Many faiths are now practiced in our Nation's houses of worship, and that diversity is built upon a rich tradition of religious tolerance. On this day, we commemorate an early realization of our Nation's founding ideals: Virginia's 1786 Statute for Religious Freedom.

The Virginia Statute was more than a law. It was a statement of principle, declaring freedom of religion as the natural right of all humanity—not a privilege for any government to give or take away. Penned by Thomas Jefferson and championed in the Virginia legislature by James Madison, it barred compulsory support of any church and ensured the freedom of all people to profess their faith openly, without fear of persecution. Five years later, the First Amendment of our Bill of Rights followed the Virginia Statute's model, stating, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .".

Our Nation's enduring commitment to the universal human right of religious freedom extends beyond our borders as we advocate for all who are denied the ability to choose and live their faith. My Administration will continue to oppose growing trends in many parts of the world to restrict religious expression.

Faith can bring us closer to one another, and our freedom to practice our faith and follow our conscience is central to our ability to live in harmony. On Religious Freedom Day, let us pledge our constant support to all who struggle against religious oppression and rededicate ourselves to fostering peace with those whose beliefs differ from our own. In doing so, we reaffirm our common humanity and respect for all people with whom we share a brief moment on this Earth.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 16, 2010, as Religious Freedom Day. I call on all Americans to commemorate this day with events and activities that teach us about this critical foundation of our Nation's liberty, and show us how we can protect it for future generations here and around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–1369
Filed 1–21–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Notice of January 20, 2010

Continuation of the National Emergency With Respect To Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists who threaten to disrupt the Middle East peace process. On August 20, 1998, by Executive Order 13099, the President modified the Annex to Executive Order 12947 to identify four additional persons, including Usama bin Laden, who threaten to disrupt the Middle East peace process.

Because these terrorist activities continue to threaten the Middle East peace process and to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on January 23, 1995, and the measures adopted on that date and on August 20, 1998, to deal with that emergency must continue in effect beyond January 23, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
January 20, 2010.

[FR Doc. 2010–1400
Filed 1–21–10; 8:45 am]
Billing code 3195–W0–P

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4314/P.L. 111–123
To permit continued financing of Government operations. (Dec. 28, 2009; 123 Stat. 3483)

H.R. 4284/P.L. 111–124
To extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes. (Dec. 28, 2009; 123 Stat. 3484)

H.R. 3819/P.L. 111–125
To extend the commercial space transportation liability regime. (Dec. 28, 2009; 123 Stat. 3486)

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