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Contents

Federal Register

Vol. 75, No. 108

Monday, June 7, 2010

Agriculture Department
See Forest Service

Antitrust Division
NOTICES
Proposed Final Judgment and Competitive Impact Statement:
United States of America v. Idaho Orthopaedic Society, Timothy Doerr, et al., 32210–32221

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Interest Projects, 32190
Task Force on Community Preventive Services, 32186–32187
National Health and Nutrition Examination Survey DNA Samples:
Guidelines for Proposals to Use Samples and Cost Schedule, 32191–32195
Procedures and Costs for Use of the Research Data Center, 32195–32199

Children and Families Administration
PROPOSED RULES
Safeguarding Child Support Information, 32145–32157

Commerce Department
See Industry and Security Bureau
See International Trade Administration

Consumer Product Safety Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Consumer Focus Groups, 32161–32162

Copyright Royalty Board
NOTICES
Rate Adjustment for the Satellite Carrier Compulsory License, 32228–32229

Defense Department
NOTICES
Meetings:
Defense Health Board, 32162
Defense Policy Board, 32163
Department of Defense Wage Committee, 32163

Drug Enforcement Administration
PROPOSED RULES
Voluntary Surrender of Certificate of Registration, 32140–32142

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 32163–32164
Applications for New Awards (FY 2010):
Regional Interpreter Education Centers for Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing, etc., 32164–32169
Comprehensive Centers Program, 32169–32171

Employment and Training Administration
NOTICES
Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance:
Alticor, Inc., et al., Ada, MI, 32221
Whirlpool Corp. et al., Evansville, IN, 32221
Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance, 32221–32225
Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance, 32225–32227
Revised Determination on Reconsideration:
Gemological Institute of America, Carlsbad, CA and New York, NY, 32227

Energy Department
See Energy Efficiency and Renewable Energy Office
RULES
Weatherization Assistance for Low-Income Persons; Maintaining the Privacy of Applicants for and Recipients of Services, 32089–32090
NOTICES
Environmental Impact Statements; Availability, etc.:
American Electric Power Service Corporations Mountaineer Commercial Scale Carbon Capture and Storage Project, Mason County, WV, 32171–32175

Energy Efficiency and Renewable Energy Office
NOTICES
Energy Conservation Program for Consumer Products:
Decision and Order Granting Waiver to Haier from DOE Residential Refrigerator and Refrigerator–Freezer Test Procedure, 32175–32177
Energy Efficiency Program for Consumer Products:
Massachusetts' Energy Efficiency Standard for Residential Non-Weatherized Gas Furnaces; Petition for Exemption from Federal Preemption, 32177–32178

Environmental Protection Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 32178
Document Availability:
National Ambient Air Quality Standards for Carbon Monoxide, 32178–32179
Regional Waiver of Section 1605 (Buy American requirement) of the American Recovery and Reinvestment Act of 2009:
Bridgeport, WA, 32179–32181

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes, etc., 32090–32092
Revision of Restricted Area R–2504:
Camp Roberts, CA, 32093–32094

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments, 32094–32098
PROPOSED RULES
Proposed Amendment of Colored Federal Airway B–38: Alaska, 32117–32119
Proposed Amendment of the Pacific High and Low Offshore Airspace Areas:
California, 32119–32120
Proposed Establishment and Amendment of Area Navigation Routes:
Alaska, 32120–32122
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 32236

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Flood Insurance Program Policy Forms, 32199
Request for Site Inspection, Landowners Authorization/Ingress/Egress Agreement
Request for the Site Inspection, Landowners Authorization/Ingress/Egress Agreement, 32199–32201
Residential Basement Floodproofing Certification, 32201

Federal Highway Administration
NOTICES
Environmental Assessments; Availability, etc.:
Klingle Valley Trail Project; Public Hearing, 32239–32240
Environmental Impact Statements; Availability, etc.:
Klingle Road; Washington, DC, 32240

Federal Housing Finance Agency
PROPOSED RULES
Enterprise Duty to Serve Underserved Markets, 32099–32117

Federal Motor Carrier Safety Administration
NOTICES
Rules of Practice, 32242–32243

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 32236–32239
Environmental Impact Statements; Availability, etc.:
Southeast High Speed Rail Corridor – Richmond, VA (Main Street Station) to Raleigh, NC (Boylan Wye), 32240–32242

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 32181
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 32181–32182
Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies Engaged in Permissible Nonbanking Activities, 32182

Fish and Wildlife Service
NOTICES
Draft Comprehensive Conservation Plan and Environmental Assessment:
Felsenthal National Wildlife Refuge, Ashley, Bradley, and Union Counties, AR; Overflow National Wildlife Refuge, Ashley County, AR, 32205–32208
Tennessee National Wildlife Refuge, Henry, Benton, Decatur, and Humphreys Counties, TN, 32201–32205

Food and Drug Administration
NOTICES
Meetings:
Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee, 32188
Endocrinologic and Metabolic Drugs Advisory Committee, 32188–32189
Endocrinologic and Metabolic Drugs Advisory Committee and Drug Safety and Risk Management Advisory Committee, 32189–32190

Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
SRS Publications Evaluation Card, 32158

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Medicaid Program:
Proposed Implementation of Section 614 of the Children's Health Insurance Program Reauthorization Act of 2009, etc., 32182–32183

Homeland Security Department
See Federal Emergency Management Agency

Industry and Security Bureau
PROPOSED RULES
Revisions to Defense Priorities and Allocations System Regulations, 32122–32140

Interior Department
See Fish and Wildlife Service
See Reclamation Bureau

International Trade Administration
NOTICES
Extension of Preliminary Results of Antidumping Duty Administrative Review:
New Pneumatic Off-the-Road Tires from the People's Republic of China, 32158–32159
Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review:
Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 32160–32161
Certain New Pneumatic Off-the-Road Tires from the People's Republic of China, 32159–32160

Justice Department
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Lodging of Consent Decree Under the Clean Air Act, 32210

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 32227–32228

Library of Congress
See Copyright Royalty Board

National Archives and Records Administration
NOTICES
Meetings:
Advisory Committee on the Records of Congress, 32229
National Declassification Center, 32229

National Institutes of Health
NOTICES
Government-Owned Inventions; Availability for Licensing, 32184–32186
Meetings:
National Center for Research Resources, 32187

Nuclear Regulatory Commission
NOTICES
Meetings:
ACRS Subcommittee on Advanced Boiling Water Reactor, 32229–32230
Meetings; Sunshine Act, 32230

Occupational Safety and Health Administration
PROPOSED RULES
Combustible Dust; Web Chat, 32142–32143

Postal Service
PROPOSED RULES
Submission of Electronic Documentation with Comailed and Copalletized Mailings, 32143–32145

Presidential Documents
PROCLAMATIONS
Special Observances:
African–American Music Appreciation Month (Proc. 8527), 32075–32076
Great Outdoors Month (Proc. 8528), 32077–32078
Lesbian, Gay, Bisexual, and Transgender Pride Month (Proc. 8529), 32079–32080
National Caribbean–American Heritage Month (Proc. 8530), 32081–32082
National Oceans Month (Proc. 8531), 32083–32084
Prayer For Peace, Memorial Day (Proc. 8532), 32085–32086
ADMINISTRATIVE ORDERS
Committees; Establishment, Renewal, Termination, etc.:
Defense Production Act Committee; Chairperson Designation (Memorandum of May 19, 2010), 32087

Reclamation Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
North San Pablo Bay Restoration and Reuse Project, 32209–32210

Small Business Administration
NOTICES
Disaster Declaration:
New Jersey, 32230
Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest:
Emergence Capital Partners SBIC, L.P., 32230
Solutions Capital I, L.P., 32230–32231
Small Business Size Standards:
Waiver of the Nonmanufacturer Rule, 32231

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 32231–32233

Special Inspector General For Iraq Reconstruction
NOTICES
Privacy Act; Systems of Records, 32233–32235

State Department
NOTICES
Meetings:
Exchange Visitor Program – Secondary School Students, 32235–32236

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8527 32075
8528 32077
8529 32079
8530 32081
8531 32083
8532 32085

Administrative Orders:

Memorandums:
Memorandum of May 21, 2010 32087

10 CFR

440 32089

12 CFR

Proposed Rules:

1282 32099

14 CFR

39 32090
73 32093
97 (2 documents) 32094, 32096

Proposed Rules:

71 (3 documents) 32117, 32119, 32120

15 CFR

Proposed Rules:

700 32122

21 CFR

Proposed Rules:

1301 32140
1309 32140

29 CFR

Proposed Rules:

1910 32142

39 CFR

Proposed Rules:

111 32143

45 CFR

Proposed Rules:

301 32145
302 32145
303 32145
307 32145

Federal Register
Vol. 75, No. 108
Monday, June 7, 2010

Presidential Documents

Title 3—

The President

Proclamation 8527 of May 28, 2010

African-American Music Appreciation Month, 2010

By the President of the United States of America

A Proclamation

Music can tell a story, assuage our sorrows, provide blessing and redemption, and express a soul's sublime and powerful beauty. It inspires us daily, giving voice to the human spirit. For many, including the African-American community, music unites individuals through a shared heritage. During African-American Music Appreciation Month, we celebrate the extraordinary legacy of African-American singers, composers, and musicians, as well as their indelible contributions to our Nation and our world.

Throughout our history, African-American music has conveyed the hopes and hardships of a people who have struggled, persevered and overcome. Through centuries of injustice, music comforted slaves, fueled a cultural renaissance, and sustained a movement for equality. Today, from the shores of Africa and the islands of the Caribbean to the jazz clubs of New Orleans and the music halls of Detroit, African-American music reflects the rich sounds of many experiences, cultures, and locales.

African-American musicians have created and expanded a variety of musical genres, synthesizing diverse artistic traditions into a distinctive soundscape. The soulful strains of gospel, the harmonic and improvisational innovations of jazz, the simple truth of the blues, the rhythms of rock and roll, and the urban themes of hip-hop all blend into a refrain of song and narrative that traces our Nation's history.

These quintessentially American styles of music have helped provide a common soundtrack for people of diverse cultures and backgrounds, and have joined Americans together not just on the dance floor, but also in our churches, in our public spaces, and in our homes. This month, we honor the talent and genius of African-American artists who have defined, shaped, and enriched our country through music, and we recommit to sharing their splendid gifts with our children and grandchildren.

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 June 2010 as African-American Music Appreciation Month. I call upon public officials, educators, and the people of the United States to observe this month with appropriate activities and programs that raise awareness and foster appreciation of African-American music.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, 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. 2010–13660
Filed 6–4–10; 8:45 am]
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Presidential Documents

Proclamation 8528 of May 28, 2010

Great Outdoors Month, 2010

By the President of the United States of America

A Proclamation

America's vast and varied outdoor spaces are a source of great national pride, and we have long strived to protect them for future generations. Our lands and waters provide countless opportunities for exploration, recreation, and reflection, whether in solitude or with family and friends. During Great Outdoors Month, we renew our enduring commitment to protect our natural landscapes, to enjoy them, and to promote active lifestyles for ourselves and our children.

Our outdoor spaces include the farms, ranches, rivers, forests, and working lands that are integral to our culture and economy, as well as our National Parks, local parks, fishing holes, beaches, and other favorite spots that provide space for us to stay active and healthy. These places are especially important today, as an increasing number of Americans, especially children, fall into unhealthy sedentary lifestyles.

This year, I launched the America's Great Outdoors Initiative to foster innovative, community-driven strategies to protect our natural spaces, and to reconnect Americans with our great outdoors. We are addressing the conservation challenges and opportunities of the 21st century through partnerships with ranchers, farmers, sportsmen, and conservationists; State, local, private, and tribal leaders; educational and service programs like AmeriCorps; and business representatives and other stakeholders. To learn how you can join this effort, visit: www.DOI.gov/AmericasGreatOutdoors.

The America's Great Outdoors Initiative also builds upon *Let's Move*, First Lady Michelle Obama's effort to help our children eat more nutritious foods, lead healthier lives, and increase their physical activity. Exploring beyond the walls of their homes and schools will help inspire our children to move, run, play, and thrive. I encourage all Americans to visit www.LetsMove.gov to learn more.

In these difficult economic times, renewing our commitment to our natural places will foster jobs in the tourism and recreation industries while conserving our great outdoors. Moreover, as Americans, we are responsible for protecting our heritage, including the raw beauty of our lands and waters. Together, let us rise to meet that responsibility and safeguard our cherished outdoor spaces for our children and grandchildren.

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 June 2010 as Great Outdoors Month. I urge all Americans to explore the great outdoors and to continue our Nation's tradition of conserving our lands for future generations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, 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. 2010–13666
Filed 6–4–10; 8:45 am]
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Presidential Documents

Proclamation 8529 of May 28, 2010

Lesbian, Gay, Bisexual, and Transgender Pride Month, 2010

By the President of the United States of America

A Proclamation

As Americans, it is our birthright that all people are created equal and deserve the same rights, privileges, and opportunities. Since our earliest days of independence, our Nation has striven to fulfill that promise. An important chapter in our great, unfinished story is the movement for fairness and equality on behalf of the lesbian, gay, bisexual, and transgender (LGBT) community. This month, as we recognize the immeasurable contributions of LGBT Americans, we renew our commitment to the struggle for equal rights for LGBT Americans and to ending prejudice and injustice wherever it exists.

LGBT Americans have enriched and strengthened the fabric of our national life. From business leaders and professors to athletes and first responders, LGBT individuals have achieved success and prominence in every discipline. They are our mothers and fathers, our sons and daughters, and our friends and neighbors. Across my Administration, openly LGBT employees are serving at every level. Thanks to those who came before us—the brave men and women who marched, stood up to injustice, and brought change through acts of compassion or defiance—we have made enormous progress and continue to strive for a more perfect union.

My Administration has advanced our journey by signing into law the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, which strengthens Federal protections against crimes based on gender identity or sexual orientation. We renewed the Ryan White CARE Act, which provides life-saving medical services and support to Americans living with HIV/AIDS, and finally eliminated the HIV entry ban. I also signed a Presidential Memorandum directing hospitals receiving Medicare and Medicaid funds to give LGBT patients the compassion and security they deserve in their time of need, including the ability to choose someone other than an immediate family member to visit them and make medical decisions.

In other areas, the Department of Housing and Urban Development (HUD) announced a series of proposals to ensure core housing programs are open to everyone, regardless of sexual orientation or gender identity. HUD also announced the first-ever national study of discrimination against members of the LGBT community in the rental and sale of housing. Additionally, the Department of Health and Human Services has created a National Resource Center for LGBT Elders.

Much work remains to fulfill our Nation's promise of equal justice under law for LGBT Americans. That is why we must give committed gay couples the same rights and responsibilities afforded to any married couple, and repeal the Defense of Marriage Act. We must protect the rights of LGBT families by securing their adoption rights, ending employment discrimination against LGBT Americans, and ensuring Federal employees receive equal benefits. We must create safer schools so all our children may learn in a supportive environment. I am also committed to ending "Don't Ask, Don't Tell" so patriotic LGBT Americans can serve openly in our military, and I am working with the Congress and our military leadership to accomplish that goal.

As we honor the LGBT Americans who have given so much to our Nation, let us remember that if one of us is unable to realize full equality, we all fall short of our founding principles. Our Nation draws its strength from our diversity, with each of us contributing to the greater whole. By affirming these rights and values, each American benefits from the further advancement of liberty and justice for all.

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 June 2010 as Lesbian, Gay, Bisexual, and Transgender Pride Month. I call upon all Americans to observe this month by fighting prejudice and discrimination in their own lives and everywhere it exists.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, 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. 2010–13672
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Presidential Documents

Proclamation 8530 of May 28, 2010

National Caribbean-American Heritage Month, 2010

By the President of the United States of America

A Proclamation

Our Nation is linked to the Caribbean by our geography as well as our shared past and common aspirations. During National Caribbean-American Heritage Month, we pay tribute to the diverse cultures and immeasurable contributions of all Americans who trace their heritage to the Caribbean.

Throughout our history, immigrants from Caribbean countries have come to our shores seeking better lives and opportunities. Others were brought against their will in the bonds of slavery. All have strived to ensure their children could achieve something greater and have preserved the promise of America for future generations.

During the month of June, we also honor the bonds of friendship between the United States and Caribbean countries. This year's devastating earthquake in Haiti has brought untold grief to the Haitian-American community, many who continue to mourn the loss of loved ones as they help rebuild their homeland. These families and individuals remain in our thoughts and prayers. The United States has proudly played a leading role in the international response to this crisis, which included vital contributions from countries throughout the Caribbean. As Haiti recovers, we will remain a steady and reliable partner.

This month, we celebrate the triumph of Caribbean Americans, a diverse community that encompasses many nationalities and languages. They have become leaders in every sector of American life while maintaining the varied traditions of their countries of origin. Caribbean Americans enrich our national character and strengthen the fabric of our culture, and we are proud they are part of the American family.

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 June 2010 as National Caribbean-American Heritage Month. I call upon all Americans to celebrate the history and culture of Caribbean Americans with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, 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.

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Presidential Documents

Proclamation 8531 of May 28, 2010

National Oceans Month, 2010

By the President of the United States of America

A Proclamation

Each year during National Oceans Month, we rededicate ourselves to protect the Earth's dominant feature and precious resource. In 2010, this annual observance falls at a time of environmental crisis, as we continue our relentless efforts to stop and contain the oil spill threatening the Gulf Coast region. The oil spill has already caused substantial damage to our coastline and its natural habitats, and negatively impacted the livelihoods of Gulf Coast small businesses and communities. The environmental and economic devastation to the Gulf Coast region requires our continuing efforts to reverse the damage to our coastlines and revitalize affected areas.

As we respond to this disaster, we must not forget that our oceans, coasts, and Great Lakes demand our constant attention. They have long been under considerable strain from pollution, overfishing, climate change, and other human activity. Last year, I established the Interagency Ocean Policy Task Force and charged it with developing a clear direction for meeting our environmental stewardship responsibilities. Our oceans face complex challenges, and we must take a comprehensive approach to ensure their sustained protection, maintenance, and restoration.

The vitality and bounty of America's natural resources immeasurably impact our lives. This year marks the 40th anniversary of the National Oceanic and Atmospheric Administration. As we commemorate this special milestone, we are reminded by the ongoing Gulf Coast crisis that we still have much to do in order to safeguard our vast oceanic resources for generations to come. Forty years from now, when our children look back on this moment, let them say that we did not waiver, but rather seized this opportunity to fulfill our duty to protect the waters that sustain us.

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 June 2010 as National Oceans Month. I call upon Americans to learn more about what they can do to protect, conserve, sustain, and enjoy our oceans, coasts, and Great Lakes.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, 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.

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Presidential Documents

Proclamation 8532 of May 28, 2010

Prayer for Peace, Memorial Day, 2010

By the President of the United States of America

A Proclamation

Since our Nation's founding, America's sons and daughters have given their lives in service to our country. From Concord and Gettysburg to Marne and Normandy, from Inchon and Khe Sanh to Baghdad and Kandahar, they departed our world as heroes and gave their lives for a cause greater than themselves.

On Memorial Day, we pay tribute to those who have paid the ultimate price to defend the United States and the principles upon which America was founded. In honor of our country's fallen, I encourage all Americans to unite at 3:00 p.m. local time to observe a National Moment of Remembrance.

Today, Americans from all backgrounds and corners of our country serve with valor, courage, and distinction in the United States Armed Forces. They stand shoulder to shoulder with the giants of our Nation's history, writing their own chapter in the American story. Many of today's warriors know what it means to lose a friend too soon, and all our service members and their families understand the true meaning of sacrifice.

This Memorial Day, we express our deepest appreciation to the men and women in uniform who gave their last full measure of devotion so we might live in freedom. We cherish their memory and pray for the peace for which they laid down their lives. We mourn with the families and friends of those we have lost, and hope they find comfort in knowing their loved ones died with honor. We ask for God's grace to protect those fighting in distant lands, and we renew our promise to support our troops, their families, and our veterans. Their unwavering devotion inspires us all—they are the best of America.

It is our sacred duty to preserve the legacy of these brave Americans, and it remains our charge to work for peace, freedom, and security. Let us always strive to uphold the founding principles they died defending; let their legacy continue to inspire our Nation; and let this solemn lesson of service and sacrifice be taught to future generations of Americans.

In honor of their dedication and service to America, the Congress, by a Joint Resolution, approved May 11, 1950, as amended (36 U.S.C. 116), has requested the President to issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Memorial Day, May 31, 2010, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to unite in prayer. I also ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day.

I request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, 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. 2010–13677
Filed 6–4–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Memorandum of May 19, 2010

Designating the Chairperson of the Defense Production Act Committee

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

Pursuant to the authority vested in me by section 722(b)(2) of the Defense Production Act of 1950, as amended (section 11 of Public Law 111–67; 50 App. U.S.C. 2171)(the "Act"), I hereby designate the Secretary of Homeland Security and the Secretary of Defense as rotating Chairpersons of the Defense Production Act Committee (the "Committee"). The Chair shall rotate annually on April 1 of each year, with the Secretary of Homeland Security hereby designated to serve as Chairperson of the Committee for the remainder of this first term. The Secretary of Homeland Security and the Secretary of Defense are directed to formalize responsibilities for funding and administratively supporting the Committee through interagency agreement.

Furthermore, the Chairperson shall invite to each meeting of the Committee all Members of the Committee as defined in section 722(b) of the Act, and shall ensure that the reporting requirements of section 722(d) of the Act are fulfilled.

The Secretary of Homeland Security is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 19, 2010

[FR Doc. 2010–13659
Filed 6–4–10; 8:45 am]
Billing code 4410–10–P

Rules and Regulations

Federal Register
Vol. 75, No. 108
Monday, June 7, 2010

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

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

DEPARTMENT OF ENERGY

10 CFR Part 440

[Docket No. DOE–EERE–OT–2010–0004]

RIN 1904–AC16

Weatherization Assistance for Low-Income Persons: Maintaining the Privacy of Applicants for and Recipients of Services

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) published an interim final rule on March 11, 2010, requiring that all States and other service providers that participate in the Weatherization Assistance Program (WAP) treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the Freedom of Information Act (FOIA). DOE is today adopting the interim final rule as final without change.

DATES: This rule is effective July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE–2K, 950 L'Enfant Plaza, SW., Room P201D, Washington, DC 20585–0121, (202) 287–1591, e-mail: *robert.adams@ee.doe.gov.*

Bryan Miller, Esq., U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8627.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title IV, Energy Conservation and Production Act, as amended, authorizes DOE to administer the WAP. All grant awards made under this program must comply with applicable authorities, including regulations contained in Title 10 of the Code of Federal Regulations (10 CFR) part 440.

II. Discussion

On March 11, 2010, DOE published an interim final rule requiring all States and other service providers that participate in the WAP to treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, including the privacy protections contained in Exemption (b)(6) of the FOIA, 5 U.S.C. 552(b)(6), 75 FR 11419. The background and explanation of the interim final rule was set out in that March 11 publication. The comment period for that interim final rule closed on April 12, 2010. DOE received one comment letter, the substance of which is set forth, with responses, below:

Comment: Rule 10 CFR 440.2(e) should state that participant name and address information has a substantial privacy interest under FOIA Exemption (b)(6) because disclosure of such information would reveal the income status of the participant.

Response: The interim final rule includes the following language in its amendment to 10 CFR 440.2: "Under 5 U.S.C. 552(b)(6) [the codification of FOIA Exemption (b)(6)], information relating to an individual's eligibility application or the individual's participation in the program, such as name, address, or income information, are generally exempt from disclosure." 75 FR 11422. DOE believes that this existing language is sufficient to satisfy the suggestion in this comment.

Comment: Rule 10 CFR 440.2(e) should state that the FOIA (b)(6) balancing test should include the consideration of alternatives to disclosure of identifying information that could address the public interest without compromising the privacy of WAP participants.

Response: The interim final rule states, "[g]iven a legitimate, articulated public interest in the disclosure, States and other service providers may release information regarding recipients in the aggregate that does not identify specific individuals * * *. Pursuant to FOIA Exemption (b)(6), records that contain personal information including but not limited to, names, addresses, and income information, are generally exempt from disclosure." 75 FR 11420. DOE believes that this existing language, and the FOIA (b)(6) language found at 5 U.S.C. 552(b)(6), adequately addresses the suggestion in this comment.

Comment: DOE should include in the final rule examples of actual or hypothetical FOIA requests as guidance to illustrate how DOE would apply the FOIA (b)(6) balancing test.

Response: DOE believes that speculating on the FOIA (b)(6) outcome of a given hypothetical situation would not provide much assistance to WAP providers. The public interest involved and the appropriate balance struck will depend on the facts of any given situation.

Comment: DOE should ask States and other service providers to voluntarily submit the results of FOIA (b)(6) balancing test decisions, so that DOE can maintain and provide access to a repository of those decisions for reference by other WAP providers.

Response: DOE believes that compiling such decisions is unnecessary, creates an additional paperwork burden on WAP providers and the Agency, and might require DOE to establish a Privacy Act System of Records.

Because the suggestions in comments (1) and (2) are already incorporated in the interim final rule, and because DOE declines to adopt the suggestions in comments (3) and (4), DOE is today adopting the interim final rule as final without change.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action is a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been

determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards—Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on May 28, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

■ Accordingly, the interim final rule amending 10 CFR part 440 which was published at 75 FR 11419 on March 11, 2010, is adopted as a final rule without change.

[FR Doc. 2010–13594 Filed 6–4–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1033; Directorate Identifier 2009–NM–104–AD; Amendment 39–16326; AD 2010–12–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule.

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

Following in-flight test deployments on CL–600–2B19 aircraft, several Air-Driven generators (ADGs) failed to come online. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. * * *

The unsafe condition is failure of the ADG, which could lead to loss of several functions essential for safe flight. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 12, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 30, 2009 (74 FR 13094, March 26, 2009).

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

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 5, 2009 (74 FR 57268), and proposed to supersede AD 2009–06–18, Amendment 39–15855 (74 FR 13094, March 26, 2009). You may obtain further information by examining the MCAI in the AD docket.

Since we issued AD 2009–06–18, we have received notice that additional suspect air-driven generators may have been installed between the effective date of Canadian Airworthiness Directive CF–2008–10, dated February 5, 2008, and the effective date of the equivalent FAA AD, AD 2009–06–18. Therefore, we have determined that the actions required by paragraph (f)(1) of AD 2009–06–18 are also required for Model CL–600–2C10 airplanes having serial numbers 10266 through 10273 inclusive, and Model CL–600–2D15 and CL–600–2D24 airplanes having serial numbers 15163 through 15223 inclusive.

Comments

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

Support for the NPRM

The Air Line Pilots Association, International (ALPA) supports the intent of the NPRM.

Request To Allow Previously Approved AMOCs

American Eagle Airlines (American Eagle) requests that we allow alternative methods of compliance (AMOCs) previously approved for AD 2009–06–18. American Eagle states that including a statement allowing previously approved AMOCs will prevent the need for duplicate requests for the same issue.

We agree with the commenter's request. We have determined that AMOCs previously approved for AD 2009–06–18 are acceptable for compliance with the corresponding requirements of this AD. We have added a statement to paragraph (h)(1) of this AD to allow AMOCs approved previously in accordance with AD 2009–06–18.

Explanation of Change Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes do not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the

MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect about 304 products of U.S. registry. The actions that are required by AD 2009–06–18 and retained in this AD take about 5 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $129,200, or $425 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15855 (74 FR 13094, March 26, 2009) and adding the following new AD:

2010–12–05 Bombardier, Inc.: Amendment 39–16326. Docket No. FAA–2009–1033; Directorate Identifier 2009–NM–104–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 12, 2010.

Affected ADs

(b) This AD supersedes AD 2009–06–18, Amendment 39–15855.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, having serial numbers (S/Ns) 10004 and subsequent; and Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, having S/N 15002 and subsequent; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

Following in-flight test deployments on CL–600–2B19 aircraft, several Air-Driven generators (ADGs) failed to come online. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. This directive mandates checking of the ADG and modification of the ADG internal wiring, if required. It also prohibits future installation of unmodified ADGs.

The unsafe condition is failure of the ADG, which could lead to loss of several functions essential for safe flight.

Restatement of Requirements of AD 2009–06–18, With No Changes

Actions and Compliance

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

(1) For airplanes identified in Table 1 of this AD: Within 12 months after April 30, 2009 (the effective date of AD 2009–06–18), inspect the serial number of the installed ADG. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the ADG can be conclusively determined from that review.

TABLE 1—BOMBARDIER AIRPLANE IDENTIFICATION

Model	Serial No.
CL–600–2C10 airplanes	10004 through 10265.
CL–600–2D15 and CL–600–2D24 airplanes	15002 through 15162.

(i) If the serial number is not listed in paragraph 1.A of Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, no further action is required by this AD.

(ii) If the serial number is listed in paragraph 1.A of Bombardier Service Bulletin 670BA–24–015, Revision A, dated December

18, 2006 ("the service bulletin"), within 12 months after April 30, 2009, inspect the ADG identification plate and, as applicable, do the actions of paragraph (f)(1)(ii)(A) or (f)(1)(ii)(B) of this AD.

(A) If the identification plate is marked with the symbol "24–2," no further action is required by this AD.

(B) If the identification plate is not marked with the symbol "24–2," modify the ADG wiring in accordance with the Accomplishment Instructions of the service bulletin.

(2) For all Model CL–600–2C10 airplanes having S/N 10004 and subsequent, and Model CL–600–2D15 and CL–600–2D24 airplanes having S/N 15002 and subsequent: As of April 30, 2009, no ADG part number 604–90800–19 (761339E), having S/N 0101 through 0132, 0134 through 0167, 0169 through 0358, 0360 through 0438, 0440 through 0456, 0458 through 0467, 0469, 0471 through 0590, 0592 through 0597, 0599 through 0745, 0747 through 1005, or 1400 through 1439, may be installed on any airplane, unless the identification plate of the ADG is identified with the symbol "24–2."

Note 1: Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, refers to Hamilton Sundstrand Service Bulletin ERPS10AG–24–2, dated February 19, 2004, for further guidance on identifying the symbol "24–2."

(3) Actions done before April 30, 2009, according to Bombardier Service Bulletin 670BA–24–015, dated May 17, 2004, are considered acceptable for compliance with the corresponding actions specified in paragraph (f)(1) of this AD, provided the ADG has not been replaced since those actions were done.

New Requirements of This AD

Actions and Compliance

(g) Unless already done, do the following actions.

(1) For airplanes identified in Table 2 of this AD: Within 12 months after the effective date of this AD, inspect the serial number of the installed ADG. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the ADG can be conclusively determined from that review.

TABLE 2—ADDITIONAL BOMBARDIER AIRPLANE IDENTIFICATION

Model	Serial No.
CL–600–2C10 airplanes	10266 through 10273 inclusive.
CL–600–2D15 and CL–600–2D24 airplanes	15163 through 15223 inclusive.

(i) If the serial number is not listed in paragraph 1.A of Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, no further action is required by this AD.

(ii) If the serial number is listed in paragraph 1.A of Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006 ("the service bulletin"), within 12 months after the effective date of this AD, inspect the ADG identification plate and, as applicable, do the actions of paragraph (g)(1)(ii)(A) or (g)(1)(ii)(B) of this AD.

(A) If the identification plate is marked with the symbol "24–2", no further action is required by this AD.

(B) If the identification plate is not marked with the symbol "24–2", modify the ADG wiring in accordance with the Accomplishment Instructions of the service bulletin.

(2) Actions done before the effective date of this AD according to Bombardier Service Bulletin 670BA–24–015, dated May 17, 2004, are considered acceptable for compliance with the corresponding actions specified in paragraph (g)(1) of this AD, provided the ADG has not been replaced since those actions were done.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: The MCAI specifies to inspect Model CL–600–2C10 airplanes having S/Ns 10004 through 10265 inclusive and Model CL–600–2D15 and CL–600–2D24 airplanes having S/Ns 15002 through 15162 inclusive. This AD also specifies to inspect Model CL–600–2C10 airplanes having S/Ns 10266 through 10273, and Model CL–600–2D15 and CL–600–2D24 airplanes having S/Ns 15163 through 15223 inclusive.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2009–06–18, Amendment 39–15855, are approved as AMOCs for the corresponding provisions of this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2008–10, dated February 5, 2008; and Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006; for related information.

Material Incorporated by Reference

(j) You must use Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Bombardier Service Bulletin 607BA–24–015, Revision A, dated December 18, 2006, on April 30, 2009 (74 FR 13094, March 26, 2009).

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the 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.

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

Issued in Renton, Washington, on May 25, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13427 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2010–0557; Airspace Docket No. 10–AWP–6]

RIN 2120–AA66

Revision of Restricted Area R–2504; Camp Roberts, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Restricted Area R–2504, Camp Roberts, CA, by subdividing the area of R–2504 to create R–2504A and R–2504B. Together, R–2504A and R–2504B will occupy the same lateral and vertical dimensions of the existing R–2504. The FAA is taking this action in response to a request from the United States (U.S.) Army. This action will fulfill Department of Defense training requirements while freeing unused airspace for use by nonparticipating civil aircraft, and allows the U.S. Army to activate only that portion of the airspace necessary to contain their operations.

DATES: Effective date 0901 UTC, September 23, 2010.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

In May 2009, the FAA Western Service Center, Operations Support Group in conjunction with the U.S. Army conducted a Special Use Airspace (SUA) review at Camp Roberts, CA. It was determined that the existing airspace was not being used efficiently and the U.S. Army requested the FAA take action to subdivide R–2504. This action is in response to that request.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by revising R–2504, Camp Roberts, CA, dividing the area into two sub areas; R–2504A from the surface to but not including 6,000 feet mean sea level (MSL); and R–2504B from 6,000 MSL to 15,000 feetMSL. Together, R–2504A and R–2504B will occupy the same lateral and vertical dimensions of the existing R–2504. This action permits greater access to airspace by both Visual Flight Rules and Instrument Flight Rules aircraft during periods of activation of R–2504A and R–2504B. Since there are no changes to the boundaries, time of designation, or activities conducted within the affected restricted areas, notice and public procedures under 5 U.S.C. 533(b) are unnecessary.

Section 73.25 of Title 14 CFR part 73 was republished in FAA Order 7400.8S, effective February 16, 2010.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a restricted area for Camp Roberts, California.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311d. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.25 [Amended]

■ 2. § 73.25 is amended as follows:

* * * * *

R–2504 Camp Roberts, CA [Remove]

R–2504 A Camp Roberts, CA [New]

Boundaries. Beginning at lat. 35°42′18″ N., long. 120°47′59″ W.; to lat. 35°42′18″ N., long. 120°47′24″ W.; to lat. 35°42′58″ N., long. 120°45′37″ W.; to lat. 35°46′38″ N., long. 120°44′42″ W.; to lat. 35°47′18″ N., long. 120°44′49″ W.; to lat. 35°47′54″ N., long. 120°45′53″ W.; to lat. 35°49′10″ N., long. 120°45′44″ W.; to lat. 35°51′00″ N., long. 120°46′29″ W.; to lat. 35°51′11″ N., long. 120°47′59″ W.; to lat. 35°48′50″ N., long. 120°50′02″ W.; to lat. 35°46′00″ N., long. 120°49′59″ W.; to lat. 35°44′03″ N., long. 120°48′12″ W.; to lat. 35°43′08″ N., long. 120°49′04″ W.; to lat. 35°42′44″ N., long. 120°48′52″ W.; to the point of beginning.

Designated altitudes. Surface to but not including 6,000 feet MSL.

Time of designation. 0600 to 2400 PST, daily.

Controlling agency. FAA, Oakland ARTCC.

Using agency. Commander, Camp Roberts, CA.

* * * * *

R–2504 B Camp Roberts, CA [New]

Boundaries. Beginning at lat. 35°42′18″ N., long. 120°47′59″ W.; to lat. 35°42′18″ N., long. 120°47′24″ W.; to lat. 35°42′58″ N., long. 120°45′37″ W.; to lat. 35°46′38″ N., long. 120°44′42″ W.; to lat. 35°47′18″ N., long. 120°44′49″ W.; to lat. 35°47′54″ N., long. 120°45′53″ W.; to lat. 35°49′10″ N., long. 120°45′44″ W.; to lat. 35°51′00″ N., long. 120°46′29″ W.; to lat. 35°51′11″ N., long. 120°47′59″ W.; to lat. 35°48′50″ N., long. 120°50′02″ W.; to lat. 35°46′00″ N., long. 120°49′59″ W.; to lat. 35°44′03″ N., long. 120°48′12″ W.; to lat. 35°43′08″ N., long. 120°49′04″ W.; to lat. 35°42′44″ N., long. 120°48′52″ W.; to the point of beginning.

Designated altitudes. 6,000 feet MSL to 15,000 feet MSL.

Time of designation. 0600 to 2400 PST, daily.

Controlling agency. FAA, Oakland ARTCC.

Using agency. Commander, Camp Roberts, CA.

Issued in Washington, DC, on May 27, 2010.

Kenneth McElroy,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–13607 Filed 6–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30726; Amdt. No. 3375]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 7, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 2010.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM and contained in this amendment, are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 14, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows: §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * **Effective Upon Publication**

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
1–Jul–10	OR	SUNRIVER	SUNRIVER	0/0047	5/13/10	RNAV (GPS) RWY 18, ORIG
1–Jul–10	CA	LOS ANGELES	LOS ANGELES INTL	0/0069	5/13/10	RNAV (RNP) Z RWY 25L
1–Jul–10	TN	KNOXVILLE	MCGHEE-TYSON	0/3627	5/5/10	RNAV (GPS) RWY 5L, AMDT 1
1–Jul–10	CA	FULLERTON	FULLERTON MUNI	0/5518	4/15/10	VOR–A, AMDT 7
1–Jul–10	CA	FULLERTON	FULLERTON MUNI	0/5519	4/15/10	LOC/DME RWY 24, ORIG
1–Jul–10	TX	WINTERS MUN	WINTERS MUNI	0/5809	4/16/10	NDB OR GPS RWY 35, ORIG
1–Jul–10	AL	HALEYVILLE	POSEY FIELD	0/6321	4/20/10	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG
1–Jul–10	AL	HALEYVILLE	POSEY FIELD	0/6322	4/20/10	VOR/DME OR GPS RWY 18, AMDT 4A
1–Jul–10	TX	HOUSTON	WILLIAM P HOBBY	0/6509	4/20/10	VOR/DME RWY 30L, AMDT 17A
1–Jul–10	WI	JANESVILLE	SOUTHERN WISCONSIN REGIONAL.	0/6510	4/29/10	RNAV (GPS) RWY 32, ORIG
1–Jul–10	MO	MARYVILLE	NORTHWEST MISSOURI REGIONAL.	0/6512	4/20/10	RNAV (GPS) RWY 14, ORIG
1–Jul–10	OH	SANDUSKY	GRIFFING-SANDUSKY	0/6513	4/29/10	VOR/DME OR GPS RWY 27, AMDT 2A
1–Jul–10	OH	NORWALK	NORWALK-HURON COUNTY	0/6514	4/29/10	VOR OR GPS–A, AMDT 5A
1–Jul–10	OH	SANDUSKY	GRIFFING-SANDUSKY	0/6520	4/29/10	VOR RWY 27, AMDT 7A
1–Jul–10	MO	MARYVILLE	NORTHWEST MISSOURI REGIONAL.	0/6521	4/20/10	RNAV (GPS) RWY 32, ORIG
1–Jul–10	MO	MOBERLY	OMAR N BRADLEY	0/6522	4/20/10	VOR/DME OR GPS A, AMDT 3
1–Jul–10	OH	CIRCLEVILLE	PICKAWAY COUNTY MEMORIAL.	0/6525	4/29/10	VOR OR GPS RWY 19
1–Jul–10	OH	MANSFIELD	MANSFIELD LAHM RGNL	0/6526	4/29/10	NDB RWY 32, AMDT 11C
1–Jul–10	MS	INDIANOLA	INDIANOLA MUNI	0/6624	4/20/10	VOR/DME B, AMDT 5
1–Jul–10	NE	LINCOLN	LINCOLN	0/6689	4/21/10	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG
1–Jul–10	TX	DALLAS	ADDISON	0/6690	4/21/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 5
1–Jul–10	MS	PICAYUNE	PICAYUNE MUNI	0/6746	4/27/10	VOR A, ORIG
1–Jul–10	FL	DESTIN	DESTIN-FORT WALTON	0/6838	4/27/10	RNAV (GPS) RWY 32, ORIG–B
1–Jul–10	FL	DESTIN	DESTIN-FORT WALTON	0/6839	4/27/10	RNAV (GPS) RWY 14, ORIG–C
1–Jul–10	WI	LA POINTE	MADELINE ISLAND	0/6965	5/7/10	RNAV (GPS) RWY 22, ORIG
1–Jul–10	NE	LINCOLN	LINCOLN	0/7018	4/23/10	RNAV (GPS) RWY 36, AMDT 1
1–Jul–10	NE	AINSWORTH	AINSWORTH MUNI	0/7019	4/23/10	RNAV (GPS) RWY 13, ORIG
1–Jul–10	SD	GREGORY	GREGORY MUNI, FLYNN FIELD.	0/7020	5/7/10	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG
1–Jul–10	NE	NORTH PLATTE	NORTH PLATTE RGNL AIRPORT LEE BIRD FIELD.	0/7069	4/23/10	RNAV (GPS) RWY 30, AMDT 1
1–Jul–10	TX	BRYAN	COULTER FIELD	0/7071	4/23/10	RNAV (GPS) RWY 15, ORIG
1–Jul–10	OH	LEBANON	LEBANON-WARREN COUNTY.	0/7074	5/7/10	NDB–A, AMDT 5
1–Jul–10	ND	WAHPETON	HARRY STERN	0/7100	5/7/10	RNAV (GPS) RWY 33, ORIG
1–Jul–10	TX	HOUSTON	WILLIAM P HOBBY	0/7219	4/26/10	ILS RWY 30L, AMDT 5B
1–Jul–10	NJ	TETERBORO	TETERBORO	0/7295	5/5/10	COPTER ILS OR LOC RWY 6, AMDT 1D
1–Jul–10	NJ	TETERBORO	TETERBORO	0/7296	5/5/10	ILS OR LOC RWY 6, AMDT 29C
1–Jul–10	OH	NORWALK	NORWALK-HURON COUNTY	0/7687	5/7/10	GPS RWY 28, ORIG
1–Jul–10	NE	COLUMBUS	COLUMBUS MUNI	0/7703	4/28/10	VOR RWY 32, AMDT 14
1–Jul–10	NE	HARTINGTON	HARTINGTON MUNI	0/7704	4/28/10	VOR/DME RWY 31, ORIG–A
1–Jul–10	KS	AUGUSTA	AUGUSTA MUNI	0/7863	4/29/10	VOR OR GPS A, ORIG
1–Jul–10	LA	LAKE CHARLES	LAKE CHARLES RGNL	0/8270	5/3/10	RNAV (GPS) RWY 33, AMDT 1
1–Jul–10	LA	LAKE CHARLES	LAKE CHARLES RGNL	0/8271	5/3/10	LOC BC RWY 33, AMDT 19
1–Jul–10	IA	SPENCER	SPENCER MUNI	0/8275	5/3/10	ILS OR LOC RWY 12, AMDT 2
1–Jul–10	OH	CLEVELAND	CLEVELAND-HOPKINS	0/8282	5/7/10	ILS OR LOC RWY 6L, AMDT 2
1–Jul–10	OR	MEDFORD	ROGUE VALLEY INTL	0/8694	5/5/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 9
1–Jul–10	KS	ANTHONY MUNI	ANTHONY MUNI	0/9193	5/7/10	VOR OR GPS A, AMDT 1

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
1–Jul–10	MN	FOSSTON	FOSSTON MUNI	0/9234	5/12/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 1
1–Jul–10	MN	MINNEAPOLIS	FLYING CLOUD	0/9235	5/12/10	ILS OR LOC RWY 10R, AMDT 3
1–Jul–10	PA	LOCK HAVEN	WILLIAM T. PIPER MEMORIAL.	0/9245	5/12/10	RNAV (GPS)–1, ORIG
1–Jul–10	FL	MILTON	PETER PRINCE FLD	0/9265	5/12/10	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG
1–Jul–10	NY	MONTGOMERY	ORANGE COUNTY	0/9280	5/12/10	ILS OR LOC RWY 3, AMDT 3A
1–Jul–10	OH	UPPER SANDUSKY	WYANDOT COUNTY	0/9415	5/12/10	VOR OR GPS–A, AMDT 3A
1–Jul–10	CO	TELLURIDE	TELLURIDE REGIONAL	0/9805	5/11/10	LOC/DME RWY 9, AMDT 1
1–Jul–10	ID	LEWISTON	LEWISTON-NEZ PERCE COUNTY.	0/9806	5/11/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 3

[FR Doc. 2010–13263 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30725 ; Amdt. No. 3374]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 7, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 2010.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *Telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria

contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule " under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 14, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 1 JUL 2010

Orlando, FL, Orlando Intl, ILS OR LOC RWY 36R, ILS RWY 36R (CAT II), ILS RWY 36R (CAT III), Amdt 9A

Effective 29 JUL 2010

Atqasuk, AK, Atqasuk Edward Burnell Sr. Memorial, NDB RWY 6, Amdt 2
Atqasuk, AK, Atqasuk Edward Burnell Sr. Memorial, NDB RWY 24, Amdt 2
Atqasuk, AK, Atqasuk Edward Burnell Sr. Memorial, Takeoff Minimums and Obstacle DP, Orig
Barrow, AK, Wiley Post-Will Rogers Memorial, GPS RWY 24, Orig-B, CANCELLED
Barrow, AK, Wiley Post-Will Rogers Memorial, ILS OR LOC/DME RWY 6, Orig-B CANCELLED
Barrow, AK, Wiley Post-Will Rogers Memorial, ILS OR LOC/DME RWY 7, Orig
Barrow, AK, Wiley Post-Will Rogers Memorial, LOC/DME BC RWY 24, Amdt 3C, CANCELLED
Barrow, AK, Wiley Post-Will Rogers Memorial, LOC/DME BC RWY 25, Orig
Barrow, AK, Wiley Post-Will Rogers Memorial, NDB RWY 6, Amdt 5A, CANCELLED
Barrow, AK, Wiley Post-Will Rogers Memorial, NDB RWY 24, Amdt 6, CANCELLED
Barrow, AK, Wiley Post-Will Rogers Memorial, RNAV (GPS) RWY 6, Orig-B, CANCELLED
Barrow, AK, Wiley Post-Will Rogers Memorial, RNAV (GPS) RWY 7, Orig
Barrow, AK, Wiley Post-Will Rogers Memorial, RNAV (GPS) RWY 25, Orig
Barrow, AK, Wiley Post-Will Rogers Memorial, Takeoff Minimums and Obstacle DP, Orig
Barrow, AK, Wiley Post-Will Rogers Memorial, VOR RWY 24, Amdt 3B, CANCELLED
Barrow, AK, Wiley Post-Will Rogers Memorial, VOR/DME RWY 24, Amdt 1A, CANCELLED
Barrow, AK, Wiley Post-Will Rogers Memorial, VOR/DME RWY 25, Orig
Muscle Shoals, AL, Northwest Alabama Rgnl, ILS OR LOC RWY 29, Amdt 5
Muscle Shoals, AL, Northwest Alabama Rgnl, RNAV (GPS) RWY 11, Amdt 1
Muscle Shoals, AL, Northwest Alabama Rgnl, RNAV (GPS) RWY 29, Amdt 1
Safford, AZ, Safford Rgnl, GPS RWY 12, Orig-A, CANCELLED
Safford, AZ, Safford Rgnl, GPS RWY 30, Orig-A, CANCELLED
Safford, AZ, Safford Rgnl, RNAV (GPS) RWY 12, Orig
Safford, AZ, Safford Rgnl, RNAV (GPS) RWY 30, Orig
Safford, AZ, Safford Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Watsonville, CA, Watsonville Muni, NDB–B, Amdt 2
Watsonville, CA, Watsonville Muni, RNAV (GPS) RWY 2, Orig
Watsonville, CA, Watsonville Muni, VOR/DME–A, Amdt 1
Jacksonville, FL, Jacksonville Intl, RADAR–1, Amdt 6C, CANCELLED
Salmon, ID, Lemhi County, RNAV (GPS)-D, Orig
Galesburg, IL, Galesburg Muni, Takeoff Minimums and Obstacle DP, Orig
Atwood, KS, Atwood-Rawlins County City-Co, Takeoff Minimums and Obstacle DP, Orig
Benton, KS, Lloyd Strearman Field, Takeoff Minimums and Obstacle DP, Orig
Junction City, KS, Freeman Field, NDB–B, Amdt 5
Dowagiac, MI, Dowagiac Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Newberry, MI, Luce County, Takeoff Minimums and Obstacle DP, Orig
Three Rivers, MI, Three Rivers Muni Dr. Haines, NDB RWY 27, Amdt 7A, CANCELLED
Brainerd, MN, Brainerd Lakes Rgnl, RNAV (GPS) RWY 5, Amdt 1
Brainerd, MN, Brainerd Lakes Rgnl, RNAV (GPS) RWY 12, Amdt 1
Brainerd, MN, Brainerd Lakes Rgnl, RNAV (GPS) RWY 30, Amdt 1
Brainerd, MN, Brainerd Lakes Rgnl, VOR/DME OR GPS RWY 12, Amdt 9A, CANCELLED
Brainerd, MN, Brainerd Lakes Rgnl, VOR OR GPS RWY 30, Amdt 13B, CANCELLED
Two Harbors, MN, Richard B. Helgeson, NDB RWY 24, Amdt 1, CANCELLED
Ava, MO, Ava Bill Martin Memorial, NDB RWY 31, Amdt 1, CANCELLED
Perryville, MO, Perryville Muni, GPS RWY 2, Orig-A, CANCELLED
Perryville, MO, Perryville Muni, GPS RWY 20, Orig-A, CANCELLED
Perryville, MO, Perryville Muni, RNAV (GPS) RWY 2, Orig
Perryville, MO, Perryville Muni, RNAV (GPS) RWY 20, Orig
Perryville, MO, Perryville Muni, Takeoff Minimum and Obstacle DP, Orig
Perryville, MO, Perryville Muni, VOR/DME–A, Amdt 5
Perryville, MO, Perryville Muni, VOR/DME RNAV RWY 20, Amdt 3A, CANCELLED
Kalispell, MT, Glacier Park Intl, ILS OR LOC RWY 2, Amdt 6A
Missoula, MT, Missoula Intl, GRZLY TWO Graphic Obstacle DP
Grafton, ND, Hutson Field, GPS RWY 17, Orig, CANCELLED
Grafton, ND, Hutson Field, GPS RWY 35, Amdt 1, CANCELLED
Grafton, ND, Hutson Field, RNAV (GPS) RWY 17, Orig
Grafton, ND, Hutson Field, RNAV (GPS) RWY 35, Orig
Grafton, ND, Hutson Field, Takeoff Minimums and Obstacle DP, Amdt 1
Hazen, ND, Mercer County Rgnl, RNAV (GPS) RWY 14, Amdt 1
Hazen, ND, Mercer County Rgnl, RNAV (GPS) RWY 32, Amdt 1
Hazen, ND, Mercer County Rgnl, Takeoff Minimums and Obstacle DP, Orig
Williston, ND, Sloulin Fld Intl, ILS OR LOC RWY 29, Amdt 4
Williston, ND, Sloulin Fld Intl, NDB RWY 29, Amdt 3
Williston, ND, Sloulin Fld Intl, RNAV (GPS) RWY 11, Orig
Williston, ND, Sloulin Fld Intl, RNAV (GPS) RWY 29, Orig

Williston, ND, Sloulin Fld Intl, Takeoff Minimums and Obstacle DP, Amdt 4
Williston, ND, Sloulin Fld Intl, VOR RWY 11, Amdt 13
Williston, ND, Sloulin Fld Intl, VOR/DME RWY 29, Amdt 4
Thedford, NE, Thomas County, RNAV (GPS) RWY 11, Amdt 2
Thedford, NE, Thomas County, RNAV (GPS) RWY 29, Amdt 2
Portsmouth, NH, Portsmouth Intl At Pease, ILS OR LOC RWY 16, Amdt 2
Portsmouth, NH, Portsmouth Intl At Pease, ILS OR LOC RWY 34, Amdt 3
Portsmouth, NH, Portsmouth Intl At Pease, RNAV (GPS) RWY 16, Amdt 2
Portsmouth, NH, Portsmouth Intl At Pease, RNAV (GPS) RWY 34, Amdt 1
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) RWY 10, Amdt 2
Connellsville, PA, Joseph A. Hardy Connellsville, LOC RWY 5, Amdt 3
St Mary's, PA, St Mary's Muni, RNAV (GPS) RWY 28, Amdt 1A
Morristown, TN, Moore-Murrell, Takeoff Minimums and Obstacle DP, Amdt 3
Front Royal, VA, Front Royal-Warren County, RNAV (GPS)-A, Orig-A
Front Royal, VA, Front Royal-Warren County, Takeoff Minimums and Obstacle DP, Amdt 1
Front Royal, VA, Front Royal-Warren County, VOR–B, Orig-A
Charleston, WV, Yeager, VOR/DME RNAV OR GPS RWY 15, Amdt 2A, CANCELLED
Charleston, WV, Yeager, VOR/DME RNAV OR GPS RWY 33, Amdt 2A, CANCELLED
Clarksburg, WV, North Central West Virginia, VOR–A, Orig
Clarksburg, WV, North Central West Virginia, VOR OR GPS RWY 3, Amdt 15B, CANCELLED

[FR Doc. 2010–12131 Filed 6–4–10; 8:45 am]

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Proposed Rules

Federal Register
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Monday, June 7, 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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AA27

Enterprise Duty To Serve Underserved Markets

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: Section 1129 of the Housing and Economic Recovery Act of 2008 (HERA) amended section 1335 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to establish a duty for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) to serve three specified underserved markets—manufactured housing, affordable housing preservation, and rural markets—in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for very low-, low- and moderate-income families in those markets. The Federal Housing Finance Agency (FHFA) is issuing and seeking comments on a proposed rule that would establish a method for evaluating and rating the Enterprises' performance in each underserved market for 2010 and each subsequent year. In addition, the proposed rule would set forth Enterprise transactions and activities that would be considered for the duty to serve.

The proposed rule would, among other things: Consider only manufactured homes titled as real property for purposes of the duty to serve the manufactured housing market; give the Enterprises latitude to concentrate on assisting particular affordable housing preservation programs that would benefit very low-, low- and moderate-income families; and define rural areas generally in accordance with the definition set forth in the Housing Act of 1949.

DATES: Written comments must be received on or before July 22, 2010.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA27, by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA27" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include "RIN 2590–AA27" in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA27, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA27, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Nelson Hernandez, Senior Associate Director, Office of Housing and Community Investment, (202) 408–2993, Brian Doherty, Manager, Office of Housing and Community Investment, (202) 408–2991, or Mike Price, Senior Policy Analyst, Office of Housing and Community Investment, (202) 408–2941. For legal questions, contact: Lyn Abrams, Attorney, (202) 414–8951, Kevin Sheehan, Attorney, (202) 414–8952, or Sharon Like, Associate General Counsel, (202) 414–8950. These are not toll-free numbers. The mailing address for each contact is: Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and may revise the language of the proposed rule as appropriate after taking all comments into consideration. Copies of all comments will be posted on FHFA's Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Background

A. Establishment of FHFA

Effective July 30, 2008, HERA amended the Safety and Soundness Act to create FHFA as an independent agency of the federal government.[1] HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises from the Office of Federal Housing Enterprise Oversight (OFHEO) to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the housing goals for the Enterprises from the Department of Housing and Urban Development (HUD) to FHFA. FHFA is responsible for ensuring that the Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities.[2]

Section 1302 of HERA provides, in part, that all regulations, orders and determinations issued by the Secretary of HUD (Secretary) with respect to the Secretary's authority under the Safety and Soundness Act, the Federal National Mortgage Association Charter

[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, section 1101, Public Law No. 110–289, 122 Stat. 2654 (2008), codified at 12 U.S.C. 4501 *et seq.*

[2] *See* 12 U.S.C. 4513.

Act and the Federal Home Loan Mortgage Corporation Act (together, the Charter Acts), shall remain in effect and be enforceable by the Secretary or the Director of FHFA, as the case may be, until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. The Enterprises continue to operate under regulations promulgated by OFHEO and HUD until FHFA issues its own regulations.[3]

The Enterprises are government-sponsored enterprises chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages.[4] Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the nation.[5]

B. Statutory Background

The Safety and Soundness Act provides that the Enterprises "have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families." 12 U.S.C. 4501(7). Section 1129 of HERA amended section 1335 of the Safety and Soundness Act to establish a duty for the Enterprises to serve three specified underserved markets, in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for certain categories of borrowers in those markets. 12 U.S.C. 4565. Specifically, the Enterprises are required to provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low- and moderate-income families with respect to manufactured housing, affordable housing preservation and rural markets.[6] *Id.* sec. 4565(a). In addition, section 1335(d)(1) requires FHFA to establish, by regulation effective for 2010 and each subsequent year, a method for evaluating and rating the Enterprises' performance of the duty to serve underserved markets. *Id.* sec. 4565(d)(1). FHFA is required to separately evaluate each Enterprise's performance with respect to each underserved market, taking into consideration the following:

(i) The Enterprise's development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each of the underserved markets (hereafter, the "loan product assessment factor");

(ii) The extent of the Enterprise's outreach to qualified loan sellers and other market participants in each of the underserved markets (hereafter, the "outreach assessment factor");

(iii) The volume of loans purchased by the Enterprise in each underserved market relative to the market opportunities available to the Enterprise, except that the Director shall not establish specific quantitative targets or evaluate the Enterprise based solely on the volume of loans purchased (hereafter, the "loan purchase assessment factor"); and

(iv) The amount of investments and grants by the Enterprise in projects which assist in meeting the needs of the underserved markets (hereafter, the "investments and grants assessment factor").

Id. sec. 4565(d)(2).

The duty to serve provisions and issues for consideration are discussed further below.

C. Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act to maintain the Enterprises in a safe and sound financial condition and to help assure performance of their public mission. The Enterprises remain under conservatorship at this time.

Because Congress enacted the duty to serve provisions in the Safety and Soundness Act before the Enterprises were placed in conservatorship, Congress developed the duty to serve requirements for normal Enterprise operating conditions, not conservatorship. While the Enterprises are in conservatorship, FHFA expects them to continue to fulfill their core statutory purposes which include their support for affordable housing. One set of measures of the Enterprises' support for affordable housing comes from the housing goals and another comes from the duty to serve. At the same time, all Enterprise activities, including those in support of affordable housing, must be consistent with the requirements of conservatorship.

Since the establishment of the conservatorships, the combined losses at the two Enterprises depleted all of their capital and required them to draw about $145 billion from the Department of the Treasury (Treasury) under the Senior Preferred Stock Purchase Agreements with Treasury. By letter dated February 2, 2010, FHFA's Acting Director reported to Congress that having the Enterprises engage in new products would be inconsistent with the goals of conservatorship and, consequently, that the Enterprises would be limited to continuing their existing core business activities and taking actions necessary to advance the goals of the conservatorship (Letter to Congress).[7]

Under the terms of the Senior Preferred Stock Purchase Agreements, the Enterprises will be shrinking their retained mortgage portfolios by ten percent per year. The Administration has announced its intention to develop and present to Congress a plan for the future of the nation's housing finance system that will include a proposal for the ultimate resolution of the Enterprises in conservatorship. Administration and congressional leadership have each pointed to the coming year as likely to see substantial legislative action affecting the Enterprises' future form and function. FHFA intends to continue operating the conservatorships as set forth in the Letter to Congress in anticipation of congressional action on the future of the Enterprises. In recognition of the foregoing facts and circumstances, FHFA's approach to implementing section 1335 of the Safety and Soundness Act is to limit the proposed rule to existing core business activities at the Enterprises and not to require that they engage in new lines of business as a result of the duty to serve proposed rule.

III. Duty To Serve Underserved Markets

A. Implementation of the Duty To Serve

The Enterprises' public purposes include a broad obligation to serve moderate- and lower-income borrowers. Through HERA, Congress created a duty for the Enterprises to serve three specific underserved markets. The duty to serve is a new obligation for the Enterprises and a new oversight responsibility for FHFA. The proposed rule would set forth standards for compliance with the duty to serve, methods for evaluating and rating the Enterprises and requirements for the

[3] *See* HERA at section 1302, 122 Stat. 2795; 12 U.S.C. 4603.

[4] *See* 12 U.S.C. 1716 *et seq.;* 12 U.S.C. 1451 *et seq.*

[5] *Id.*

[6] The terms "very low-income", "low-income" and "moderate-income" are defined in 12 U.S.C. 4502.

[7] *See* Letter from Acting Director Edward J. DeMarco to the Honorable Christopher Dodd, Honorable Richard C. Shelby, Honorable Barney Frank, and Honorable Spencer Bachus (Feb. 2, 2010).

Enterprises to provide reports and data on their performance under the duty to serve.

B. Overview of Comments

The formal rulemaking for the duty to serve commenced with FHFA's publication of an Advance Notice of Proposed Rulemaking (ANPR), 74 FR 38572 (Aug. 4, 2009).[8] FHFA received 100 comment letters in response. The majority of the commenters addressed manufactured housing. Twenty-six individuals, 18 nonprofit organizations, 11 trade associations, 11 corporations, seven policy advocacy organizations and one government entity addressed this issue. FHFA also received comments on other issues from one individual, nine nonprofit organizations, six trade associations, one corporation, five policy advocacy organizations, one government agency, one professional association and both Enterprises.

In addition to the comment letters, FHFA held five in-person meetings and one teleconference with manufactured housing industry representatives. These discussions covered current secondary mortgage market support for manufactured housing, the practices and operations of the industry and the consumer protections afforded manufactured housing borrowers. On December 3, 2009, FHFA hosted a forum on affordable housing, which was attended by members of the Affordable Housing Advisory Councils of the 12 Federal Home Loan Banks. The forum focused on manufactured housing and rural housing issues. Summaries of the forum, the meetings and the teleconference are available on FHFA's Web site.

Commenters on the duty to serve the manufactured housing market focused primarily on personal property (chattel) loans for manufactured homes and manufactured home community[9] financing. Fifty-seven commenters, including most of the individuals and nonprofit organizations, opposed consideration for chattel loans, or would limit consideration of such loans to instances in which they were backed by rigorous consumer protections.

With regard to manufactured home communities, individuals, nonprofit organizations, and policy advocacy groups expressed concern about the lack of tenant protections in communities owned by investors. Although some commenters favored consideration for loans made in support of these communities, this support was conditioned upon FHFA's establishing significant protections for residents. The manufactured housing corporations and trade associations generally favored duty to serve consideration for purchases of mortgages on investor-owned and resident-owned manufactured home communities. They commented that a dearth of new manufactured home communities are being developed, there is a shortage of financing for such communities, many communities need to refinance over the next several years, and there are harmful effects on residents when a community cannot obtain financing and must convert to a different use.

FHFA received sixteen comments regarding the affordable housing preservation market. The commenters, who included one trade association, four policy advocacy organizations, seven nonprofit organizations, one government agency and both Enterprises, addressed a range of issues. Most commenters supported consideration under the affordable housing preservation market for Enterprise assistance to HUD's Neighborhood Stabilization Program (NSP) and state and local foreclosure prevention programs. However, other commenters opposed consideration for assistance to NSP, but did favor consideration for state and local foreclosure prevention programs. A few commenters suggested consideration for assisting with Treasury's loan modification programs. Most of the affordable housing advocate commenters wanted less rigorous underwriting assumptions for properties receiving Section 8 payments or other property-based HUD subsidies. There was also strong support for more interaction between the Enterprises and state and local Housing Finance Agencies (HFAs).

The majority of comments on rural markets addressed the definition of "rural area." In the ANPR, FHFA requested comment on three definitions of "rural area." While some commenters supported at least one of those three definitions, more than half of the commenters on this issue supported adoption of the definition of "rural area" from the Housing Act of 1949, which was not one of the definitions identified in the ANPR. These commenters, all of whom are involved in rural housing mortgage lending or development, are familiar with this definition and use it within their organizations. The comments received and the merits of the different definitions are analyzed in detail below under the discussion of the duty to serve rural markets.

Several commenters supported evaluating the Enterprises' performance by using an evaluation methodology similar to that used to evaluate compliance with the Community Reinvestment Act (CRA). Other commenters stated that the four tests for evaluation set forth in the ANPR should not necessarily be given equal weight in evaluating the Enterprises' performance.

C. Underserved Markets

The duty to serve provisions in the Safety and Soundness Act indicate that the markets for manufactured housing, affordable housing preservation and rural areas are underserved and in need of particular assistance by the Enterprises. The extent of the lack of service and some of the factors underlying it are discussed below.

1. Manufactured Housing

According to Home Mortgage Disclosure Act (HMDA) data for 2008, home purchase applications for manufactured homes are denied at three times the rate that applications for site-built homes are denied. Further, of those mortgages that are originated, 60 percent are "higher-cost mortgages" under HMDA[10], whereas only 8 percent of originations for site-built homes are higher-cost mortgages. Manufactured housing borrowers may have few refinancing options even if interest rates decrease.[11]

A number of other factors combine to make the manufactured housing market underserved. In recent times, mortgage insurance has been generally unavailable for manufactured homes. Moreover, comparable properties, particularly in rural areas, can be difficult to identify, which makes appraisals more difficult. Also, unlike site-built housing, many manufactured homes have been financed as personal property, which many commenters viewed as offering terms less favorable to borrowers.[12]

[8] 74 FR 38572 (Aug. 4, 2009).

[9] In this rulemaking FHFA is using the term "manufactured home communities" to mean "manufactured home parks."

[10] For the 2008 reporting year, lenders reported the difference between the loan's annual percentage rate (APR) and the yield on Treasury securities having comparable periods of maturity, if that difference is equal to or greater than 3 percentage points for loans secured by a first lien on a dwelling, or equal to or greater than 5 percentage points for loans secured by a subordinate lien on a dwelling. *See* 67 FR 43218 (June 27, 2002).

[11] Jon Thompson, "Manufactured housing: An expected beneficiary from subprime mortgage disruption," p. 3. (Advantus Capital Management, 4th Qtr. 2007), available at *http://www.advantuscapital.com/adv/pdf/F67229.pdf.*

[12] Manufactured housing industry commenters asserted there could be advantages to personal property mortgages. The Manufactured Housing

Continued

2. Affordable Housing Preservation

Affordable housing is preserved when an owner acts to keep rents affordable for low- and moderate-income households while ensuring that the property remains in good physical and financial condition for an extended period.[13] While affordable housing preservation is often associated with programs to help existing subsidized properties remain financially viable, it also encompasses efforts to keep unsubsidized properties in good condition while maintaining affordability for low- and moderate-income households. Many owners of subsidized properties face the need to refinance the loans on their properties, either because the original financing is nearing maturity or because they need to obtain equity from the property to perform major upgrades and repairs. Congressional hearings have highlighted the problems in this area.[14]

A variety of factors make the affordable housing preservation market difficult to serve. For example, the disruptions in the financial markets and the general lowering in value of Low Income Housing Tax Credits (LIHTCs) affect some of the programs that the Enterprises are required to assist. Transactions in many of the enumerated programs are generally project specific, involving multiple sources for debt and equity. Structuring is often complex, and the transaction process is often difficult and lengthy.

Units lacking rental assistance, which are often in older and/or small multifamily properties, provide a significant share of housing affordable to low- and moderate-income families. Keeping these units in the housing stock at reasonable rents can be more cost-effective than building new subsidized units.[15] One way to achieve this is to make financing for affordable housing preservation available on better terms.

3. Rural Areas

Practitioners and researchers have identified a number of long-standing impediments to affordable housing in rural areas. One impediment is the lower population density, which may prevent developers and operators from taking advantage of economies of scale in developing affordable housing in rural areas.[16] In addition, rural areas often have fewer nonprofit housing development corporations with the capacity to handle complicated government subsidy programs and the long and difficult housing development process.[17] Many smaller communities and governments have difficulty funding public utilities essential to constructing housing. Moreover, there are fewer lenders in rural areas than in metropolitan areas, and rural lenders may lack the back office capacity and the necessary scale of volume to effectively sell mortgages in the secondary market.

In 2007, the Housing Assistance Council (HAC) testified that "[n]early 3.6 million rural households are cost burdened, paying more than 30 percent of their monthly income for housing costs."[18] HAC further testified that less than 16 percent of the rural population is minority; however, this population was disproportionately affected by poor housing conditions, as rural minorities are more likely than rural whites to live in substandard housing.[19]

D. Market-by-Market Considerations

1. Manufactured Housing Market—Proposed § 1282.32

Section 1335 of the Safety and Soundness Act requires the Enterprises to "develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families." 12 U.S.C. 4565(a)(1)(A). Manufactured housing could be an important housing option for lower-income families. Nearly half of all loans originated on manufactured homes from 2004 to 2008 were for families with incomes at or below 80 percent of area median income (AMI).[20] Manufactured housing also costs less initially than site-built housing. Manufactured homes tend to be much smaller, which significantly reduces the price of the home.[21] In addition, the average price per square foot of a new site-built home in 2008, exclusive of the cost of the land, was more than double that of a double-wide manufactured home.[22]

Investors have been cautious about manufactured housing in the wake of market disruptions at the end of the 1990s and the beginning of this decade, particularly in light of the demise of some of the larger specialized manufactured housing lenders. More recently, shortages of warehouse lines of credit, downgrades of existing asset-backed securities[23] and difficulties with bond insurance[24] have added to concerns.[25]

Institute, for example, suggested: (1) The overall principal loan amount is more affordable due to the absence of land in the transaction; (2) no appraisal, survey or private mortgage insurance is necessary, which lowers closing costs; (3) the customer does not encumber any real property; (4) tax, titling fees, homeowners insurance and service warranties can be financed; and (5) the transaction is generally faster.

[13] *See* "Window of Opportunity—Preserving Affordable Housing" p. 6 (MacArthur Foundation, Nov. 2007), available at *http://www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/MAC_1107_Singles.pdf.*

[14] *See e.g.,* "Affordable Housing Preservation," Hearing before the Subcomm. on Housing and Transportation of the Senate Comm. on Banking, Housing, and Urban Affairs, 107th Cong., 2nd Sess. (Oct. 9, 2002) (S. Hearing 107–1014), available at *http://www.gpo.gov/congress/senate/pdf/107hrg/90543.pdf;* "Legislative Options for Preserving Federally- and State-assisted Affordable Housing and Preventing Displacement of Low-Income, Elderly, and Disabled Tenants," Hearing Before the Subcomm. on Housing & Community Opportunities of the House Comm. on Financial Services, 111th Cong., 1st Sess. (July 15, 2009) (Serial No. 111–59), available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:53239.wais.*

[15] *See* National Housing Trust, "Affordable Housing Preservation FAQs" (2010), available at *http://www.nhtinc.org/preservation_faq.php.*

[16] *See generally* National Rural Housing Coalition, "Preserving Rural America's Affordable Rental Housing" (Oct. 2004), available at *http://www.nrhcweb.org/news/515PreservationReport.pdf*; E. Bolda, *et al.,* "Creating Affordable Rural Housing with Services: Options and Strategies," Working Paper #19 (Apr. 2000), available at *http://muskie.usm.maine.edu/Publications/rural/WP%2319.pdf.*

[17] *See* Joe Myer, "Developing Rural Housing Despite the Obstacles—Why It is Hard to Build Affordable Housing in Rural Delaware" (Winter 2002), available at *http://www.housingforall.org/housing_in_rural_de.htm.*

[18] Statement of Moises Loza, Housing Assistance Council, before the Subcomm. on Housing and Community Development, U.S. House of Representatives (May 8, 2007), available at *http://financialservices.house.gov/hearing110/htloza050807.pdf.*

[19] "Rural Housing Programs: Review of Fiscal Year 2008 Budget and Pending Rural Housing Legislation," Hearing Before the Subcomm. on Housing & Community Opportunities of the House Comm. on Financial Services, 110th Cong., 1st Sess. 28 (May 8, 2007) (Serial No. 110–27), available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:37205.pdf.*

[20] This assessment is based on HMDA data from 2004–2008, exclusive of HOEPA mortgages and mortgages lacking borrower income information.

[21] The average size of a site-built house in 2008 was 2,459 square feet, whereas the average square footage of a single-wide manufactured home was 1,105 square feet and the average square footage of a double-wide manufactured home was 1,775 square feet. *See* U.S. Bureau of the Census, "Cost & Size Comparisons for New Manufactured Homes and New Single Family Site Built Homes" (2004–2008), available at *http://www.census.gov/const/mhs/sitebuiltvsmh.pdf.*

[22] In 2008, the average price per square foot for a new site-built home was $88.55 and for a new double-wide manufactured home was $42.87. *See id.*

[23] *See generally* Standard & Poor's, "Ratings Roundup: Monoline and Financial Institution Rating Volatility Drive Fourth-Quarter U.S. ABS Downgrades" (Jan. 28, 2009), available at *http://www.ambac.com/pdfs/RA/Volatility%20Drive%20Fourth-Quarter%20U.S.%20ABS%20Downgrades%20(01-28-09).pdf.*

[24] *See generally* Standard & Poor's, "S&P various actions on 182 U.S. rtgs after Ambac downgrade" (July 8, 2009), available at *http://www.reuters.com/article/idUSWNA860120090708.*

[25] As an illustration of the recent market, according to Origen Financial Services, the lack of

Manufactured housing could be an option for very low- and low-income families who reside in rural areas. HMDA data for 2008 show that 15 percent of all loan originations on manufactured homes in rural areas were for families with incomes at or below 50 percent of AMI, and another 29 percent were for families with incomes greater than 50 percent but at or below 80 percent of AMI. From 2004 through 2008, loan originations on manufactured homes in rural areas were more than double loan originations on manufactured homes in non-rural areas. Nearly half of all manufactured housing loans in rural areas during that time period were for families whose incomes were 80 percent or less of AMI.

One study explained the importance of manufactured housing to rural areas this way:

> The prevalence of manufactured housing in rural areas is in part a reflection of the costs and logistical challenges of site-built construction on relatively remote and scattered sites. It is also due to rural residents' generally lower incomes, and to the challenge of arranging standard mortgage financing for lots and land uses that do not conform to customary mortgage-underwriting criteria. Part of manufactured housing's appeal, in fact, lies in the ease with which units can be sited, a characteristic that is particularly important in areas lacking well developed construction and trade sectors. Manufactured housing's popularity in rural areas also results from a lack of affordable housing options, such as multifamily rental units, which are rarely developed at a cost-effective scale in low-density settings.[26]

The Enterprises have not been major investors in manufactured housing mortgages in recent years. Some industry commenters observed that manufactured housing loans are significantly under-represented in the Enterprises' mortgage portfolios in comparison with site-built homes. In particular, the Manufactured Housing Association for Regulatory Reform (MHARR) commented that manufactured housing loans now constitute less than one percent of the total business portfolios of both Enterprises, even though manufactured housing has historically represented approximately 10 to 15 percent of the single-family housing market. The fact that the majority of manufactured home loans were not financed as real property helps to explain why manufactured home loans constitute a small share of the Enterprises' business.

HMDA data do not specify the portion of these manufactured home loans that are financed as chattel, but the U.S. Census Bureau reported that in 2008, 63 percent of new manufactured homes placed for residential use were titled as personal property.[27]

In the ANPR, FHFA invited comment on the appropriate treatment under the duty to serve the manufactured housing market for personal property loans, land-home loans, real estate loans and loans for manufactured home communities. The comments are discussed in the relevant sections below.

Personal Property Loans. Section 1335(d)(3) of the Safety and Soundness Act provides that in determining whether the Enterprises have complied with the duty to serve the manufactured housing market, "the Director may consider loans secured by both real and personal property." 12 U.S.C. 4565(d)(3). FHFA is proposing that only loans titled as real property be considered towards the Enterprise's duty to serve.

Neither Enterprise has an ongoing business activity of purchasing chattel loans, although at least one of them has made limited bulk purchases of such loans in the past. Purchasing or guaranteeing chattel loans would require each Enterprise to develop operational capacities and risk management processes not currently in place. Moreover, to ensure that such lending was done responsibly would require each Enterprise to develop an extensive set of consumer protection requirements. Thus, FHFA proposes that chattel loans on manufactured homes not be considered towards the duty to serve the manufactured housing market as these loans are inconsistent with Enterprise conservatorship and would require substantial new efforts by the Enterprises to ensure safe and sound operations and sustainable homeownership for families.

The following paragraphs describe the widely divergent views FHFA received on this topic in response to the ANPR and the bases for the proposed exclusion of chattel loans.

Seventy-six commenters addressed the appropriateness of Enterprise support for personal property (chattel) loans on manufactured homes. Organizations representing consumers and manufactured home community residents expressed serious reservations about chattel lending. CFED, for example, stated that chattel loans provide low-income families with higher rates, less optimal terms and reduced consumer protections, as compared to a mortgage loan, and this was echoed in other comment letters.

Manufactured housing industry commenters asserted that manufactured housing financed as chattel provides a low cost housing option for lower-income borrowers, and that the secondary market for these loans is limited. These industry commenters largely supported providing duty to serve consideration for Enterprise purchase of chattel loans and suggested that the Enterprises purchase them on a flow basis and in significant quantities.[28]

In proposing that only loans titled as real property be considered towards the duty to serve, FHFA recognizes that manufactured housing financing often differs from financing for site-built homes. Interest rates charged for chattel loans are typically higher than those for real estate-secured loans.[29] Normally, chattel loans have shorter maturities and offer fewer consumer protections than real property loans. In several states, manufactured homes cannot be titled as real property[30] and, as a result,

a reliable source for a loan warehouse facility and the uncertainty of the availability of an exit in the securitization market caused it to stop originating loans for its own account and sell its portfolio of unsecuritized loans at a substantial loss. *See* Origen Financial, Inc., Annual Report on Form 10–K, as Amended, For the Fiscal Year Ended December 31, 2008, p. 2, available at *http://www.origenfinancial.com/sites/default/files/as_printed_Origen_10-K.pdf.*

[26] Neighborhood Reinvestment Corporation, "An Examination of Manufactured Housing as a Community-and Asset-Building Strategy," p. 6 (Sept. 2002), available at *http://www.jchs.harvard.edu/publications/communitydevelopment/W02–11_apgar_et_al.pdf.*

[27] *See* U.S. Bureau of the Census, "Cost & Size Comparisons For New Manufactured Homes and New Single Family Site Built Homes (2004–2008)," available at *http://www.census.gov/const/mhs/sitebuiltvsmh.pdf.*

[28] The Enterprises generally acquire single-family mortgage loans for securitization or for portfolio through either "flow" or "bulk" transaction channels. In the flow business, which represents the majority of their mortgage acquisitions, the Enterprises typically enter into agreements that generally set agreed-upon guaranty fee prices for a lender's future delivery of individual loans over a specified time period. Bulk business involves transactions in which a defined set of loans is to be delivered in bulk, a process which allows the Enterprises to review the loans for eligibility and pricing prior to delivery in accordance with the terms of the applicable contracts. Guaranty fees and other contract terms for bulk mortgage acquisitions are negotiated on an individual transaction basis, thereby enabling the Enterprises to adjust pricing more rapidly than in a flow transaction to reflect changes in market conditions and the credit risk of the specific transactions.

[29] *See* Ronald A. Wirtz, "Home, sweet (manufactured?) home" *Fedgazette* (July 2005), available at *http://www.minneapolisfed.org/pubs/fedgaz/05-07/cover.cfm.* Annual percentage rates may also be higher. For example, in 2007 one lender advertised an average annual percentage rate of 10.14 percent for its chattel loans and an average annual percentage rate of 7.54 percent for its real estate-secured loans. *See* "Tammac Manufactured Housing Advantage" (2007), available at *http://www.cdscreative.com/images/portfolio/tammac-holdings.pdf.*

[30] More than 40 states reportedly provide for conversion to real estate titles for manufactured

Continued

are not afforded certain borrower protections that apply when loans are secured by real property. Delinquencies and defaults on chattel loans typically exceed rates on mortgage loans.[31]

Sustainable homeownership results, in part, from the enforcement of appropriate consumer protections. Consumer organizations and some manufactured home resident organizations were particularly concerned that the Real Estate Settlement Procedures Act (RESPA), which requires that consumers receive an estimate of costs prior to closing and which prohibits payment of referral fees among settlement providers, does not apply to chattel loans. The National Consumer Law Center commented that the distinction between real property and personal property is especially important upon default because if a home is personal property rather than real property, the rights of the creditor are governed by Article 9 of the Uniform Commercial Code and the home may be subject to self-help repossession.[32] Further, the National Consumer Law Center commented that if the home is real property, upon default most states require that the creditor use the foreclosure process.

Commenters suggested that if FHFA determines that manufactured homes secured by chattel loans be considered, FHFA should require borrower protections such as: (i) Capping the annual percentage rate (APR) at 3.5 points above the prime rate; (ii) banning prepayment penalties; (iii) banning yield spread premiums; and (iv) requiring that lease terms extend five years beyond the term of the loan.[33]

Commenters also emphasized the importance of RESPA-like protections for chattel loans. However, developing such protections may require legislative and regulatory changes beyond the scope of the duty to serve.

The Enterprises have minimal experience with chattel financing, and the high level of defaults related to such financing creates significant credit and operational risks.[34] The depreciation in the value of the manufactured home could result in greater loss to the Enterprise in the event of default on the loan.[35] Manufactured homes are generally regarded as depreciating assets, even in a strong market environment.[36] A 2005 report by Lehman Brothers estimated the expected annual depreciation rate at three to four percent annually.[37] Likewise, Abt Associates noted that "[m]anufactured housing where the household does not own the lot is not an investment in any sense * * * [i]t should be thought of as a type of consumer durable."[38] The Office of Thrift Supervision cautioned lenders engaged in manufactured housing finance to carefully manage the risk of collateral depreciation for the homes.[39]

Upon consideration of the risks facing the borrowers and the Enterprises, FHFA proposes that only Enterprise purchases of mortgages on manufactured homes titled as real property and activities related to such mortgages be considered toward the duty to serve the manufactured housing market. Enterprise purchases of chattel mortgages or other mortgages not titled as real estate, and any activity related to such mortgages, would not be considered. The proposed rule would define "manufactured home" in accordance with the definition of "manufactured home" used by HUD under section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5402(6), and implementing regulations.[40]

FHFA has determined that very low-, low- and moderate-income families can be best served through manufactured housing titled as real property and that the Enterprises, as part of their mission to increase the liquidity of mortgages to low- and moderate-income families, can play a significant role in serving this segment of the market. In addition, the safe and sound operations of the Enterprises in conservatorship are better protected

homes. *See* Cathy Adkins, "Manufactured Housing: Not What You Think" (National Conference of State Legislatures, Apr. 2007), available at *http://www.ncsl.org/default.aspx?tabid=12742.*

[31] *See generally* Michael Koss, "Manufactured Housing ABS—Valuation in a Troubled Sector," p. 22 (Feb. 9, 2005) (Lehman Brothers Fixed-Income Research) (regarding the performance of different types of manufactured housing collateral). Origen Financial Services, LLC, commented that the Enterprises frequently object to purchasing chattel loans because of their high default rates and that about 30 percent of chattel loans fail during the life of the loan.

[32] For information on consumer protections under repossession, *see* Government Accountability Office, "Federal Housing Administration—Agency Should Assess the Effects of Proposed Changes to the Manufactured Home Loan Program," GAO–07–879, 26–27 (Aug. 2007), available at *http://www.gao.gov/new.items/d07879.pdf. See generally* A. Schmitz, "Promoting the Promise Manufactured Homes Provide for Affordable Housing," 13 Journal of Affordable Housing 394–395 (No. 3) (Spring 2004), available at *http://lawweb.colorado.edu/profiles/pubpdfs/schmitz/SchmitzAHCDL.pdf;* Consumers Union, "Manufactured housing: A home that the law still treats like a car" (Feb. 2005), available at *http://www.consumersunion.org/mh/docs/Feb2005.pdf.*

[33] For a discussion of consumer concerns about the origination and servicing of manufactured housing mortgages, *see generally* S. West, "Manufactured Housing Finance and the Secondary Market," Vol. 2, Issue 1, Community Development Investment Review 39 (2006) (Federal Reserve Bank of San Francisco), available at *http://www.frbsf.org/publications/community/review/062006/west.pdf* (Current financing of manufactured housing is expensive; the secondary market for manufactured housing mortgages must include the Enterprises and strategies to reduce investor risk.); A. Schmitz, "Promoting the Promise Manufactured Homes Provide for Affordable Housing," 13 Journal of Affordable Housing 384 (No. 3) (Spring 2004), available at *http://lawweb.colorado.edu/profiles/pubpdfs/schmitz/SchmitzAHCDL.pdf* (State laws differ with respect to real and personal property financing and with respect to corresponding consumer protection provisions; the relatively small number of manufactured housing lenders allows them to garner bargaining power over consumers and has led to predatory financing.).

[34] By letter dated February 2, 2010, FHFA advised Congress of its concerns about new Enterprise initiatives that could require entry into new business lines with little prior experience or the dedication of Enterprise personnel already operating in a stressed environment. *See* Letter to Congress at 7.

[35] One manufactured housing lender observed: "The value of manufactured houses has tended to depreciate over time * * * rapid depreciation may cause the fair market value of borrowers' manufactured houses to be less than the outstanding balance of their loans. In cases where borrowers have negative equity in their houses, they may not be able to resell their manufactured houses for enough money to repay their loans and may have less incentive to continue to repay their loans, which may lead to increased delinquencies and defaults." Origen Financial, Inc., Annual Report on Form 10–K, as Amended, for the Fiscal Year Ended December 31, 2008, p. 7, available at *http://www.origenfinancial.com/sites/default/files/as_printed_Origen_10-K.pdf.*

[36] *See* S. Nelson & G. Bailey, "Manufactured Housing RMBS Performance Update," p. 1 (Nov. 17, 2009) (Fitch Ratings). *See also* Consumer Federation of America, "The Promise and Pitfalls of Building Wealth through Manufactured Housing," p. 2–3 (*http://content.knowledgeplex.org/kp2/cache/documents/1895/189501.pdf;* April 2006), available at Dominion Bond Rating Service, "Methodology—Rating U.S. Residential Mortgage-Backed Securities Transactions," p. 22 (Apr. 2009), available at *http://www.dbrs.com/research/227912/rating-u-s-residential-mortgage-backed-securities-transactions.pdf* ("Historically, chattel paper posed difficulties for investors of RMBS since the greatest recovery value is in the land, not the structure.").

[37] *See* Michael Koss, "Manufactured Housing ABS—Valuation in a Troubled Sector," p. 13 (Feb. 9, 2005) (Lehman Brothers Fixed-Income Research). Advantus Capital views manufactured homes as depreciating like a car depreciates. *See* Jon Thomson, "Manufactured housing: An expected beneficiary from subprime mortgage disruption" 3 (Advantus Capital Management, 4th Qtr. 2007), available at *http://www.advantuscapital.com/adv/pdf/F67229.pdf.*

[38] T. Boehm & A. Schlottmann, "Is Manufactured Housing a Good Alternative for Low-Income Families? Evidence from the American Housing Survey," p. 50 (December 2004), available at *http://www.huduser.org/Publications/pdf/IsManufacturedHousingAGoodAlternativeForLow-IncomeFamiliesEvidenceFromTheAmericanHousingSurvey.pdf*

[39] *See* Office of Thrift Supervision, Examination Handbook, 212.25 (Sept. 2008), available at *http://files.ots.treas.gov/422320.pdf.*

[40] This definition is consistent with the definition of "manufactured housing" in FHFA's regulation governing Federal Home Loan Bank advances to members, at 12 CFR 950.1.

when real estate is pledged as collateral for the mortgage loan.

Other Types of Manufactured Home Loans. In the ANPR, FHFA requested comment on definitions for land-home loans. FHFA has reviewed the comments received and literature on land-home loans and found no universal agreement on terminology or definitions. Fannie Mae commented that it "has many years of experience purchasing loans secured by real property manufactured housing, sometimes called 'land home' mortgages." The Manufactured Housing Institute (MHI) described "land-home non-conforming mortgage loans" as including both the acquisition of the home and the land as part of the loan transaction, but as not conforming to one or more of the Enterprises' underwriting requirements. According to MHI, there is a separate classification of "real property conforming mortgage loans," which includes both the acquisition of the home and the land as part of the loan transaction and meets the Enterprises' underwriting requirements.

With some manufactured housing financing transactions, a single loan is secured by separate liens against the home and against the real estate on which the home is sited. In the event of a default, this arrangement provides the lender with the option of proceeding against either the home or the real estate, whichever is most advantageous. These types of transactions would not be considered under the proposed rule, but FHFA welcomes further comment as to their relative merits in serving very low-, low- and moderate-income families in the manufactured housing market.

Manufactured Home Communities. Enterprise assistance to manufactured home communities would not be considered for purposes of the duty to serve the manufactured housing market in the proposed rule.

Although some manufactured home communities may include units owned by the community that are rented to tenants, manufactured home communities generally provide siting for chattel financed homes, and for the reasons discussed previously, the proposed rule would not allow for consideration for assistance to manufactured homes not titled as real property. Advocacy organizations representing tenants highlighted significant concerns about the vulnerability of tenants in investor-owned communities. In their view, short-term leases, in combination with the expense and difficulty involved in relocating a manufactured home, made tenants vulnerable to a variety of difficulties, including unexpectedly high rental increases and conversions of communities to other uses with the resulting displacement of tenants. Enterprise support for housing under these circumstances would not be consistent with the intent of the duty to serve.

The ANPR solicited comments on whether and how Enterprise assistance for manufactured home communities should be considered for purposes of the duty to serve the manufactured housing market and whether there should be differences in how resident-owned and investor-owned communities are treated. Eighty-four commenters addressed this issue. There was support from most commenters for considering assistance to resident-owned communities. Commenters did not cite resident protection issues in connection with these types of communities. To the contrary, community, resident and consumer advocacy organizations suggested that Enterprise assistance with resident-owned communities would support affordable housing for lower-income families. ROC USA commented that after 25 years and over $150 million in originations for resident-owned communities, it had "not had a single loan lost or charged off."

Several commenters stated that this market faces significant difficulties. The commenters indicated that there is a shortage of financing for manufactured home communities, many communities need to refinance over the next several years, few new communities are being developed and residents face dislocation when a community cannot obtain financing and must convert to a different use.[41] In addition, commenters stated that manufactured home communities are analogous to multifamily properties in providing affordable housing and that multifamily properties receive significant support from the Enterprises.

However, many resident and consumer advocacy commenters identified certain tenant protections that would be necessary in conjunction with providing assistance to manufactured home communities including requirements that:

(i) The term of the lease on the lot where the home is sited is tied to the term of the mortgage on the manufactured home;

(ii) Rental increases on the lot where the home is sited would be governed by formulas based on published, third party indices;

(iii) Residents would be notified significantly in advance of any sale of the community by the owner and would have a collective right of first refusal to purchase the community;

(iv) Residents would have the right to sell their homes in place to persons of their choosing; and

(v) Residents would have the right to form resident associations and conduct resident meetings.

In light of the potential for manufactured home communities to provide affordable housing to very low-, low- and moderate-income families, FHFA solicits comment on whether assistance to manufactured home communities should be considered for purposes of the duty to serve the manufactured housing market. FHFA particularly encourages comments on the safety and soundness of financing, distinctions between investor-owned and resident-owned communities, and the potential to ensure appropriate consumer protections in conjunction with such assistance.

2. Affordable Housing Preservation Market—Proposed § 1282.33

Affordable housing preservation focuses primarily on "at risk properties." A property becomes "at risk" "either when its rent affordability restrictions expire, or because mismanagement or disinvestment cause [sic] the property to deteriorate and become unsafe or uninhabitable."[42] Across the country, thousands of multifamily properties with federal, state or local subsidies or financing are at risk of conversion to market rate rents, obsolescence, or foreclosure, if owners are unable to refinance loans. The Enterprises can play an important role in preserving affordable multifamily properties by offering owners refinancing alternatives to Federal Housing Administration (FHA), state and local financing programs.

Section 1335(a)(1)(B) of the Safety and Soundness Act requires the Enterprises to "develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and

[41] A different view was expressed by Hometown American Communities, who commented that financing for manufactured home communities is generally available including from various life insurance companies.

[42] Stewards of Affordable Housing for the Future, "Housing at Risk", available at *http://www.poah.org/about/at-risk.htm.* According to HUD, the general definition of "affordability" is for a household to pay no more than 30 percent of its annual income on housing. *See http://www.hud.gov/offices/cpd/affordablehousing/index.cfm.*

moderate-income families," including assistance to housing projects under the following programs:

i. The project-based and tenant-based rental assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

ii. The program under Section 236 of the National Housing Act (rental and cooperative housing for lower income families) (12 U.S.C. 1715z-1);

iii. The below-market interest rate mortgage program under Section 221(d)(4) of the National Housing Act (housing for moderate-income and displaced families) (12 U.S.C. 1715*l*);

iv. The supportive housing for the elderly program under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

v. The supportive housing program for persons with disabilities under Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);

vi. The programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 *et seq.*), but only permanent supportive housing projects subsidized under such programs;

vii. The rural rental housing program under Section 515 of the Housing Act of 1949 (42 U.S.C. 1485);

viii. The low-income housing tax credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42); and

ix. Comparable state and local affordable housing programs.

12 U.S.C. 4565(a)(1)(B).

Under the proposed rule, Enterprise assistance to housing projects under these programs would be considered under the duty to serve the affordable housing preservation market. FHFA will pay particular attention to the volume of existing loans that are maturing and may need refinancing in the affordable housing preservation market. The Enterprises would not be required to assist each program every year, but could take a step-by-step, concentrated approach. For example, an Enterprise might initially focus on the HUD Section 8, Section 236 and Section 202 programs. Several commenters asserted that the Enterprises should do more to support small multifamily properties.

The Enterprises have existing loan products that may meet the need of some owners seeking to refinance subsidized properties eligible to be considered under the affordable housing preservation market. The Enterprises offer subsidized property owners options not available under FHA programs, such as shorter terms and amortization periods, although these may not be as competitive as some FHA programs. The Enterprises have several loan products already in place for refinancing loans on Section 8 properties and Sections 236 and 202 loans. The properties refinanced under these programs are more numerous than properties refinanced pursuant to other enumerated programs, and their financing structure is more immediately suited to the Enterprises' existing operations. Other enumerated programs may require additional time for the Enterprise to tailor financing and other assistance, in particular, Section 221(d)(4), Section 811 and Section 515 programs, the McKinney-Vento Homeless Assistance Act and LIHTCs. In some or all of these cases, developing or implementing new loan products may be inconsistent with the requirements of conservatorship, but Enterprise outreach, such as providing technical assistance, or other support may be possible and appropriate.

The status of the enumerated programs and the role that the Enterprises could play in assisting them are discussed below.

Section 8. Both Enterprises currently purchase refinance mortgages on properties with HUD Section 8 contracts known as Housing Assistance Payments (HAP) contracts. Under this program, property owners receive rent payment subsidies from HUD and, in return, the property owner agrees to maintain affordable rents and maintain housing quality standards. Several commenters, including the Consumer Federation of America, Center for Responsible Lending, National Consumer Law Center, and Local Initiatives Support Corporation (LISC), stated that the Enterprises' underwriting guidelines are unnecessarily strict. For example, the Enterprises do not count all of the Section 8 payments as rental income and require additional reserves to protect against appropriations risk.[43] In the commenters' view, this may make refinancing a property infeasible or result in a lower loan amount and, therefore, fewer funds for repairs and replacement.

LISC commented in detail about the need for changes in Enterprise Section 8 financing. According to this comment letter, the Enterprises should modify their underwriting guidelines to allow the debt service coverage ratios to be based upon the full amount of the Section 8 rent levels, provided these rents were not above market levels. In addition, the letter suggested that the Enterprises may give better treatment for the debt service coverage ratios and the loan-to-value ratios for non-subsidized or LIHTC-only projects than they do for projects subsidized under Section 8, which may be a disincentive for financing of Section 8 projects.

Section 236. Both Enterprises currently have programs for purchasing refinance mortgages on Section 236 below-market interest rate (BMIR) loans. HUD's Section 236 program, also known as Section 236 Decoupling, permits an owner to refinance into a conventional multifamily mortgage while maintaining the interest rate subsidy provided by HUD. The HUD subsidy is referred to as Interest Reduction Payments (IRPs), and they are made directly to the lender. The amount HUD pays is the difference between the note rate and one percent. The Section 236 programs of both Enterprises use a bifurcated loan structure where the real estate loan and IRP payments amortize separately. The loan must be structured to ensure that the IRP payments are liquidated prior to the maturing of the real estate loan. HUD data indicate that there are over 1,300 outstanding Section 236 BMIR loans, and that about 200 of these loans will mature in 2010 and 2011.[44]

Section 221(d)(4). The Section 221(d)(4) program provides financing for the construction or major rehabilitation of multifamily rental properties and for permanent financing when construction is completed. The program is not subsidized, and there are no income restrictions on tenants. Therefore, the program may provide housing for other than very low-, low- and moderate-income households. Section 221(d)(4) loans purchased by the Enterprise may be considered as long as the units financed serve the income groups targeted by the duty to serve.

While the Safety and Soundness Act does not specifically mention the HUD Section 221(d)(3) program, this program, which is for nonprofit sponsors, can have a BMIR loan component. FHFA solicits comments on whether Enterprise purchases of Section 221(d)(3) loans should be considered under the duty to serve the affordable housing preservation market.

Section 202. Opportunities for the Enterprises to purchase refinanced Section 202 loans for the low-income elderly could grow due to legislative and HUD program changes and the increasing number of Section 202

[43] "Appropriations risk" is the possibility that Congress will not appropriate any funds for a program, or appropriate less funds than requested by the executive branch.

[44] HUD Insured Multifamily Mortgages Database, available at *http://www.hud.gov/offices/hsg/comp/rpts/mfh/mf_f47.cfm.*

properties in need of funding for rehabilitation. Established by the National Housing Act of 1959, Section 202 was a loan program without rental subsidies from 1959 to 1974. In 1974, HUD began to provide rental subsidies, but replaced subsidized loans with direct financing at prevailing market interest rates. As a result of the National Housing Act of 1990, HUD discontinued financing Section 202 properties, and instead, the Section 202 program became a capital advance program under which HUD provided construction or rehabilitation funds to sponsors, and after construction, rental subsidies. In return, sponsors were required to keep rents affordable to elderly households for a period of 40 years.

Most loans financed under Section 202 from 1959 to 1974 have 50-year terms, and most sponsors with such loans have already refinanced or sold their properties for redevelopment. The remaining Section 202 properties are at risk of deteriorating or being sold for redevelopment but not as affordable properties.[45] Section 202 properties that were financed from 1969 to 1974 are most in need of new financing.[46] Many properties financed from 1974 to 1990 have loans with interest rates exceeding nine percent and might also benefit from legislative changes. Refinancing would allow owners to acquire additional funds for rehabilitation, which could then be used to repair or rehabilitate Section 202 properties.[47] HUD data show that over 2,800 outstanding Section 202 loans are eligible for refinancing.[48]

Most Section 202 properties are refinanced through FHA-insured programs. FHA programs offer financing terms such as lower debt service coverage ratios and higher loan-to-value ratios than conventional mortgage lenders. More importantly, sponsors can refinance properties using contract rents rather than lower market rents, which usually results in a larger loan amount and more cash available to the sponsor for rehabilitation and reserves.

By actively pursuing Section 202 refinancing opportunities, the Enterprises would be able to provide more refinancing options for sponsors. Conventional financing through the Enterprises would allow sponsors access to adjustable rate mortgages with shorter maturities and amortization periods. Legislative changes to further facilitate refinancing of Section 202 loans have been introduced in Congress.[49] If these changes are enacted into law, the Enterprises would have increased opportunities to purchase refinanced mortgages and preserve Section 202 housing. Given the growing need for Section 202 sponsors to have available refinancing options other than FHA and state and local programs, Enterprise assistance in this area is particularly useful.

Section 811. The Section 811 program is a capital advance and rental assistance program for low-income disabled persons, and was created by the Cranston-Gonzalez National Housing Act of 1990. Under current law, Section 811 properties carry no debt, and HUD rental subsidies cover the difference between HUD-determined operating expenses and rental income.[50] There are no provisions under current law for refinancing Section 811 properties, and nonprofit organizations could not qualify for financing because excess cash flows produced by the properties under the program are minimal. Further, owners participating in the Section 811 program are required to maintain the property as housing for the disabled for a period of 40 years, and it will be at least 20 more years before low-income use restrictions on owners expire. However, the President's 2011 budget proposes changes to the Section 811 program and will introduce Project Rental Assistance Contracts (PRACs) as part of the program.[51] This would open up new opportunities for the Enterprises to provide long-term funding for properties receiving Section 811 PRACs.

McKinney-Vento Homeless Assistance Act. Programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 *et seq.*) provide supportive housing grants to help the homeless, especially homeless families with children, transition to independent living. Nonprofits that develop such supportive housing can use a combination of equity and financing sources, but such projects typically do not involve mortgages, which effectively limits Enterprise duty to serve activity under these programs. FHFA solicits comments on how the Enterprises could provide assistance to properties subsidized pursuant to the McKinney-Vento Homeless Assistance Act for purposes of the duty to serve the affordable housing preservation market.

Sections 515 and 538. Both Enterprises currently have programs to help owners of properties with the U.S. Department of Agriculture's (USDA) Section 515 direct loans to support low-income housing in rural areas. The Enterprises could also purchase eligible Section 538 loans that refinance Section 515 properties. Section 538 is the primary program used by USDA to preserve affordable rural rental housing.

Low-Income Housing Tax Credits (LIHTCs). LIHTCs, which are an important source of equity for new low-income rental housing, face significant challenges in today's market. Traditionally, the Enterprises have been among the largest investors in LIHTCs. Now in conservatorship, the Enterprises have no business reasons to purchase LIHTCs and are not currently purchasing them.

Neighborhood Stabilization Program. The proposed rule would add the Neighborhood Stabilization Program (NSP) administered by state and local governments with funds provided by HUD, as an eligible state and local affordable housing program for purposes of the duty to serve the affordable housing preservation market. The NSP is designed to enable communities to address problems related to mortgage foreclosure and abandonment through the purchase of foreclosed or abandoned homes. Under the NSP, at least 25 percent of NSP funds must be used to purchase and redevelop abandoned or foreclosed homes that will be used to house families with incomes that do not exceed 50 percent of AMI.

Some commenters, including the National Association of Home Builders and several consumer advocacy organizations, suggested that Enterprise assistance with foreclosure prevention efforts done in conjunction with

[45] *See generally* "The American Association of Homes and Services for the Aging", House Financial Services Comm., Subcomm. on Housing and Community Opportunity, "Legislative Options for Preserving Federally- and State-Assisted Affordable Housing and Preventing Displacement of Low-Income, Elderly and Disabled Tenants," 111th Cong., 1st Sess. (July 15, 2009) (Statement for the Record), available at *http://www.house.gov/apps/list/hearing/financialsvcs_dem/aahsa_statement_for_the_record.pdf.*

[46] *Id.*

[47] *See* Vincent F. O'Donnell, "Prepayment and Refinancing of Section 202 Direct Loans—A Summary of HUD Notices H 2002–16 and H 2004–21" (Feb. 25, 2005), available at *http://docs.google.com/viewer?a=v&q=cache:OS9fkvDzizwJ:www.lisc.org/files/896_file_asset_upload_file62_6015.pdf+.org+h+2004–21+lisc+February+25&hl=en&gl=us&pid=bl&srcid=ADGEESjfLlsfyFT-b-DHQ8QSySzpNFYC5VTDHxWlM74Ji4PmkCWW2aFM9bzzQOeXlu7iwS8Tzpo6jShgeYzBOBsEdxcMAaFM-pR2WpxlKvtWL1XZmcoS_F9fsbV8cUbyqcmouUB8Hycy&sig=AHIEtbR0BncO3GAII_rSAfSyljUDOH_Y9g.*

[48] HUD Insured Multifamily Mortgages Database, available at *http://www.hud.gov/offices/hsg/comp/rpts/mfh/mf_f47.cfm.*

[49] *See* S. 118—111th Cong.: "Section 202 Supportive Housing for the Elderly Act of 2009," available at *http://thomas.loc.gov/cgi-bin/query/z?c111:S.118:.*

[50] For a description of the Section 811 program, *see http://www.hud.gov/offices/hsg/mfh/progdesc/disab811.cfm.*

[51] For a description of the PRAC initiative, *see http://www.hud.gov/offices/cfo/reports/2011/cjs/Housing_For_Persons_Disabilities_2011.pdf.*

nonprofit organizations and state and local governments that receive NSP funds should be considered towards the duty to serve. The consumer commenters also encouraged greater Enterprise involvement in helping community development financial institutions (CDFIs) finance foreclosed properties that have been acquired by nonprofits through debt and equity investments.

Comparable State and Local Affordable Housing Programs. The Enterprises' support of state and local affordable housing programs has been primarily through purchases of LIHTCs and mortgage revenue bonds (MRBs) from state and local HFAs. The National Council of State Housing Agencies (NCSHA) has made increased cooperation between HFAs and the Enterprises a top legislative and regulatory goal for 2010.[52]

As a result of the liquidity crisis facing HFAs, on October 19, 2009, FHFA, in conjunction with Treasury and HUD, announced an initiative to support state and local HFAs through a new bond purchase program that will support new lending by HFAs and a temporary credit and liquidity program that will improve the access of HFAs to liquidity for outstanding HFA bonds.[53] Fannie Mae and Freddie Mac both played a role in this program, which, through its support of HFA liquidity, could expand resources for low- and moderate-income borrowers who want to purchase or rent homes that are affordable over the long term. On January 13, 2010, Treasury, FHFA and HUD announced the completion of all transactions under the initiative, which involved more than 90 HFAs. Two commenters noted that there needs to be a closer partnership between state and local HFAs and the Enterprises in order to expand affordable housing preservation opportunities. However, commenters did not suggest any specific programs or activities where the Enterprises could assist.

Several commenters suggested other potential sources of affordable housing units that should be preserved such as:

(i) Subsidized or non-subsidized affordable housing where there is and/or will be a local, state or federal long-term affordable use restriction in place for at least 20 percent of the units;

(ii) State mortgage subsidy programs;

(iii) State low-income housing tax credit programs;

(iv) Tax-exempt bond-financed housing;

(v) Public housing and state public housing involving mixed-finance redevelopment; and

(vi) Affordable, sustainable communities and healthy housing programs.

FHFA invites further comments on the merit of considering any of these other potential sources of affordable housing as part of the Enterprises' duty to serve, consistent with the requirements of conservatorship described earlier.

3. Rural Markets—Proposed §§ 1282.1, 1282.34

Section 1335(a)(1)(C) of the Safety and Soundness Act requires the Enterprises to "develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas." 12 U.S.C. 4565(a)(1)(C). An appropriate definition for "rural area" and the types of Enterprise activities that should be considered are discussed below.

Definition of "Rural Area." In the ANPR, FHFA suggested three definitions of "rural area." The first definition is based on classifications used by the U.S. Census Bureau for the 2000 census and distinguishes between urban and rural areas. Urban areas are classified as all territory, population, and housing units located within urbanized areas and urban clusters. In general, urbanized areas must have a core with a population density of 1,000 persons per square mile and may contain adjoining territory with at least 500 persons per square mile. Urban clusters have at least 2,500 but less than 50,000 persons. Rural areas are classified as all territory located outside of urbanized areas and urban clusters. Three commenters favored this definition.

The second definition defines "rural areas" as all counties assigned a USDA Rural-Urban Continuum code (RUC code), which the USDA uses to classify rural areas. These codes are available for all U.S. counties and for municipios (county equivalents) in Puerto Rico. Because data on other U.S. territories, including Guam and the Virgin Islands, are lacking, FHFA suggested treating these territories as "rural areas." A disadvantage of using the RUC code is that designations based on RUC codes are county-based. Consequently, these designations could encompass both urban and rural areas, as occurs with very large counties, particularly west of the Mississippi River. Commenters recognized this disadvantage and were generally not in favor of this definition.

The third definition would combine two different designations, one used by the U.S. Census Bureau and one used by the USDA. Under this two-pronged definition, all census tracts designated by the U.S. Census Bureau as nonmetropolitan, *i.e.,* outside metropolitan statistical areas (MSAs) designated by the Office of Management and Budget (OMB), would be considered rural areas, as would all census tracts outside of urbanized areas and urban clusters, as designated by USDA's Rural-Urban Commuting Area (RUCA) code. Because it would be census tract-based, it would be more granular than county-based or MSA-based definitions and should better distinguish between rural areas and non-rural areas. Furthermore, this definition would be easily implemented by the Enterprises' existing geocoding systems. Freddie Mac and two other commenters supported this definition.

One disadvantage of the third definition, as some commenters pointed out, is that a census tract could be excluded if a small portion is also included within an "Urbanized Area" or an "Urban Cluster." Also, as with the other definitions, this definition is based upon aging 2000 census data, and updated information is not expected to be available until 2012 or 2013. Another disadvantage of the third definition is that USDA does not plan to extend the RUCA code to Puerto Rico until at least 2012, and RUCA codes are not currently assigned to census tracts in the other U.S. territories. In the ANPR, FHFA suggested filling this gap by using the RUC code described above to augment the RUCA code in Puerto Rico and other U.S. territories or by creating an estimate of the RUCA code for these areas.

FHFA solicits further comment on the three definitions discussed in the ANPR and how to address the operational concerns involved.

A number of commenters, including USDA and Fannie Mae, recommended that FHFA adopt the definition of "rural area" from the Housing Act of 1949, as implemented by USDA. Under this definition, "rural area" means any open country or any town, village, city, or place that is not part of or associated with an urban area, and that "(1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2, 500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but

[52] *See* "NCSHA 2010 Legislative and Regulatory Priorities," (Oct. 14, 2009), available at *http://www.ncsha.org/resource/ncsha-2010-legislative-and-regulatory-priorities.*

[53] U.S. Department of the Treasury, "Administration Announces Initiatives for State and Local Housing Finance Agencies," Press Release (Oct. 19, 2009), available at *http://www.ustreas.gov/press/releases/tg323.htm.*

not in excess of 20,000 and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit for lower and moderate income families." 42 U.S.C. 1490.

The proposed rule would define "rural area" for purposes of the duty to serve consistent with the above definition. Because rural housing practitioners and USDA use this definition, its adoption would obviate the need for practitioners to adapt their practices and systems to fit a new definition. In addition, since the definition is maintained by USDA, it would not need to be updated by FHFA with successive censuses.

The proposed definition may present operational concerns to FHFA and to the Enterprises. The Government Accountability Office (GAO) has found that because MSAs contain both urban and rural areas and have increased substantially in both size and number in recent decades, the use of MSAs may no longer be a good way to distinguish urban territory from rural territory.[54] In addition, it would be necessary for the Enterprises to automate the coding of a rural/urban designation based on information currently available only through the USDA Web site. The USDA Web site is designed for loan underwriters and originators with much smaller transaction volume, who must enter property addresses individually into the Web site to determine which addresses are located in rural areas. The volume of the Enterprises' transactions is much larger, and they will need the capability to automate the rural/urban designation for large numbers of properties.

FHFA suggests two approaches for addressing the coding problem. First, USDA's RUCA code could be used until USDA implements an automated system for coding multiple properties. A second approach is for originators of loans purchased on a flow basis to manually enter the property addresses in USDA's Web site and provide the resulting classification data to the Enterprise. For loans purchased in bulk transactions, the Enterprise would be allowed to use the RUCA code definition for determining "rural area" rather than the Housing Act of 1949 definition.

The definition proposed for "rural area" may not encompass all tribal lands and colonias.[55] Very low-, low- and moderate-income families in these areas face unique housing challenges. In comments received in response to the ANPR, two nonprofit organizations and one policy advocacy organization stated that tribal lands should be automatically included in the definition of "rural area"; one trade association opposed this.

FHFA requests further comments on whether tribal lands and colonias should be included in the definition of "rural area" and how to define colonias.

Inclusion of Rural Housing Service (RHS) Programs. Under the RHS's Section 538 program, the federal government guarantees loans made through approved lenders to build or acquire apartments for moderate-income tenants in rural areas. USDA and HAC commented on the need for secondary market support for Section 538 mortgages, emphasizing that Section 538 multifamily properties provide housing for lower-income families. HAC also recommended duty to serve consideration for Enterprise assistance to the RHS Section 514 program, which finances housing for farm workers in rural areas.

Section 514 loans cannot be supported by the Enterprises in the same way as Section 538 loans, because Section 514 loans are made directly by USDA, which holds them in its portfolio. FHFA solicits comments on what type of assistance the Enterprises could provide for residential lending to farm workers in rural areas and under the Section 514 program in particular.

A number of commenters sought express FHFA authorization for particular RHS loan programs under the duty to serve rural markets. For purposes of the duty to serve, it is not necessary that FHFA specifically determine the eligibility of individual federal, state or local programs that support rural housing. As a general matter, where: (1) An Enterprise's mortgage purchase, or other activity related to such mortgage, is authorized under the Charter Act; (2) the property financed is residential real estate located within a rural area; and (3) the income of the residents falls within the duty to serve income limits, the units financed may be considered.

Enterprise Activities in Rural Markets. The Safety and Soundness Act enumerates specific housing programs for the Enterprises to assist to fulfill their duty to serve the affordable housing preservation market but does not prescribe specific programs for purposes of the Enterprises' duty to serve rural markets. The Enterprises have latitude to address the needs in rural markets. FHFA expects each Enterprise to evaluate its current activities in rural areas and opportunities to increase those activities to address liquidity needs. For example, an Enterprise may market its products to lenders in rural areas in an effort to increase the number of approved lenders in those areas. An Enterprise may also purchase or otherwise assist with loans guaranteed under USDA programs and any other residential mortgage to the extent such mortgage otherwise qualifies for consideration. FHFA expects the Enterprises to thoroughly review their underwriting guidelines to ensure they are appropriate for rural markets.

Some rural areas with very high median incomes may lack affordable multifamily housing for lower-income workers employed there. FHFA seeks comment on what assistance the Enterprises might be able to provide in these areas for purposes of the duty to serve rural markets.

E. Evaluating and Rating Performance

1. Overview of Evaluation

Section 1335(d) of the Safety and Soundness Act requires FHFA to separately evaluate whether each Enterprise has complied with the duty to serve each underserved market and annually "rate the performance of each Enterprise as to the extent of compliance." 12 U.S.C. 4565(d). Both Enterprises and most other commenters suggested a flexible approach to evaluation. Commenters generally supported an evaluation methodology similar to that used by regulators to determine compliance with the CRA, and FHFA has incorporated certain CRA-like features into the proposed rule. *See* 12 U.S.C. 2901 *et seq.;* 12 CFR parts 25, 228, 345, and 563e.

The proposed rule would require each Enterprise to submit an underserved markets plan under which its performance would be evaluated and rated. FHFA would consider four factors in determining whether an Enterprise has complied with the duty to serve. These four factors were described as four "tests" in the ANPR, but have been renamed "assessment factors" in the

[54] *See* United States Government Accountability Office, GAO–05–110, "Rural Housing—Changing the Definition of Rural Could Improve Eligibility Determinations" (Dec. 2004), available at *http://www.gao.gov/new.items/d05110.pdf.*

[55] For purposes of HUD's Colonia Set-Aside Program, a "colonia" is any identifiable community in the U.S.-Mexico border regions of Arizona, California, New Mexico and Texas that is determined to be a colonia on the basis of objective criteria, including lack of a potable water supply, inadequate sewage systems, and a shortage of decent, safe and sanitary housing. The border region is the area within 150 miles of the U.S.-Mexico border excluding MSAs with populations exceeding one million. *See http://www.hud.gov/offices/cpd/communitydevelopment/programs/colonias/cdbgcolonias.cfm.*

proposed rule.[56] FHFA would evaluate each Enterprise's performance on each assessment factor and assign a rating of satisfactory or unsatisfactory to each assessment factor in each underserved market. Based on the assessment factor ratings, FHFA would assign a rating to the Enterprise of "in compliance" or "noncompliance" with the duty to serve each underserved market.

Enterprise new products and new activities are subject to the prior approval and prior notice requirements FHFA established pursuant to section 1321 of the Safety and Soundness Act. *See* 12 U.S.C. 4541, 12 CFR Part 1253. However, innovation in the provision of services to underserved markets is not necessarily the same as the concept of new products requiring FHFA approval under section 1321 of the Safety and Soundness Act. In the Letter to Congress, FHFA advised Congress that permitting the Enterprises to engage in new products is inconsistent with the goals of conservatorship and further instructed them not to submit such requests under the new products rule.[57] This guidance does not prohibit the Enterprises from engaging in new activities that are substantially similar to existing activities previously approved by FHFA, or from modifying underwriting guidelines for existing loan products, consistent with safety and soundness and the requirements of conservatorship. FHFA will consider this guidance when evaluating the Enterprise's plan and performance of its duty to serve underserved markets.

2. Underserved Markets Plan—Proposed § 1282.35

FHFA proposes that each Enterprise provide an underserved markets plan against which the Enterprise would be evaluated and rated. The plan would be similar to a "strategic plan" under the CRA, but the plan would be mandatory rather than optional.[58] In its plan, the Enterprise would establish benchmarks and objectives upon which FHFA would evaluate and rate its performance. The plan would specify the actions the Enterprise would take and results it expects to achieve under each assessment factor for each underserved market. The Enterprise would be required to specify benchmarks and objectives to achieve a rating of satisfactory for each assessment factor in each underserved market. Although the plan may include non-quantitative considerations, it must include objective measurements with sufficient specificity to enable FHFA to evaluate and rate the Enterprise's performance against those measures. All benchmarks and objectives must have a timeframe for completion.

The proposed rule would identify benchmarks and objectives for each assessment factor that the Enterprise must address in its plan. These are discussed in more detail below.

Loan Product Assessment Factor. The loan product assessment factor requires evaluation of the Enterprise's "development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each" underserved market. *Id.* sec. 4565(d)(2)(A).

FHFA received several comments addressing the loan product assessment factor. Fannie Mae suggested that FHFA give appropriate consideration to research and development activities that may not show results in their initial phase, but which are necessary for long-term planning and development. CFED commented that loan products for previously owned manufactured homes and energy-efficient single-wide manufactured homes serve the most underserved segments of the manufactured housing industry and should be considered under the loan product assessment factor. FHFA agrees with these comments and will consider these activities, provided they meet the other requirements set forth in the proposed rule.

To comply with this assessment factor, the proposed rule would require the Enterprise to evaluate its underwriting guidelines, which could include empirical testing of different parameters and modification of loan products in an effort to increase the availability of loans to families in each income group targeted by the duty to serve, consistent with prudent lending practices. FHFA expects the Enterprise to identify underwriting obstacles that could prevent service to underserved families. Enterprise modification of underwriting guidelines, particularly in the manufactured housing and rural markets, could also be considered. In its plan, the Enterprise would be permitted to establish additional benchmarks and objectives that could be considered under the loan product assessment factor.

Outreach Assessment Factor. The outreach assessment factor requires evaluation of "the extent of outreach [by the Enterprises] to qualified loan sellers and other market participants" in each of the three underserved markets. *Id.* sec. 4565(d)(2)(B). For this assessment factor, the Enterprises are expected to engage market participants and pursue relationships that result in enhanced service to each underserved market. These market participants could include nontraditional issuers, such as CDFIs and consortia sponsored by banks, local and state governments or others.

USDA indicated that one way to assess outreach in rural markets would be to consider the number of approved Fannie Mae or Freddie Mac lenders in a state that are active in lending in rural areas. USDA suggested, as an example, a goal for each state to have at least three active approved lenders and for each lender to have financed three different properties within that state over a two-year period. In the example, the Enterprise would be evaluated on its performance relative to such a quantitative benchmark and objective in its plan.

Other examples include actions such as simplifying the procedures for approving new seller-servicers that specialize in a particular underserved market, conducting relevant market surveys and forums to gather information on how to better serve the particular market and marketing existing products targeted towards an underserved market. In response to commenters, Enterprise training in its products and processes to market participants would also be considered. This could include training for specialized participants in an underserved market, such as USDA field staff, nonprofit and for-profit lenders and state and local HFAs.

The proposed rule would require the Enterprise to specify new relationships it would develop with qualified loan sellers, its outreach to market participants that serve families in each income group targeted by the duty to serve and technical support it would provide. The Enterprise could also specify other outreach activities in its plan.

Loan Purchase Assessment Factor. The loan purchase assessment factor requires FHFA to consider "the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the [E]nterprise." *Id.* sec. 4565(d)(2)(C). The Safety and Soundness Act further states that FHFA "shall not establish specific quantitative targets nor evaluate the [E]nterprises based solely on the volume of loans purchased." *Id.*

FHFA received specific suggestions from commenters regarding implementation of the loan purchase assessment factor. USDA suggested that

[56] For stylistic simplicity, where a commenter speaks of the four "tests" as set forth in the ANPR, the preamble will describe them as "assessment factors."

[57] *See* Letter to Congress at 6.

[58] For information on strategic plans under CRA regulations, *see generally* 12 CFR 228.27.

the Enterprises buy at least five percent of the total new construction loans guaranteed by the Guaranteed Rural Rental Housing Program. Under USDA's proposal, this would escalate to 10 percent in the second year and 15 percent in the third year. Similarly, the Center for Responsible Lending, CFED and the National Consumer Law Center recommended requiring that Enterprise participation in affordable housing preservation be proportional to its service to the larger multifamily market.

The proposed rule would set forth benchmarks and objectives for the loan purchase assessment factor that the Enterprise must establish in its plan. Although FHFA is not establishing quantitative targets, FHFA would consider the Enterprise's past performance on the volume of loans purchased in a particular underserved market relative to the volume of loans the Enterprise purchases in that underserved market in a given year.

The Enterprise's plan would provide FHFA with assessments and analyses of the market opportunities available for each underserved market and describe the Enterprise's expected volume of loan purchases for a given year. The plan would be subject to FHFA review, which would normally take into account difficulties in forecasting future performance and the need for flexibility in dealing with unexpected market changes.

Investments and Grants Assessment Factor. The investments and grants assessment factor requires evaluation of "the amount of investments and grants in projects which assist in meeting the needs of such underserved markets." 12 U.S.C. 4565(d)(2)(D).

CFED provided several suggestions for grants in connection with manufactured housing, such as grants that promote peer-learning and industry knowledge on innovative and promising practices on the development of new products and activities. Under appropriate circumstances, these may be considered.

The proposed rule would require the Enterprise to specify in its plan the benchmarks and objectives it would establish for the investments and grants assessment factor. The plan would describe the Enterprise's projected investments and grants in a given year and any other benchmark and objective the Enterprise deems relevant.

Other Considerations. The Enterprises would have the option, in their plans, of selecting within each underserved market particular programs to emphasize in a particular year. As discussed previously, for example, the Enterprises would not be required to assist each enumerated program in the affordable housing preservation market every year. Rather, the Enterprises could target certain programs in a given year. Likewise, for rural markets an Enterprise may choose to emphasize assistance with particular RHS programs. The plan should articulate the reasons for choosing particular programs.

Although the Enterprises are in conservatorship, FHFA expects them to show tangible results in each underserved market and to be a catalyst for mortgage lending to very low-, low- and moderate-income families in each underserved market. The Enterprises should expect mortgage purchases and activities pursuant to the duty to serve to be profitable, even though they may be less so than activities that do not serve these underserved markets.

Submission and Review of Plan. The proposed rule would set forth procedures for submission and review of the plan. The Enterprise would be required to submit the plan to FHFA at least 90 days before the plan's effective date of January 1st of a particular year. The term of the plan must be for two years.

Within 60 days of receipt of the plan, FHFA would inform the Enterprise of any concerns with or objections to the plan and, if necessary, would direct the Enterprise to amend the plan to FHFA's satisfaction.

For the 2010 evaluation year, FHFA would expect the Enterprises to submit a plan as soon as practical after publication of the final rule, and with the earliest feasible effective date.

Assigned Ratings. The proposed rule would require that the Enterprise establish benchmarks and objectives in its plan to achieve an assigned rating of satisfactory on each assessment factor in each underserved market. The proposed rule would specify appropriate benchmarks and objectives that may result in a rating of satisfactory.

Satisfactory performance would mean that an Enterprise has diligently and with a degree of success pursued opportunities and acted on the opportunities to serve the market in a given year. Satisfactory performance would include attention to families in each income group targeted by the duty to serve and responsiveness to the needs of the particular underserved market.

Unsatisfactory performance would mean that the results were poor and the Enterprise did not meet the benchmarks and objectives in its plan for a rating of satisfactory.

FHFA solicits comments on whether the assigned ratings for each assessment factor should be limited to satisfactory or unsatisfactory or have additional possible ratings such as outstanding or marginal.

3. Determination of Compliance—Proposed § 1282.36

FHFA would evaluate an Enterprise's performance annually, as required by the Safety and Soundness Act. 12 U.S.C. 4565(d)(1). In rating the Enterprise, FHFA would determine whether the Enterprise has substantially achieved its benchmarks and objectives for the desired rating as set forth in its plan. In determining substantial achievement, FHFA would consider the specific needs and conditions of each underserved market and the financial condition of the Enterprise. If market conditions or the financial condition of the Enterprise change markedly during an evaluation year, FHFA would take this into consideration. FHFA would also consider input from the Enterprise, market participants and others, such as housing and financial researchers, as to the Enterprise's performance, financial condition and the needs and opportunities in the underserved markets.

Evaluation of Assessment Factors. When evaluating an Enterprise's compliance with the duty to serve, FHFA would not mechanically tally an Enterprise's performance on each assessment factor into a total score for that market. Rather, FHFA would evaluate and weight each assessment factor based on the needs of the particular underserved market, overall market conditions and the financial condition of the Enterprise.

Some commenters suggested a mathematical weighting of the four assessment factors to generate overall scores for the individual underserved markets. FHFA has considered these comments and has determined that a rigid mathematical weighting of the assessment factors would not provide FHFA with sufficient flexibility when evaluating an Enterprise's compliance with the duty to serve during conservatorship.

ROC USA suggested that the assessment factors for loan products, outreach and investments and grants should initially count more than loan purchases, but FHFA has not adopted this approach in the proposed rule. Loan purchases are the core business of the Enterprises and result in a tangible and immediate benefit to the families targeted for assistance. Accordingly, the loan purchase assessment factor, along with the outreach assessment factor, would receive significant weight in FHFA's evaluation. Although FHFA would also consider the Enterprises' performance under the loan product

assessment factor, this would not include any requirement that the Enterprises enter new lines of business. Because the Enterprises are in conservatorship and are obligated to pay dividends to the Treasury for preferred shares of Enterprise stock that Treasury holds, the investments and grants assessment factor would receive little to no weight.

Evaluation and Rating for 2010. For the 2010 evaluation year, FHFA would consider the administrative and operational effects on the Enterprises of not having final guidance in place for the entire year, and the Enterprises would only be rated for the portion of 2010 for which the rule is effective.

4. Requirements for Transactions or Activities—Proposed §§ 1282.37 Through 1282.39

The proposed rule would establish requirements for how transactions or activities would be treated. With some exceptions, the counting rules and other requirements would be similar to those established for the housing goals. For example, under appropriate circumstances, a single transaction could count towards the achievement of multiple housing goals, and in the same way one transaction could be considered towards more than one underserved market. Also, specialized transactions such as guarantees of MRBs and purchases of participations in mortgages would be treated in the same manner as under the Enterprises' housing goals regulation. Consistent with the comments received, FHFA proposes to measure performance in terms of units rather than mortgages or unpaid principal balance for the loan purchase assessment factor.

Under the proposed rule, Enterprise purchases of HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined by FHFA in existing 12 CFR 1282.1, would not be considered under the duty to serve underserved markets. Thus, for example, purchase money mortgages exceeding the thresholds in 12 CFR 1282.1 would not be considered. In addition, Enterprise purchase of mortgages where the sale or financing of prepaid single-premium credit life insurance products occurs in connection with the origination would not be considered.

The proposed rule would provide that Enterprise purchases of mortgages that do not conform to the interagency Statement on Subprime Mortgage Lending [59] and the Interagency Guidance on Nontraditional Mortgage Product Risks [60] would not be considered under the duty to serve. To receive consideration under the duty to serve, all single-family loans purchased by the Enterprises must meet the standards in the Statement and Guidance. The Enterprises are expected to review the operations of loan sellers to ensure that the loans being sold to the Enterprises meet the standards in the Statement and Guidance.

The proposed rule would require that the Enterprise use actual income or rent of the borrower or tenant when this is available. When this is not available for rental properties, the Enterprise could estimate affordability by using the median income level of the census tract where the property is located, relative to AMI. FHFA seeks comment on whether an alternative basis for estimating affordability would be more effective. For example, the affordability of rental units in a census tract could be estimated based on the affordable proportion of all rental units securing new mortgages in that census tract.

The proposed rule would not limit the number of units with missing data for which an Enterprise could estimate affordability. Comments as to whether and how FHFA should impose a limit are invited.

F. Enforcement of Duty to Serve—Proposed §§ 1282.40, 1282.41

Section 1336(a)(4) of the Safety and Soundness Act provides that the duty to serve underserved markets is enforceable to the same extent and under the same enforcement provisions as are applicable to the Enterprise housing goals, except as otherwise provided. *See* 12 U.S.C. 4566(a)(4). Accordingly, if an Enterprise fails to comply with, or there is a substantial probability that the Enterprise will not comply with, its duty to serve a particular underserved market in a given year, FHFA would determine whether the benchmarks and objectives in the Enterprise's plan are or were feasible.

In determining feasibility, FHFA would consider factors such as market conditions and the financial condition of the Enterprise. The proposed rule would provide that if FHFA determines that such compliance is or was feasible, FHFA would follow the procedures in 12 U.S.C. 4566(b). The proposed rule would also include provisions for submitting a housing plan in the Director's discretion, if the Director determines that the Enterprise did not comply with its duty to serve a particular underserved market.

G. Reports and Data Submission—Proposed § 1282.66

The ANPR solicited comment on appropriate reporting and data submission requirements. The comments received were not extensive.

The Center for Responsible Lending, Consumer Federation of America and National Consumer Law Center commented that FHFA should consider requiring each Enterprise to annually publish a comprehensive report that describes the Enterprise's activities in each underserved market. Freddie Mac commented that the reporting requirements should be flexible and that FHFA should utilize existing Enterprise systems and processes. LISC commented that requiring the Enterprises to provide a complete listing of transactions would be valuable as long as confidentiality concerns are appropriately addressed.

FHFA proposes to require the Enterprise to provide three quarterly reports and one annual report on its performance and progress towards meeting its duty to serve each underserved market. The reports would contain both narrative and summary statistical information, supported by submission of appropriate transaction-level data. The annual report would include a description of the Enterprise's market opportunities for loan purchases that year that were available in each underserved market, to the extent data is available, the volume of qualifying loans purchased that year, a comparison of the Enterprise's loan purchases in that year with its loan purchases in past years, and a comparison of market opportunities with the size of the relevant markets in the past, to the extent data are available. The annual reports would also include discussion of the factors affecting the availability of loans for purchase that meet the requirements of the regulation. These factors could include market or accounting requirements for lenders to retain loans in portfolio or to sell them, the availability and pricing of credit enhancements from third parties and competition from other secondary market participants.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement

[59] Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, "Statement on Subprime Mortgage Lending," 72 FR 37569–575 (July 10, 2007).

[60] Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, "Interagency Guidance on Nontraditional Mortgage Product Risks." 71 FR 58609–618 (Oct. 4, 2006).

that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, FHFA proposes to further amend part 1282 of subchapter E of 12 CFR chapter XII, as proposed to be revised at 75 FR 9061 (February 26, 2010), as follows:

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

1. The authority citation for part 1282 is revised to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566, 4603.

2. In § 1282.1, add the following definitions in alphabetical order:

§ 1282.1 Definitions.

* * * * *

Manufactured home, for purposes of subpart C of this part, means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5402(6), and implementing regulations.

* * * * *

Rural area, for purposes of subpart C of this part, shall have the same meaning as provided in 42 U.S.C. 1490.

* * * * *

3. Add subpart C to read as follows:

Subpart C—Duty to Serve

Sec.
1282.31 General.
1282.32 Manufactured housing market.
1282.33 Affordable housing preservation market.
1282.34 Rural markets.
1282.35 Underserved markets plan.
1282.36 Evaluations and assigned ratings.
1282.37 Consideration of transactions or activities.
1282.38 General requirements for loan purchases.
1282.39 Special requirements for loan purchases.
1282.40 Failure to comply.
1282.41 Housing plans.

Subpart C—Duty to Serve

§ 1282.31 General.

(a) This subpart sets forth the Enterprises' duty to serve three underserved markets as required by section 1335 of the Safety and Soundness Act, 12 U.S.C. 4565. This subpart also establishes for 2010 and subsequent years, standards and procedures for evaluating and rating each Enterprise's compliance with the duty to serve underserved markets.

(b) Nothing in this subpart shall permit or require an Enterprise to engage in any activity that would otherwise be inconsistent with its Charter Act or the Safety and Soundness Act.

§ 1282.32 Manufactured housing market.

(a) *Duty in general.* Each Enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for eligible mortgages on manufactured homes for very low-, low- and moderate-income families. The Enterprise's activities under this section shall serve each such income group in the year for which the Enterprise is evaluated and rated.

(b) *Eligible activities.* Mortgages on manufactured homes and activities related to such mortgages shall be eligible for consideration under the duty to serve the manufactured housing market provided that:

(1) The home is titled as real property; and

(2) The loan does not provide for mandatory arbitration of disputes.

§ 1282.33 Affordable housing preservation market.

(a) *Duty in general.* Each Enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low- and moderate-income families under eligible housing programs. The Enterprise's activities under this section shall serve each such income group in the year for which the Enterprise is evaluated and rated.

(b) *Eligible housing programs.* Enterprise activities related to housing projects under the following programs shall be eligible for consideration under the affordable housing preservation market:

(1) The project-based and tenant-based rental assistance housing programs under section 8 of the U.S. Housing Act of 1937, 42 U.S.C. 1437f;

(2) The rental and cooperative housing for lower income families under section 236 of the National Housing Act, 12 U.S.C. 1715z–1;

(3) The housing program for moderate-income and displaced families under section 221(d)(4) of the National Housing Act, 12 U.S.C. 1715*l*;

(4) The supportive housing program for the elderly under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q;

(5) The supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 8013;

(6) The permanent supportive housing projects subsidized under Title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 1136*1 et seq.*;

(7) The rural rental housing program under section 515 of the Housing Act of 1949, 42 U.S.C. 1485;

(8) Low-income housing tax credits under section 42 of the Internal Revenue Code of 1986, 26 U.S.C. 42;

(9) The Neighborhood Stabilization Program; and

(10) Other comparable affordable housing programs administered by a state or local government that preserve housing affordable to very low-, low- and moderate-income families, as may be determined by FHFA in its discretion.

(c) *Level of assistance.* An Enterprise shall not be required to assist every program enumerated in paragraphs (b)(1) through (b)(9) of this section in a particular year.

§ 1282.34 Rural markets.

Each Enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low- and moderate-income families in rural areas. The Enterprise's activities under this section shall serve each such income group in the year for

which the Enterprise is evaluated and rated.

§ 1282.35 Underserved markets plan.

(a) *General.* Each Enterprise shall submit an underserved markets plan describing the steps it will take to serve each underserved market. FHFA will annually evaluate the Enterprise on its performance in all three underserved markets pursuant to the plan.

(b) *Term of plan.* The plan shall cover a period of two years.

(c) *Plan content.*—(1) The plan shall specify measurable benchmarks and objectives designed to achieve a rating of satisfactory for each assessment factor in each underserved market. For each underserved market, the plan shall address each benchmark and objective set forth in paragraphs (c)(2) through (c)(5) of this section and describe with sufficient specificity the steps the Enterprise will take to accomplish such benchmark and objective. The plan shall include annual measurable benchmarks and objectives and a timeframe for meeting them.

(2) *Benchmarks and objectives for loan product assessment factor.*—(i) Loan features or products the Enterprise will evaluate or develop to increase the number of loans available to very low-, low- and moderate-income families in a particular underserved market;

(ii) The Enterprise's evaluation of and changes to its underwriting guidelines for existing loan products for the purpose of increasing the number of very low-, low- and moderate-income families that would qualify for such products. Any changes must be consistent with the Safety and Soundness Act and the safe and sound operation of the Enterprise;

(iii) The degree to which such loan features, products or evaluation of or changes to underwriting guidelines serve families in each income group targeted by the duty to serve; and

(iv) Any other benchmark and objective the Enterprise deems relevant.

(3) *Benchmarks and objectives for outreach assessment factor.*—(i) New relationships the Enterprise will develop with qualified loan sellers that serve the needs of very low-, low- and moderate-income families in a particular underserved market;

(ii) Enterprise outreach to market participants, such as community organizations, community development financial institutions, and organizations or market participants that serve families in each income group targeted by the duty to serve;

(iii) Technical support the Enterprise will provide to qualified loan sellers and market participants. Technical support may include seminars, training and literature on the Enterprise's loan products and processes, and any other support that would assist qualified loan sellers and market participants gain a better understanding of the Enterprise's products; and

(iv) Any other benchmark and objective the Enterprise deems relevant.

(4) *Benchmarks and objectives for loan purchase assessment factor.*—(i) The volume of loans the Enterprise will purchase that serves the particular underserved market;

(ii) The market opportunities for Enterprise mortgage purchases in the underserved area. Descriptions of market opportunities shall be supported by market size estimations;

(iii) The Enterprise's past performance on the volume of loans purchased in a particular underserved market relative to the volume of loans the Enterprise will purchase in such underserved market in a given year;

(iv) The extent to which the loans purchased will serve each income group targeted by the duty to serve; and

(v) Any other benchmark and objective the Enterprise deems relevant.

(5) *Benchmarks and objectives for investments and grants assessment factor.*—(i) Investments and grants the Enterprise intends to make in a particular year; and

(ii) Any other benchmark and objective the Enterprise deems relevant.

(d) *Procedures.*—(1) An Enterprise shall submit the plan to FHFA at least 90 days before the effective date of the plan.

(2) The effective date of the plan shall be January 1st of that evaluation year.

(3) Within 60 days of receipt of an Enterprise's plan, FHFA will review the plan and inform the Enterprise of any concerns with or objections to the plan.

(4) If FHFA objects to a plan submitted by the Enterprise, the Enterprise shall submit an amended plan to FHFA not later than 15 days following notification from FHFA.

(e) *Criteria for evaluating plan content.* FHFA will evaluate a plan using the following criteria:

(1) The extent to which the plan addresses each assessment factor and describes the steps the Enterprise will take to implement each benchmark and objective for each assessment factor in each underserved market;

(2) The extent to which the plan establishes measurable benchmarks and objectives to achieve a rating of satisfactory and to serve a particular underserved market;

(3) The innovativeness and effectiveness of the steps the Enterprise will take to accomplish the benchmarks and objectives and whether those steps will be responsive to the needs of a particular underserved market; and

(4) The extent to which the plan serves families in each targeted income group in a particular underserved market.

(f) *Satisfactory rating.* Benchmarks and objectives appropriate for a rating of satisfactory for a particular assessment factor may include:

(1) Use of innovative products, practices and services;

(2) Improvement in performance from year to year;

(3) Responsiveness to the needs of a particular underserved market;

(4) Assistance with products and programs for first-time homebuyers;

(5) Assistance to insured depository institutions in meeting their CRA requirements;

(6) Attention to families in each income group targeted by the duty to serve; and

(7) For the loan purchase assessment factor, improvement in loan purchases over prior years.

(g) *Unsatisfactory rating.* Failure to substantially achieve the benchmarks and objectives for a rating of satisfactory on a particular assessment factor shall result in a rating of unsatisfactory for that assessment factor.

§ 1282.36 Evaluations and assigned ratings.

(a) *Assessment factors.*—(1) FHFA will separately evaluate an Enterprise's performance on each of the four assessment factors, as provided in paragraphs (a)(2) through (a)(5) of this section, in each underserved market. FHFA will evaluate and rate each Enterprise's performance in each underserved market on an annual basis.

(2) *Loan product assessment factor.* FHFA will evaluate each Enterprise on its development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each underserved market.

(3) *Outreach assessment factor.* FHFA will evaluate each Enterprise on the extent of its outreach to qualified loan sellers and other market participants in each underserved market.

(4) *Loan purchase assessment factor.* FHFA will evaluate each Enterprise on the volume of loans it purchases in each underserved market relative to the market opportunities available to the Enterprise.

(5) *Investments and grants assessment factor.* FHFA will evaluate each Enterprise on the amount of its investments and grants in projects that

assist in meeting the needs of each underserved market, taking into consideration the safe and sound operation of the Enterprise and the requirements of conservatorship.

(b) *Evaluation of assessment factors.* In determining whether an Enterprise has complied with the duty to serve each underserved market, FHFA will annually evaluate the Enterprise under its underserved markets plan and assign a rating as follows:

(1) FHFA will assign a rating of satisfactory or unsatisfactory to each assessment factor in each underserved market based on FHFA's determination of whether the Enterprise has substantially achieved its benchmarks and objectives under its underserved markets plan;

(2) In determining whether the Enterprise has substantially achieved its benchmarks and objectives, FHFA will consider market factors and other circumstances beyond the Enterprise's control that affected the Enterprise's ability to fully achieve its benchmarks and objectives.

(c) *Determination of compliance.* For each underserved market, FHFA will assign a rating of "in compliance" or "noncompliance" with the duty to serve that market.

§ 1282.37 Consideration of transactions or activities.

(a) *General.* FHFA shall determine whether an Enterprise transaction or activity shall be considered for purposes of the duty to serve underserved markets. In this determination, FHFA will consider whether the transaction or activity facilitates a secondary market for mortgages: On manufactured homes for very low-, low- and moderate-income families; to preserve housing affordable to very low-, low- and moderate-income families under eligible housing programs; and on housing for very low-, low- and moderate-income families in rural areas. If FHFA determines that a transaction or activity will be considered for purposes of the duty to serve underserved markets, such transaction or activity will be considered under the relevant assessment factor for each underserved market it serves.

(b) *Not considered.* The following transactions or activities shall not be considered for purposes of the duty to serve underserved markets and shall not be considered for any assessment factor, even if the transaction or activity would otherwise be considered under § 1282.39:

(1) Enterprise contributions to the Housing Trust Fund, 12 U.S.C. 4568, and the Capital Magnet Fund, 12 U.S.C. 4569, and mortgage purchases funded with such grant amounts;

(2) HOEPA mortgages and mortgages with unacceptable terms and conditions;

(3) Mortgages that do not conform to the interagency Statement on Subprime Mortgage Lending, 72 FR 37569–575 (July 10, 2007), and the Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609–618 (Oct. 4, 2006);

(4) Mortgages on manufactured homes not titled as real property or that provide for mandatory arbitration of disputes, or any activity related to such mortgages;

(5) Mortgages on manufactured home communities or any activity related to such mortgages;

(6) Purchases of single-family private label securities;

(7) Commitments to buy mortgages at a later date or time;

(8) Options to acquire mortgages;

(9) Rights of first refusal to acquire mortgages;

(10) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(11) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;

(12) Purchases of subordinate lien mortgages (second mortgages);

(13) Transactions or activities for which either Enterprise previously received consideration under the duty to serve underserved markets within the five years immediately preceding the current performance year;

(14) Purchases of mortgages where the property has not been approved for occupancy;

(15) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(16) Purchases of State and local government housing bonds except as provided in § 1282.39(g); and

(17) Any combination of factors in paragraphs (b)(1) through (b)(16) of this section.

(c) *FHFA review of transactions or activities.* FHFA may determine whether and how any transaction or activity will be considered for purposes of the duty to serve underserved markets, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any transaction or activity.

(d) *The year in which a transaction or activity will be considered.* A transaction or activity will be considered for purposes of the duty to serve underserved markets in the year in which the transaction or activity is completed. FHFA may determine that partial consideration is appropriate for a transaction or activity that begins in a particular year but is not completed until a subsequent year, except that transactions that count toward the loan purchase assessment factor shall be considered in the year in which the Enterprise purchased the mortgage.

(e) *Consideration under one assessment factor.* A transaction or activity will only be considered under one assessment factor in a particular underserved market.

(f) *Consideration toward multiple underserved markets.* A transaction or activity, including dwelling units financed by an Enterprise's mortgage purchase, shall be considered for each underserved market for which such transaction or activity qualifies in that year.

§ 1282.38 General requirements for loan purchases.

(a) *General.* This section shall apply to Enterprise mortgage purchases that will be considered under the loan purchase assessment factor for a particular underserved market. Only dwelling units that are financed by mortgage purchases eligible to be considered under the duty to serve a particular underserved market, and that are not specifically excluded as ineligible under § 1282.37(b), may be considered.

(b) *Rental units.* For purposes of counting rental units toward the loan purchase assessment factor, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.,* known to a lender.

(1) *Use of income.* Each Enterprise shall require lenders to provide to the Enterprise tenant income information, but only when such information is known to the lender. When the income of actual tenants is available, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17, or as provided in § 1282.18 if family size is not known.

(i) When such tenant income information is available for all occupied units, the Enterprise's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the Enterprise shall use rent levels for comparable units in the property to determine affordability,

except as provided in paragraph (b)(1)(ii) of this section.

(ii) When income for tenants is available to a lender because a project is subject to a federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit, but such tenant income shall not exceed 100 percent of area median income. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each Enterprise must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(2) *Use of rent.* When the income of the prospective or actual tenants of a dwelling unit is not available, performance will be evaluated based on rent and whether the rent is affordable to the income group targeted by the underserved market. A rent is affordable if the rent does not exceed the maximum income levels as provided in § 1282.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(3) *Model units and rental offices.* A model unit or rental office may be counted towards the loan purchase assessment factor only if an Enterprise determines that the number of such units is reasonable and minimal considering the size of the property.

(4) *Timeliness of information.* When counting dwelling units, each Enterprise shall use tenant and rental information as of the time of mortgage acquisition.

(c) *Missing data or information*—(1) When an Enterprise lacks sufficient information to determine whether an owner-occupied unit in a property securing a mortgage purchased by an Enterprise counts toward the loan purchase assessment factor for a particular underserved market because the income of the mortgagor is not available, the Enterprise may not count such unit.

(2) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a mortgage purchased by an Enterprise counts toward the loan purchase assessment factor for a particular underserved market because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise may estimate affordability with respect to such unit by using the median income level of the census tract where the property is located, as determined by FHFA based on the most recent decennial census.

(d) *Application of median income*—(1) For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and the definitions in § 1282.1, the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(e) *Sampling not permitted.* Performance under the loan purchase assessment factor for each underserved market for each year shall be based on a complete tabulation of dwelling units for that year; a sampling of such dwelling units is not acceptable.

(f) *Newly available data.* When an Enterprise uses data to determine whether a dwelling unit counts toward the loan purchase assessment factor for a particular underserved market and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

§ 1282.39 Special requirements for loan purchases.

(a) *General.* Subject to FHFA's determination of whether a transaction or activity shall be considered for purposes of the duty to serve underserved markets, the transactions and activities identified in this section shall be treated as mortgage purchases as described, and be considered under the loan purchase assessment factor. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph.

(b) *Credit enhancements*—(1) Dwelling units financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases only when:

(i) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency); and

(ii) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds.

(2) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such transactions to count under the loan purchase assessment factor for a particular underserved market.

(c) *Risk-sharing.* Mortgages purchased under risk-sharing arrangements between an Enterprise and any federal agency under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases.

(d) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases only when the Enterprise's participation in the mortgage is 50 percent or more.

(e) *Cooperative housing and condominiums*—(1) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase.

(2) The purchase of a mortgage on a cooperative building ("a blanket loan") or a mortgage on a condominium project shall be treated as a mortgage purchase.

(3) Where an Enterprise purchases both a blanket loan on a cooperative building and share loans for units in the same building, both the blanket loan and the share loan(s) shall be treated as mortgage purchases. Where an Enterprise purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units shall be treated as mortgage purchases.

(f) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase.

(g) *Purchase of refinancing mortgages.* The purchase of a refinancing mortgage by an Enterprise shall be treated as a mortgage purchase only if the refinancing is an arms-length transaction that is borrower-driven.

(h) *Mortgage revenue bonds.* The purchase or guarantee of a mortgage revenue bond issued by a State or local housing finance agency shall be treated as a purchase of the underlying mortgages only to the extent the Enterprise has sufficient information to determine whether the underlying mortgages or mortgage-backed securities serve very low-, low- or moderate-income families in a particular underserved market.

(i) *Loan modifications.* An Enterprise's modification of a loan in accordance with the Making Home Affordable program announced on March 4, 2009, that is held in the Enterprise's portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase.

(j) *Seller dissolution option*—(1) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases only when:

(i) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(ii) The transaction is not dissolved during the one-year minimum lockout period.

(2) FHFA may grant an exception to the one-year minimum lockout period described in paragraphs (j)(1)(i) and (j)(1)(ii) of this section, in response to a written request from an Enterprise, if FHFA determines that the transaction furthers the purposes of the Enterprise's Charter Act and the Safety and Soundness Act.

(3) For purposes of paragraph (j) of this section, "seller dissolution option" means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

§ 1282.40 Failure to comply.

If the Director determines that an Enterprise has not complied with, or there is a substantial probability that the Enterprise will not comply with, the duty to serve a particular underserved market in a given year and the Director determines that such compliance is or was feasible, the Director will follow the procedures in 12 U.S.C. 4566(b).

§ 1282.41 Housing plans.

(a) *General.* If the Director determines that an Enterprise did not comply with the duty to serve a particular underserved market in a given year, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of housing plan.* If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take—:

(i) To comply with the duty to serve a particular underserved market for the next calendar year; or

(ii) To make such improvements and changes in its operations as are reasonable in the remainder of the year, if the Director determines that there is a substantial probability that the Enterprise will fail to comply with the duty to serve a particular underserved market in such year; and

(4) Address any additional matters relevant to the housing plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Enterprise to submit a housing plan. The Director may extend the deadline for submission of a housing plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (c)(5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended housing plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial housing plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended housing plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new housing plan.

4. Add § 1282.66 in subpart D to read as follows:

§ 1282.66 Enterprise reports on duty to serve.

(a) *Quarterly reports.* Each Enterprise shall submit to the Director a quarterly report on its transactions and activities undertaken pursuant to its underserved markets plan, which shall include detailed information on the Enterprise's progress towards meeting the benchmarks and objectives in its plan.

(b) *Annual report.* To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and for purposes of FHFA's Annual Housing Report to Congress, each Enterprise shall submit to the Director an annual report on its transactions and activities undertaken pursuant to its underserved markets plan no later than 60 days after the end of each calendar year. For each underserved market, the annual report shall include: a description of the Enterprise's market opportunities for loan purchases during the evaluation year to the extent data is available; the volume of qualifying loans purchased by the Enterprise; a comparison of the Enterprise's loan purchases with its loan purchases in prior years; and a comparison of market opportunities with the size of the relevant markets in the past, to the extent data are available.

Dated: May 28, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–13411 Filed 6–4–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0365; Airspace Docket No. 10–AAL–12]

RIN 2120–AA66

Proposed Amendment of Colored Federal Airway B–38; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Colored Federal Airway Blue 38 (B–38), in Alaska. Specifically this action would remove a segment of B–38 from Haines Non-directional Beacon (NDB) to the Whitehorse, Yukon Territories Canada (XY NDB). The FAA is proposing this action in preparation of the eventual decommissioning of XY NDB by the Canadian Air Authority NAV CANADA.

DATES: Comments must be received on or before July 22, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2010–0365 and Airspace Docket No. 10–AAL–12 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0365 and Airspace Docket No. 10–AAL–12) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0365 and Airspace Docket No. 10–AAL–12." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaskan Service Center, Operations Support Group, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend Colored Federal Airway B–38, Alaska, by terminating the airway at the HNS NDB, AK, instead of the XY NDB, Canada. The Canadian Air Authority NAV CANADA recently conducted a study to determine the feasibility of keeping the XY NDB operational. NAV CANADA determined it is no longer feasible and will be decommissioning the XY NDB.

Blue Federal Airways are published in paragraph 6009(d) of FAA Order 7400.9T, signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Colored Federal Airway listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies a Colored Federal Airway in Alaska.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6009 (d) Blue Federal Airways.

* * * * *

B–38 [Amended]

From Elephant, AK, NDB, to Haines, AK, NDB.

Issued in Washington, DC, on May 26, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–13592 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0187; Airspace Docket No. 09–AWP–10]

RIN 2120–AA66

Proposed Amendment of the Pacific High and Low Offshore Airspace Areas; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Pacific High and Low Offshore Airspace Areas by providing additional airspace in which domestic air traffic control procedures could be used to separate and manage aircraft operations in the currently uncontrolled airspace off the California coast. This proposed change would enhance the efficient utilization of that airspace within the National Airspace System.

DATES: Comments must be received on or before July 22, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2010–0187 and Airspace Docket No. 09–AWP–10 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0187 and Airspace Docket No. 09–AWP–10) and be submitted in triplicate to the Docket Management Facility (*see* "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0187 and Airspace Docket No. 09–AWP–10." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* "**ADDRESSES**" section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

In October, 2009, the Los Angeles Air Route Traffic Control Center (ARTCC) personnel conducted a comprehensive review of the offshore airspace in the ARTCC's area of responsibility. The review revealed that many of the aircraft transiting in the offshore airspace are being diverted around pockets of uncontrolled airspace. In order to facilitate operations in the offshore areas, modification of the Pacific High and Low Offshore Airspace Areas is needed. Currently, International Civil Aviation Organization (ICAO) oceanic air traffic control (ATC) procedures are used to separate and manage aircraft operations that extend beyond the lateral boundary of the existing Pacific High and Low Offshore Airspace Areas. Modifying the Pacific Offshore Airspace Areas by extending the boundaries further south of the current location to the Mexico Flight Information Region (FIR), will allow the application of domestic ATC separation procedures over a larger area. This proposal to modify the offshore airspace area would enhance system capacity and allow for more efficient utilization of that airspace. This action does not change the status of any warning areas contained within the Pacific Offshore Airspace Areas or affect Department of Defense (DOD) operations conducted therein. As with all warning areas, a letter of agreement between the controlling and using agencies is executed to define the conditions and procedures under which the controlling agency may authorize nonparticipating aircraft to transit the warning area.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Pacific High and Low Offshore Airspace Areas, by extending the present airspace boundaries further southeast of the current location to the Mexico FIR capturing pockets of uncontrolled airspace off the California coast. This proposed modification would allow the application of domestic ATC separation procedures in lieu of ICAO separation and enhance system capacity and allow for more efficient utilization of that airspace.

Offshore airspace areas are published in paragraph 2003 and 6007, respectfully, of FAA Order 7400.9T signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The offshore airspace listed in this

document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the high and low offshore airspace areas off the coast of California.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the ICAO International Standards and Recommended Practices. The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace and Rules Group, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions. The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction. In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 2003 Offshore Airspace Areas.

* * * * *

Pacific High, CA [Amended]

That airspace extending upward from 18,000 feet MSL to and including FL 600 bounded on the north by the Vancouver FIR boundary, on the east by a line 12 miles from and parallel to the U.S. shoreline, and on south by the Mexico FIR boundary, and on the west by the Oakland Oceanic CTA/FIR boundary, excluding active Warning Area airspace.

* * * * *

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Pacific Low, CA [Amended]

That airspace extending upward from 5,500 feet MSL bounded on the north by the Vancouver FIR boundary, on the east by a line 12 miles from and parallel to the U.S. shoreline, and on south by the Mexico FIR boundary, and on the west by the Oakland Oceanic FIR boundary, excluding active Warning Area airspace.

Issued in Washington, DC, May 26, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–13603 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0397; Airspace Docket No. 10–AAL–7]

Proposed Establishment and Amendment of Area Navigation (RNAV) Routes; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish two and modify four Area Navigation (RNAV) routes in Alaska. T and Q-routes are Air Traffic Service (ATS) routes, based on RNAV, for use by aircraft having instrument flight rules (IFR)-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment, or Distance Measuring Equipment (DME)/DME Inertial Reference Unit (IRU) navigation capability. The FAA is proposing this action to enhance safety and improve the efficient use of the navigable airspace in Alaska.

DATES: Comments must be received on or before July 22, 2010.

ADDRESSES: Send comments on the proposal to the U.S. Department of Transportation, Docket Operations, M–

30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2010–0397 and Airspace Docket No. 10–AAL–7 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0397 and Airspace Docket No. 10–AAL–7) and be submitted in triplicate to the Docket Management Facility (*see* "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0397 and Airspace Docket No. 10–AAL–7." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* "**ADDRESSES**" section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaskan Service Center, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish two RNAV T-routes, T–267 and T–271, and modify four RNAV T-routes and Q-routes in Alaska. In response to comments received for a NPRM published February 12, 2009, (74 FR 7012), a new T-route T–267 is proposed, which would circumvent the ocean near Kotzebue, AK, allowing IFR aircraft to fly closer to the shoreline. Also, one modified T-route would continue south from Frederick's Point Non-directional Beacon, which would allow connectivity between Juneau and Ketchikan, AK. Two T-routes would be modified to allow lower minimum en route altitudes to be flown. Additionally, one Q-route would be revised providing a more direct route between Anchorage and Galena, AK. The RNAV routes described in this NPRM would enhance safety, and facilitate more flexible and efficient use of the navigable airspace for en route IFR operations in Alaska.

A graphical representation of this proposal is on the web (downloadable PDF file) at: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/notices/RNAV_Routes-2010/.*

The High Altitude RNAV Routes are published in paragraph 2006, and Low Altitude RNAV Routes are published in paragraph 6011, in FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it proposes to establish and revise RNAV routes in Alaska.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–8 ANC to GAL [Revised]

GAL VOR/DME
(Lat. 64°44′17″ N., long. 156°46′38″ W.)
ANC VOR/DME
(Lat. 61°09′03″ N., long. 150°12′24″ W.)

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–227 SYA to SCC [Modified]

SYA VORTAC
(Lat. 52°43′06″ N., long. 174°03′44″ E.)
JANNT WP
(Lat. 52°04′18″ N., long. 178°15′37″ W.)
BAERE WP
(Lat. 52°12′12″ N., long. 176°08′09″ W.)
ALEUT FIX
(Lat. 54°14′17″ N., long. 166°32′52″ W.)
MORDI FIX
(Lat. 54°52′50″ N., long. 165°03′15″ W.)
GENFU FIX
(Lat. 55°23′19″ N., long. 163°06′22″ W.)
BINAL FIX
(Lat. 55°46′00″ N., long. 161°59′56″ W.)
PDN NDB/DME
(Lat. 56°57′15″ N., long. 158°38′51″ W.)
BATTY FIX
(Lat. 59°03′57″ N., long. 155°04′42″ W.)
AMOTT FIX
(Lat. 60°53′56″ N., long. 151°21′46″ W.)
ANC VOR/DME
(Lat. 61°09′03″ N., long. 150°12′24″ W.)
FAI VORTAC
(Lat. 64°48′00″ N., long. 148°00′43″ W.)
SCC VOR/DME
(Lat. 70°11′57″ N., long. 148°24′58″ W.)

* * * * *

T–266 CGL to ANN [Modified]

CGL NDB
(Lat. 58°21′33″ N., long. 134°41′58″ W.)
FPN NDB
(Lat. 56°47′32″ N., long. 132°49′16″ W.)
ANN VOR/DME
(Lat. 55°03′37″ N., long. 131°34′42″ W.)

* * * * *

T–267 OME to OTZ [New]

OME VOR/DME
(Lat. 64°29′06″ N., long. 165°15′11″ W.)
BALIN FIX
(Lat. 64°33′55″ N., long. 161°34′32″ W.)
OTZ VOR/DME
(Lat. 66°53′09″ N., long. 162°32′24″ W.)

* * * * *

T–271 CDB to AMOTT [New]

CDB VORTAC
(Lat. 55°16′03″ N., long. 162°46′27″ W.)
BINAL FIX
(Lat. 55°46′00″ N., long. 161°59′56″ W.)
AKN VORTAC
(Lat. 58°43′29″ N., long. 156°45′08″ W.)
AMOTT FIX
(Lat. 60°53′56″ N., long. 151°21′46″ W.)

* * * * *

T–273 FAI to ROCES [Modified]

FAI VORTAC
(Lat. 64°48′00″ N., long. 148°00′43″ W.)
AYKID FIX
(Lat. 65°50′58″ N., long. 147°16′34″ W.)
TUVVO FIX
(Lat. 67°37′20″ N., long. 146°04′49″ W.)
ROCES WP
(Lat. 70°08′34″ N., long. 144°08′16″ W.)

Issued in Washington, DC, May 28, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–13596 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 700

[Docket No. 0912311453–0016–01]

RIN 0694–AE81

Revisions to Defense Priorities and Allocations System Regulations

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reorganize and clarify existing standards and procedures by which the Bureau of Industry and Security (BIS) may require that certain contracts or orders that promote the national defense be given priority over other contracts or orders. This rule also sets new standards and procedures by which BIS may allocate materials, services and facilities to promote the national defense. BIS is publishing this rule to comply with a requirement of the Defense Production Act Reauthorization of 2009 to publish regulations providing standards and procedures for prioritization of contracts and orders and for allocation of materials, services and facilities to promote the national defense.

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

ADDRESSES: You may submit comments, identified by RIN 0694–AE81, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- By e-mail directly to *bis@publiccomments.bis.doc.gov.* Include RIN 0694–AE81 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John Isbell, Director (Acting), Defense Programs Division, Office of Strategic Industries and Economic Security, Bureau of Industry and Security; (202) 482–8229, *jisbell@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This rule updates and expands 15 CFR part 700, the Bureau of Industry and Security's (BIS) Defense Priorities and Allocations System (DPAS) regulations. The DPAS regulations implement BIS' administration of priorities and allocations actions involving industrial resources. BIS administers the DPAS pursuant to authority under Title I of the Defense Production Act (50 U.S.C. app. 2071 *et seq.*) (DPA) as delegated by Executive Order 12919 (June 3, 1994). The DPAS has two principal components: Priorities and allocations. Under the priorities component, certain contracts between the government and private parties or between private parties for the production or delivery of industrial resources are required to be given priority over other contracts to facilitate expedited delivery in promotion of the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term "national defense" is defined broadly and can include critical infrastructure protection and restoration, emergency preparedness, and recovery from natural disasters. BIS has extensive experience using its prioritizations authorities. However, BIS has not used its allocations authorities in more than fifty years.

On September 30, 2009, the Defense Production Act Reauthorization of 2009 (Pub. L. 111–67, 123 Stat. 2006, September 30, 2009) (DPAR) was enacted. That act requires that within 270 days of its enactment (that is, by June 20, 2010), all agencies to which the

President has delegated priorities and allocations authority under Title I of the DPA must publish final rules establishing standards and procedures by which that authority will be used to promote the national defense in both emergency and nonemergency situations. That act also required all such agencies to consult "as appropriate and to the extent practicable to develop a consistent and unified Federal priorities and allocations system." (123 Stat. 2006, at 2009). This rule is one of several rules to be published to implement the provisions of the DPAR. The final rules of the agencies with DPAR authorities, which are the Departments of Commerce, Energy, Transportation, Health and Human Services, Defense, and Agriculture, will comprise the Federal Priorities and Allocations System.

BIS is publishing this proposed rule as the initial rulemaking stage in compliance with the provision of the DPAR noted above. BIS believes that its existing rules regarding priorities satisfy the DPAR's requirement that agencies have standards and procedures in place to implement the DPA's authorities. However, in the interest of promoting a unified priorities and allocations system, and to update many of the existing DPAS procedures, BIS is setting forth in this proposed rule changes that will clarify and reorganize the DPAS to make it consistent with the regulations issued by other agencies, and to make it easier to understand. Additionally, although allocations provisions were previously contained in the DPAS, this proposed rule expands those provisions to clearly set forth the procedures to be followed for allocations actions. The specific changes proposed by this rule are more fully described below.

Analysis of the Proposed Priorities and Allocations System

Subpart A

Proposed Subpart A would be titled "Purpose, Overview and Definitions" and would reflect all three concepts.

Proposed § 700.1 would state the purpose of the DPAS in general terms and would largely restate information that appears at 15 CFR 700.1 in the existing regulations. However, extensive language about the source of BIS's legal authority would not be incorporated into the proposed § 700.1 on the grounds that such language is not regulatory in nature. BIS believes that the language regarding the DPAS' purpose would be clearer if it is not submerged in extensive discussions of legal authority, particularly where those discussions have no legal effect.

Proposed § 700.2 would provide an overview of the DPAS program. This section would incorporate much of the discussion that currently appears in Subpart B of the existing regulations, but would describe briefly all aspects of the DPAS, eliminating the need for the more extensive descriptions found in §§ 700.3 through 700.7 of the existing regulations.

The "Definitions" section, which appears in § 700.8 in Subpart C of the current regulations, would appear in proposed § 700.3 in Subpart A with the following modifications. Proposed § 700.3 would state that the definitions therein apply to all of part 700 unless otherwise specified in a particular definition. The reference to the definitions found in the DPA and in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) that appear in the current regulations would be removed and all relevant definitions would appear in full in § 700.3, thereby eliminating the need to consult statutes for definitions. Although references to these statutes are being removed, the definitions contained in proposed § 700.3 would be consistent with those set forth in the statutes.

New definitions would be added for the following terms: *Allocation, allocation authority, allocation order, allotment, critical infrastructure, prioritization directive, allocation directive, emergency preparedness, national defense, priorities authority, priority rating, priority performance, program identification symbols, resource agency,* and *short supply item.* These new definitions are needed to promote clarity of meaning, to remove the need to consult authorizing statutes for definitions, to implement the new provisions regarding allocations, and to develop a consistent and unified Federal priorities and allocations system.

The definition of the term "*MRO*" would be revised to replace the term "*Maintenance, and repair and operating supplies*" with the term "*Maintenance, repair and/or operating supplies.*" For years, BIS has interpreted the term MRO to apply to maintenance, to repair, to operating supplies, to any combination of two of the three, or to all three. BIS is proposing to revise the language because it believes that the proposed language more clearly expresses the meaning that BIS has applied for years. In other respects, the definition is unchanged.

The definition of the term *Person* would be expanded to include international organizations in order to clarify the scope of the entities subject to or eligible to be a recipient of authority (delegated or direct) as provided in this part. BIS proposes to modify the definition to clarify that international organizations are among the entities eligible to request priority ratings to obtain items in the United States in support of approved programs. This proposed change would codify existing agency practice.

The definition of the term "*Production equipment*" would be changed to emphasize that the characteristics of the equipment that give it a useful life of more than one year (as distinct from the actual amount of time that it actually will be used) is a relevant factor in determining whether a piece of equipment is production equipment. The wording of the other factors in the definition, unit acquisition cost in excess of $2,500 and use in producing materials or furnishing services, remains unchanged.

Finally, the definition of the term *Set-aside,* which appears as a parenthetical in § 700.30 of the existing regulations, would be revised to more clearly state what is required of a person who is issued a set-aside. The current definition uses outdated language that makes the meaning of the term unclear.

Subpart B

Proposed Subpart B would be based largely on language that appears in Subparts D, I and L of the existing regulations and would be titled "Industrial Priorities and Allocations," reflecting the fact that the subpart will address certain matters that are common to both priorities and to allocations as opposed to the current title of subpart D "Industrial Priorities," which reflects a narrower scope.

Proposed § 700.10, "Authority," would incorporate language that appears in the existing regulations at § 700.10 of existing Subpart D, however the existing language would be revised to describe more fully the President's delegations to the Department of Commerce and to other agencies that have roles in the Federal priorities and allocation system. It would also describe, in general terms, the items subject to each agency's jurisdiction and note that the Department of Commerce has delegated certain authorities to other agencies. BIS is proposing this change to facilitate public understanding of the role that each delegate agency plays in the overall priorities and allocations system.

Proposed § 700.11, "Priority ratings," which is based on language that appears in existing § 700.11, would be revised and shortened to eliminate language newly included in the proposed

definitions section of Subpart A regarding "program identification symbols." This revision is necessary for clarity and to prevent redundancy with the definitions in Subpart A.

Proposed § 700.12, "Prioritization directives and allocation orders," would incorporate language from existing § 700.62(b) and (c) and would provide a discussion of the use of prioritization directives and allocation orders. The definition for "directive" in § 700.62(a) would be replaced by definitions of "allocation directive" and "prioritization directive" in proposed § 700.3 along with the other definitions of terms used in this proposed rule. Paragraphs (b) and (c) of the existing regulations at § 700.62 would become paragraphs (a) and (b) respectively in proposed § 700.12. Proposed paragraph (c) is a new paragraph that provides that allocation orders take precedence over prioritization directives, DX rated orders, DO rated orders, and unrated orders, unless a contrary instruction appears in the allocation order.

Language in proposed § 700.13, "Examples of emergency preparedness," provides examples of what constitutes "emergency preparedness activities" and explains how those considerations impact decisions with regard to priority ratings and allocation orders. The material in this section is new.

Language in proposed § 700.14, "Changes or cancellations of priority ratings, rated orders and allocation orders," is largely identical to language that appears in existing § 700.16 "Changes or cancellations of priority ratings and rated orders." However, the scope would be expanded to include language describing the action necessary to change an allocation order.

Proposed § 700.15, "Adjustments or exceptions," incorporates language that appears in existing § 700.80 "Adjustment or exceptions" found in Subpart K. Proposed § 700.15 would reflect the time period in which the Office of Strategic Industries and Economic Security should respond to requests for adjustments to or exceptions. For such requests related to a priority rated order, response should occur within 20 business days. For requests for adjustments to or exceptions from an allocation order, response should occur within 2 (two) business days. BIS believes that a deadline for responses to requests for exceptions or adjustments is appropriate to provide predictability in the priorities and allocations processes. In addition, because allocations, if used, would address national emergencies, BIS believes that a shorter deadline to respond in those instances is appropriate.

Proposed § 700.16, which incorporates language from § 700.81 of the existing regulations, sets forth the procedures for appealing to the Assistant Secretary for Export Administration for review of a decision regarding a request for an exception from or adjustment to a priority rated order or allocation order. Most of the language in proposed § 700.16 is taken from language that appears in § 700.81 of the existing regulations. However, § 700.81 provides no express procedure for appeals from a decision regarding a request for an exception from or adjustment to allocation orders. This rule would adopt the appeals procedures currently prescribed for requests for exceptions from, or adjustments to, priority rated orders to appeals from allocation orders with one exception. Appeals from allocation orders would have to be received in the Office of the Assistant Secretary for Export Administration within 5 (five) business days of the receipt of the decision by the party appealing that decision. The Assistant Secretary for Export Administration would have discretion to accept appeals after the 5 day deadline. For priority rated orders, the deadline would continue to be 45 calendar days. The proposed rule also would continue to give the Assistant Secretary discretion to accept appeals after that 45 day deadline, but would remove the phrase "for good cause shown from the sentence authorizing such acceptances because the phrase adds nothing of substance to the sentence. Because BIS will issue allocation orders only during a national emergency, the urgent nature of the circumstance and its possible impact on industry make a five business day deadline for filing an appeal necessary.

Language in proposed § 700.17 "Protection against claims" is identical to the language that appears in existing § 700.90 of Subpart L. BIS is proposing to move the language to § 700.17 in Subpart B to emphasize the point that the protections in this section would apply equally to persons complying with official actions related to priorities and to allocations.

Subpart C

Proposed Subpart C would address matters related to priorities and would be based largely on language currently in Subpart D and Subpart F. The proposed subpart would be titled "Complying with Priority Ratings and Orders" to reflect the subpart's narrower scope as compared to proposed Subpart B. However, as noted above, the language in § 700.10, "Delegation of Authority," and § 700.16, "Changes or cancellations of priority ratings and rated orders," of the existing regulations would be modified, retitled, and moved to proposed Subpart B. BIS is proposing these changes because it believes that discussing matters related to priorities in the order set forth in this proposed rule is more logical and easier to follow than the order in which such matters are discussed in the existing rule.

Proposed § 700.21, "Rated Orders," would reflect language that appears in existing § 700.3 but would be revised and shortened to prevent redundancy with language provided in the proposed definitions section of Subpart A. The new title also distinguishes this section from proposed § 700.11.

Proposed § 700.22, "Elements of a rated order," includes language that appears in existing § 700.12 but would include the phrase "program identification symbol" in proposed paragraph (a) to clarify what constitutes an official priority rating in accordance with Schedule 1. In addition, a new element setting forth language that should be included in those rated orders for emergency preparedness requirements for which expedited action is necessary and appropriate to meet such requirements, would be added. The language would identify the rated order as one for an emergency preparedness requirement and would specify that the order must be accepted or rejected within a specified number of workings days. When issuing the rated order, the rating agency would insert a number of working days ranging from one through fourteen as appropriate to the transaction. This section also would be reworded to clarify the text.

Proposed § 700.23, "Use of rated orders," incorporates the text from existing § 700.17. This proposed section would describe when and how a person would use a rated order. BIS would also incorporate language that appears in § 700.17 of the existing regulations into proposed § 700.23 to improve the organization of the proposed rule.

Language in proposed § 700.24, "Limitations on placing rated orders," draws from the language that appears in existing § 700.18 but is modified to recognize that in some instances, other agencies' regulations would authorize the placement of rated orders. Existing § 700.18 prohibits placing rated orders that are not authorized by "this regulation." BIS would recognize other agencies' authority by modifying the language in paragraph (a) of proposed § 700.24 to state that rated orders issued pursuant to this part (*i.e.,* 15 CFR part 700) may not be used except as

authorized by this part. BIS is making this change because it does not intend to regulate conduct that is subject to the regulations of other agencies and not subject to regulations that are administered by BIS.

In proposed § 700.25, "Acceptance and rejection of rated orders," the proposed rule would move the language that appears in § 700.13 of the existing regulations, and modify it to specify the timeframes within which persons must accept or reject rated orders for emergency preparedness-related approved programs. This section was also revised by removing reference to the OMB control number because such reference is not needed in the regulatory text.

The proposed rule would add language to proposed § 700.25 to distinguish the time frame within which persons must respond to priority rated orders for certain emergency preparedness requirement orders from other rated orders. The recipient would be required to accept or reject rated orders that contain the deadline specific language set forth in proposed § 700.22(b) within the time specified in the order. That time could be in the range of one through fourteen working days. The issuing agency would select the number of days according to the urgency of the situation for which the order is issued at the time of the order's issuance.

The timeframe for acceptance or rejection of rated orders for all other approved programs remains fifteen days for DO programs and ten days for DX programs. BIS is proposing the shorter time limits in which the recipient must respond to a rated order issued in connection with an emergency preparedness program because such programs would involve disaster assistance, emergency response or similar activities. BIS believes that the exigent circumstances inherent in emergency preparedness related programs justify requiring a response time commensurate with the exigencies of the situation. In addition, a note would be added to alert the public that in some instances, for example certain emergency preparedness situations, a shorter time limit may be specified. The proposed note also alerts the public that priorities regulations issued by other Delegate Agencies may have shorter time limits than the time limits provided by BIS, and the recipient of a rated order must follow the regulations of the Delegate Agency issuing the rated order.

The language in proposed § 700.26 "Preferential scheduling," proposed § 700.27 "Extension of priority ratings," and proposed § 700.28 "Metalworking machines," incorporates the language that appears in the existing regulations at §§ 700.14, 700.15 and 700.31 respectively. BIS is proposing to move the language of these sections to Subpart C because it believes placing the language governing priorities in a single subpart would make the regulations easier to understand and would clarify the organization of these regulations. The proposed sections retain much of the original language from those sections, but also have been amended to provide examples in some instances, and to make the processes described in each section clearer.

Subpart D

Proposed Subpart D, "Industrial Priorities for Energy Programs," describes the use of priority rating authority to support energy programs approved by the Department of Energy.

Proposed § 700.30, "Use of priority ratings for energy programs" and § 700.31, "Application for priority rating authority," would use text that appears in the existing regulations at §§ 700.20 and 700.21, respectively. The phrase "for energy programs" would be added to the header of proposed § 700.30 to describe accurately the scope of the text of that section. Proposed § 700.31 would not contain language that appears in paragraphs (a) and (d) of § 700.21 the exiting regulations. Paragraph 700.21(a) of the existing regulations describes a procedure and process used by the Department of Energy that is more appropriately addressed in that agency's regulations, and therefore this proposed rule would not include that discussion from regulations. Paragraph 700.21(d) of the existing regulations describes an internal BIS procedure that is not regulatory in nature and thus would not be included in the regulations. Apart from those changes, the text of proposed Subpart D is the same as the text of existing §§ 700.20 and 700.21.

Subpart E

Proposed Subpart E "Special Priorities Assistance" describes instances in which BIS would provide assistance in resolving matters related to priority rated contracts and orders. The text is taken from existing Subpart H with principle changes discussed below.

Proposed § 700.40 "General provisions" is based on existing § 700.50, but has been modified to make it clearer and more succinct. Discussions unrelated to the special priorities assistance that BIS can provide would be eliminated as would a recitation of the OMB Paperwork Reduction Act control number for the form used to request assistance from BIS because they are unnecessary and detract from the main point of the section, which is to illustrate when and how BIS can provide special priorities assistance. Although special priorities assistance may be requested for any reason, three examples would be provided. These examples are based on BIS's experience and illustrate circumstances where BIS has been able to provide assistance in the past.

In proposed § 700.41 "Request for priority rating authority" is largely the same text that appears in § 700.51 of the existing regulations, except that the statement in existing § 700.51(c)(3)(v), which states that BIS will consider the political sensitivity of the project in reviewing requests for rating authority in advance of a prime contract would not be included, because BIS would not consider that factor in deciding whether to grant rating authority.

Proposed § 700.42 and § 700.43 reflect the same text that appears in existing § 700.53 and § 700.55 respectively, with one exception. In proposed § 700.42 the word "develop" would replace the word "effect" that is currently in § 700.53 to make that language clearer.

In some instances, BIS can provide priorities assistance to persons located in foreign nations or to international organizations (*e.g.,* NATO, United Nations agencies, etc.) seeking assistance in obtaining military and critical infrastructure items in the United States or priority rating authority for military and critical infrastructure items to be purchased in the United States. In addition, BIS can sometimes provide informal assistance to persons in the United States who are seeking assistance in obtaining items from foreign countries. In this proposed rule, BIS would expand the language describing this assistance pursuant to the changes specific to the new availability of critical infrastructure items to non-U.S. persons set forth in the DPAR, and for the purpose of clarification.

This proposed rule would add a new section that specifically describes military assistance with respect to Canada (proposed § 700.44, "Military assistance programs with Canada"), and would create another section describing such assistance with respect to other nations and international organizations (proposed § 700.45, "Military assistance programs with other nations and international organizations"). Currently, information about military assistance with respect to all eligible foreign nations appears in § 700.55 of the existing regulations, and that section does not mention international

organizations. BIS is proposing to create a new section that speaks to military assistance with respect to Canada because the Canadian Government has been authorized to place priority ratings in the United States to support approved defense programs without the endorsement of the U.S. Department of Defense (DOD). Persons in other foreign countries may place priority ratings in the United States if their requests for military assistance are sponsored by their government and have DOD approval and endorsement. BIS believes that this difference justifies creation of separate sections to address these procedures. In addition, because BIS has provided assistance to international organizations in the past, adding a reference to international organizations in proposed § 700.45 merely codifies existing agency practice and does not represent a change in policy.

In addition, this rule proposes to add new § 700.45 that would add Finland to the list of nations that have bilateral security of supply arrangements with the U.S. Department of Defense, reflecting an agreement signed by the United States and Finland in October 2009. Proposed § 700.45 would also make it clear that persons in countries that do not have bilateral security of supply arrangements with the U.S. Department of Defense (DOD) may still seek assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States.

Proposed § 700.46, "Critical infrastructure assistance programs with other nations and international organizations," is also a new section that would describe how persons in foreign nations or international organizations may place priority ratings in the United States if their requests for critical infrastructure assistance are sponsored by their government or organization and have received the approval and endorsement of the U.S. Department of Homeland Security. The Department of Commerce is adding this section pursuant to the requirements of the DPAR, which include critical infrastructure protection and restoration assistance to foreign nations and international organizations.

Subpart F

Proposed Subpart F "Official Actions" is taken largely from existing Subpart I of the same name. Proposed §§ 700.50, 700.51 and 700.52 employ the text of existing §§ 700.60, 600.61 and 700.63, respectively, without substantive change. The substance of existing § 700.62 "Directives" has been amended to clarify that these directives are "prioritization directives" and has been incorporated into the definitions in proposed § 700.3. These changes are being made to improve the clarity and flow of the regulations.

Subpart G

Proposed Subpart G "Allocations in a National Emergency" contains mostly new material and would replace language in existing Subpart F. Proposed Subpart G would provide the public with detailed information on the procedures governing allocations actions. Allocations actions will likely be used in response to a national emergency.

Proposed § 700.61 describes allocations and when and how allocation orders would be used. Specifically, allocation orders would be used only if priorities authority would not provide a sufficient supply of material, services or facilities for national defense requirements, or when use of priorities authority would cause a severe and prolonged disruption in the supply of resources available to support normal U.S. economic activities. Allocation orders would not be used to ration materials or services at the retail level. Allocation orders would be distributed equitably among the suppliers of the resource(s) being allocated and would not require any person to relinquish a disproportionate share of the civilian market. BIS is proposing the standards set forth in proposed § 700.60 because it believes that they provide reasonable assurance that allocation orders will be used only in situations were the circumstances justify such orders.

Proposed § 700.62 would provide that, in the event of a conflict between a priority order or prioritization directive and allocation order or allocation directive, the latter would take precedence. BIS is proposing this order of precedence because it believes that given the extreme and rare circumstances under which allocation orders would be issued as compared to the serious, but more frequently encountered circumstances under which priority orders are issued, it can reasonably predict that the justification for the allocation order will overcome any justification for any priority order that conflicts with the allocation order.

Proposed § 700.63 describes the three types of allocation orders that BIS might issue, which are a set-aside, an allocation directive, and an allotment. A set-aside is an official action that would require a person to reserve resource capacity in anticipation of receipt of rated orders. An allocation directive is an official action that would require a person to take or refrain from taking certain actions in accordance with its provisions (an allocation directive can require a person to stop or reduce production of an item, prohibit the use of selected items, divert supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period). An allotment is an official action that would specify the maximum quantity of an item authorized for use in a specific program or application. The text in proposed § 700.63 is largely new. BIS is proposing these three types of allocation orders because it believes that, collectively they describe the types of actions that might be taken in any situation in which allocation is justified.

Proposed § 700.64 "Elements of an allocation order," is a new section that sets forth the minimum elements of an allocation order. Those elements are:

(a) A detailed description of the required allocation action(s);

(b) Specific start and end calendar dates for each required allocation action;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the head of the Resource Agency placing the order. The signature or use of the name certifies that the order is authorized under the DPAS regulations and that the requirements of those regulation are being followed; and

(d) A statement that reads in substance: "This is an allocation order certified for national defense use. [Insert the legal name of the person receiving the order] is required to comply with this order, in accordance with the provisions of 15 CFR 700."

BIS is proposing these elements because it believes that they provide a proper balance between the need for standards to permit the public to recognize and understand an allocation order if one is issued, and the expectation that any actual allocation orders will have to be tailored to meet unforeseeable circumstances. The language of proposed § 700.64 would not preclude BIS from including additional information in an allocation order if circumstances warrant doing so.

Proposed § 700.65 "Mandatory acceptance of allocation orders" would require that an allocation order must be accepted if a person is capable of fulfilling the order. This section also states that a person may not discriminate against an allocation order in any manner, such as by charging higher prices or imposing terms and conditions different than what the person imposed on contracts or orders

for the same resource(s) that were received prior to receiving the allocation order. This section also instructs the public on the procedures to follow to reject an allocation order, and refers the public to proposed § 700.15 for information on how to seek adjustment of or exception to an allocation order. BIS is proposing § 700.65 to make it clear to the public that the limited circumstances and emergency situations that trigger issuance of an allocation order require immediate response from the public in order to address the situation in an expedient fashion.

Proposed § 700.66 "Changes or cancellations of allocation orders" would provide notice that the Department of Commerce may modify or cancel an allocation order. BIS is proposing this language because it believes that the uncertain nature of the events attributed to allocation orders, and the need for flexibility in dealing with a national emergency, require that BIS be able to modify or cancel orders to address changing circumstances as they arise.

Subpart H

Proposed Subpart H, "Compliance," is taken largely from the language that appears in Subpart J of the existing regulations with little change. The language in existing §§ 700.70, 700. 71, 700.72, 700.73, 700.74 and 700.75 of Subpart J would appear in §§ 700.70, 700.72, 700.73, 700.74, 700.75, and 700.76, respectively, in Subpart H. The term "official actions" would be removed from the text of this subpart. This term would be removed because its inclusion in the text suggested that official actions were something other than the activities set forth in part 700. Additionally, throughout Subpart H, references to "related statutes" would be removed from the phrase the "Defense Production Act, the Selective Service Act and related statutes" because the Defense Production Act and the Selective Service Act are the legal basis for BIS's administrative and enforcement activities set forth in the Defense Priorities and Allocations System regulations (15 CFR part 700). The removal of the reference to unnamed "related statutes" does not impact BIS's authority or public understanding of the compliance requirement that Subpart H is intended to address. The language currently in § 700.70(b) stating that persons who place rated orders should be familiar with and must comply with this regulation does not appear in proposed § 700.70 because BIS believes that it is unnecessary either for public understanding of the rule or as a basis for enforcement.

Proposed § 700.71 reflects language that appears in § 700.91 "Records and reports" in Subpart L of the existing regulations. BIS believes that placing all compliance related previsions in a single subpart improves the organization of the DPAS. Additionally, the language in proposed § 700.72 would be modified to clarify that personal service of a demand for information or inspection authorization may be made by leaving a copy of the document with a person who is at least eighteen years of age. The language that appears in § 700.71 of the existing regulations provides that the person must be of "suitable age and discretion." The Department of Commerce is proposing this change in conformity with the proposed rules of other agencies delegated authority under the DPA and in conformity with the language in existing § 700.71(f)(3), which requires that a person receiving service of a demand for information or inspection authorization must be at least eighteen years of age.

Subpart I

Proposed Subpart I "Miscellaneous Provisions" is taken largely from Subpart L of the existing regulations. The language in existing §§ 700.92 and 700.93 would become §§ 700.80 and 700.81, respectively. Language in proposed § 700.80(c) would mirror the language that appears in § 700.92(c) of the existing regulations but would include a reference to the Defense Priorities and Allocations System because the Defense Priorities and Allocations System superseded both the Materials System and the Defense Priorities System, in 1984. Language in proposed § 700.80(d) would reflect the language that appears in § 700.92(d) of the existing regulations but would reflect current terminology. Substantively, existing § 700.92(d) provides that repeals of rules, orders, schedules and delegations of authority will not affect any penalty or liability incurred while such rules, orders, schedules and delegations of authority were in force. As previously noted, the language in § 700.90 "Protection against claims" of the existing regulations would be moved to proposed § 700.17 in proposed Subpart B, and the language in § 700.91 "Records and Reports" of the existing regulations would be moved to proposed § 700.71 in proposed Subpart H to make the DPAS regulations more organized and easier to read. BIS is proposing the language in proposed § 700.80(c) and (d) to state more precisely meaning that BIS has attributed to those two paragraphs for years.

Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains two collections previously approved by OMB. OMB control number 0694–0053 authorizes the requirement that recipient of rated orders notify the party placing the order whether or not they will fulfill the rated order. BIS believes that this rule will not materially change the burden imposed by this collection. OMB control number 0694–0057 authorizes the collection of information that parties must send to BIS when seeking special priorities assistance or priority rating authority. BIS believes that this rule will not materially change the burden imposed by this collection. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to John Isbell, *jisbell@bis.doc.gov*.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Acting Chief Counsel of Regulations,

Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

Number of Small Entities

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (August 2008 Edition), has a maximum annual revenue of $ 33.5 million and a maximum of 1,500 employees (for some business categories, these number are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule sets criteria under which BIS (or agencies to which BIS delegates authority) will authorize prioritization of certain orders or contracts as well as criteria under which BIS would issue orders allocating resources or production facilities. Because the rule affects commercial transactions, BIS believes that small organizations and small governmental jurisdictions are unlikely to be affected by this rule. However, BIS has no basis on which to estimate the number of small businesses that are likely to be affected by this rule.

Impact

BIS believes that any impact that this rule might have on small businesses would be minor. The rule has two principle components: prioritization and allocation. Prioritization is the process that is, by far, more likely to be used. Under prioritization, BIS designates certain orders, which may be placed by Government or by private entities, and assigned under one of two possible priority levels. Once so designated, such orders are referred to as "rated orders." The recipient of a rated order must give it priority over an unrated order. The recipient of a rated order with the higher priority rating must give that order priority over any rated orders with the lower priority rating and over unrated orders. A recipient of a rated order may place two or more orders at the same priority level with suppliers and subcontractors for supplies and services necessary to fulfill the recipient's rated order and the suppliers and subcontractors must treat the request from the rated order recipient as a rated order with the same priority level as the original rated order. The rule does not require recipients to fulfill rated orders if the price or terms of sale are not consistent with the price or terms of sale of similar non-rated orders. The rule provides a defense from any liability for damages or penalties for actions or inactions made in compliance with the rule.

BIS expects that this rule will not result in any increase in the use of rated orders. The changes to the provisions of 15 CFR part 700 that apply to rated orders are primarily simplifications and clarifications. The standards under which a rated order would be issued are not changed by this rule.

Although rated orders could require a firm to fill one order prior to filling another, they would not require a reduction in the total volume of orders nor would they require the recipient to reduce prices or provide rated orders with more favorable terms than a similar non-rated order. Under these circumstances, the economic effects on the rated order recipient of substituting one order for another are likely to be mutually offsetting, resulting in no net loss.

Allocations could be used to control the general distribution of materials or services in the civilian market. Specific allocation actions that BIS might take are as follows:

Set-aside: An official action that requires a person to reserve resource capacity in anticipation of receipt of rated orders.

Allocation directive: An official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. An allocation directive can require a person to stop or reduce production of an item, prohibit the use of selected items, or divert supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period.

Allotment: An official action that specifies the maximum quantity of an item authorized for use in a specific program or application.

BIS has not taken any actions under its existing allocations authority since the early 1950s (during the Korean conflict) and any future allocations actions would be used only in extraordinary circumstances. As required by section 101(b) of the Defense Production Act of 1950, as amended, (50 U.S.C. app. § 2071), hereinafter "DPA," and by Section 201(d) of Executive Order 12919 of June 3, 1994, as amended, BIS may implement allocations only if the Secretary of Commerce made, and the President approved, a finding "(1) that the material [or service] is a scarce and critical material [or service] essential to the national defense, and (2) that the requirements of the national defense for such material [or service] cannot otherwise be met without creating a significant dislocation of the normal distribution of such material [or service] in the civilian market to such a degree as to create appreciable hardship." The term "national defense" is defined to mean "programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any related activity. Such term includes emergency preparedness activities conducted pursuant to title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration."

Any allocation actions taken by BIS would also have to comply with Section 701(e) of the DPA (50 U.S.C. app. 2151(e)), which provides that "small business concerns shall be accorded, to the extent practicable, a fair share of the such material [including services] in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns."

Conclusion

Although BIS cannot determine precisely the number of small entities that would be affected by this rule, BIS believes that the overall impact on such entities would not be significant. With respect to priorities authority, this rule is not likely to increase the number of priority rated contracts compared to the number being issued currently. In addition, in most instances, rated contracts would be in addition to other (unrated) contracts and not reduce the total amount of business of the firm that receives a rated contract.

BIS's lack of experience with allocations makes gauging the impact of an allocation, should one occur, difficult. Because allocations can be imposed only after a determination by the President, and the fact that BIS has taken no allocations actions in more than fifty years, one can expect allocations will be a rare occurrence. However, BIS believes that the requirement for a Presidential

determination and the provisions of section 701 of the DPA provide reasonable assurance that any impact on small business will not be significant.

Therefore, for the reasons set forth above, the Chief Counsel for Regulations at the Department of Commerce certified that this action would not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

For the reasons stated in the preamble, 15 CFR part 700, is proposed to be revised as follows:

PART 700—[AMENDED]

1. The authority citations paragraph for part 700 is revised to read as follows:

Authority: 50 U.S.C. App. 2061, *et seq.;* 42 U.S.C. 5195, *et seq.;* 50 U.S.C. App 468; 10 U.S.C. 2538; 50 U.S.C. 82; E.O. 12919, 59 FR 29525, 3 CFR, 1991 Comp. 901; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166; E.O. 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; E.O. 12656, 53 FR 226, 3 CFR, 1988, Comp. 585.

2. Subpart A is revised to read as follows:

Subpart A—Purpose, Overview and Definitions.

Sec.
700.1 Purpose.
700.2 Overview.
700.3 Definitions.

Subpart A—Purpose, Overview and Definitions.

§ 700.1 Purpose.

This part implements the Defense Priorities and Allocations System (DPAS) that is administered by the U.S. Department of Commerce, Bureau of Industry and Security. The DPAS implements the priorities and allocations authority of the Defense Production Act specific to industrial resources, including use of that authority to implement emergency preparedness activities pursuant to Title VI of the Stafford Act (Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and the priorities authority of the Selective Service Act, all with respect to industrial resources. The DPAS ensures the timely availability of industrial resources for approved programs and provides an operating system to support rapid industrial response to a national emergency.

§ 700.2 Overview.

(a) Certain national defense and energy programs (including emergency preparedness activities) are approved for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are "approved programs." A complete list of currently approved programs is provided at Schedule I to this part.

(b) The Department of Commerce administers the DPAS and may exercise priorities or allocation authority to ensure the timely delivery of industrial items to meet approved program requirements.

(c) The Department of Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to certain government agencies that issue such contracts or orders. Such delegations include authority to authorize recipients of rated orders to place ratings on contracts or orders to suppliers and subcontractors. Schedule I includes a list of agencies to which the Department of Commerce has delegated authority.

§ 700.3 Definitions.

The definitions in this section apply to the entirety of this part unless otherwise stated in a specific definition.

Allocation. The control of the distribution of materials, services or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allocation Authority. The authority to allocate materials, facilities and services for use in approved programs.

Allocation Directive. An official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. An allocation directive can require a person to stop or reduce production of an item, prohibit the use of selected items, divert the supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period.

Allocation Order. An official action to control the distribution of materials, services or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allotment. An official action that specifies the maximum quantity of an item for specified use to promote the national defense.

Approved Program. A program determined by the Secretary of Defense, the Secretary of Energy or the Secretary of Homeland Security as necessary or appropriate for priorities and allocations support to promote the national defense.

Construction. The erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical Infrastructure. Any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Delegate Agency. A government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders for industrial resources needed to support approved programs.

Defense Production Act. The Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), is the statute authorizing the President to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders and to require the allocation of materials, services, and facilities as necessary or appropriate to promote the national defense.

Emergency Preparedness. All activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard.

Industrial Resources. All materials, services, and facilities, including construction materials that are needed to establish or maintain an efficient and modern defense industrial capacity, the authority for which has not been delegated to other agencies under Executive Order 12919. This term also includes the term "item" as defined and used in this part.

Item. Any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

MRO. Maintenance, repair and/or operating supplies as those three terms are defined in this section. However, MRO does not include items produced or obtained for sale to other persons or

for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design. The elements of MRO are defined as follows:

(1) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition,

(2) *Operating supplies* are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items, and

(3) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

National Defense. Programs for military and energy production or construction, military or critical infrastructure assistance to a foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.

Official action. An action taken by the Department of Commerce under the authority of the Defense Production Act, the Selective Service Act, and this part. Subparts B, F and H describe the official actions that may be taken by the Department of Commerce. Official actions include the issuance of set-asides, rating authorizations, allocation or prioritization directives, letters of understanding, demands for information, inspection authorizations, and administrative subpoenas.

Person. Any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any authorized State or local government or agency thereof; and for purposes of administration of this part, including the United States Government and any authorized foreign government or agency thereof, or international organization delegated authority as provided in this part.

Priorities Authority. The authority of the Department of Commerce, pursuant to Section 101 of the Defense Production Act, to require priority performance of contracts and orders for industrial resource items for use in approved programs.

Priority Rating. An identifying code assigned by a delegate agency or authorized person placed on all rated orders and consisting of the rating symbol and the program identification symbol. The Department of Commerce uses the priority rating DO and DX; with DX having priority over DO.

Prioritization Directive. An official action which requires a person to take or refrain from taking certain actions in accordance with its provisions. A prioritization directive may require a person to satisfy a rated requirement within a specific time period.

Production Equipment. Any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of $2,500 or more and the potential for maintaining its integrity as a capital item in excess of one year.

Program Identification Symbols. Abbreviations used to indicate which approved program is supported by a rated order. The list of approved programs and their identification symbols is found in Schedule I of this part. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

Rated Order. A prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this part.

Resource Agency. Any U.S. Government agency delegated priorities and allocations authority in Section 201 of Executive Order 12919.

Selective Service Act. Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), authorizes the President to place an order with a supplier for any articles or materials required for the exclusive use of the U.S. armed forces whenever the President determines that in the interest of national security, prompt delivery of the articles and materials is required. The supplier must give precedence to the order so as to deliver the articles or materials in a required time period.

Set-Aside. An official action that requires a person to reserve resource capacity in anticipation of the receipt of rated orders.

Short Supply Item. An item that is in short supply due to a sudden and substantial increase in demand or decrease in supply.

Stafford Act. Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

3. Subpart B is revised to read as follows:

Subpart B—Industrial Priorities and Allocations

Sec.
700.10 Authority.
700.11 Priority ratings.
700.12 Prioritization directives and allocation orders.
700.13 Examples of emergency preparedness.
700.14 Changes to or cancellations of priority ratings, rated orders and allocation orders.
700.15 Adjustments or exceptions.
700.16 Appeals.
700.17 Protection against claims.

Subpart B—Industrial Priorities and Allocations

§ 700.10 Authority.

(a) *Delegations to the Department of Commerce.* The priorities and allocations authorities of the President under Title I of the Defense Production Act with respect to industrial resources have been delegated to the Secretary of Commerce under Executive Order 12919 of June 3, 1994 (59 FR 29525, 3 CFR, 1991 Comp., p. 901). The priorities authorities of the President under the Selective Service Act with respect to industrial resources have also been delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (56 FR 1079, 3 CFR 1991 Comp., p. 309).

(b) *Delegations by the Department of Commerce.* In turn, the Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for industrial resources needed for use in approved programs.

(c) *Jurisdiction limitations.* (1) The priorities and allocations authority for certain items have been delegated under Executive Order 12919, other executive orders, or Interagency Memoranda of Understanding between other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this part are not applicable to those other items which include:

(i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (delegated to the Department of Agriculture);

(ii) All forms of energy (delegated to the Department of Energy);

(iii) Health resources (delegated to the Department of Health and Human Services);

(iv) All forms of civil transportation (delegated to the Department of Transportation); and

(v) Water resources (delegated to the Department of Defense/U.S. Army Corps of Engineers).

(2) The priorities and allocations authority set forth in this part may not be applied to communications services (delegated to the National Communications System under Executive Order 12472 of April 3, 1984, 49 FR 13471, 3 CFR, 1985 Comp., p. 193).

§ 700.11 Priority ratings.

(a) *Levels of priority.* (1) There are two levels of priority authorized by this subpart, identified by the rating symbols "DO" and "DX."

(2) All DO rated orders have equal priority with each other and take precedence over unrated orders. All DX rated orders have equal priority with each other and take precedence over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, *see* § 700.12(c) of this part.)

(3) In addition, a prioritization directive issued by the Department of Commerce takes precedence over any DX rated order, DO rated order or any unrated order, as stipulated in the prioritization directive. (For a full discussion of prioritization directives, see § 700.12 of this part.)

(b) *Program identification symbols.* The list of approved programs and their identification symbols are listed in Schedule I. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs.

§ 700.12 Prioritization directives and allocation orders.

(a) A person must comply with each prioritization directive issued. However, a person may not use or extend a prioritization directive to obtain any items from a supplier, unless expressly authorized to do so in the prioritization directive.

(b) Prioritization directives take precedence over all DX rated orders, DO rated orders and unrated orders previously or subsequently received, unless a contrary instruction appears in the prioritization directive.

(c) Allocation orders take precedence over prioritization directives, DX rated orders, DO rated orders and unrated orders previously or subsequently received, unless a contrary instruction appears in the allocation order.

§ 700.13 Examples of emergency preparedness.

There are instances where emergency preparedness is a basis for issuance of a priority rating or allocation order. Emergency preparedness is defined in § 700.3 of this part, and largely depends on the nature of the hazards encountered. Examples of hazards that relate to emergency preparedness include the following:

(a) Measures to be undertaken for anticipated hazards (including the establishment of appropriate organizations, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and when appropriate, the nonmilitary evacuation of the civilian population);

(b) Measures to be undertaken during a hazard (including the evacuation of personnel to shelter areas and the control and use of lighting and civil communications); and

(c) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, and immediately essential emergency repair or restoration of damaged vital facilities).

§ 700.14 Changes to or cancellations of priority ratings, rated orders and allocation orders.

(a) The priority rating on a rated order may be changed or cancelled by:

(1) An official action of, or an allocation order from, the Department of Commerce; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended to make it a rated order, or if a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 700.24 of this part.

(d) The following amendments do not constitute a new rated order: A change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design (prior to the start of production); or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items to fill a rated order, any rated orders placed with suppliers for the items, or the priority rating on those orders, must be cancelled.

(f) When a priority rating is added to an unrated order, or when a priority rating is changed or cancelled, all suppliers must be promptly notified in writing by the person adding, changing or canceling the priority rating.

(g) An allocation order may be changed by an official action of the Department of Commerce.

§ 700.15 Adjustments or exceptions.

(a) A person may submit a request to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this part or an official action is contrary to the intent of the Defense Production Act, the Selective Service Act, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action for which adjustment or from which an exception is sought and a full and precise statement of the reasons why relief should be provided. Requests for adjustment or exception pursuant this section should be sent to: Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Room 3876, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, Ref: DPAS Adjustments; Fax: (202) 482–5650.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Strategic Industries and Economic Security.

(1) The Office of Strategic Industries and Economic Security shall respond to request for adjustment of or exceptions to priority orders within 20 (twenty) business days of the date of receipt.

(2) The Office of Strategic Industries and Economic Security shall respond to request for adjustment of allocation orders or exceptions to within 2 (two) business days of receipt.

(d) A decision of the Office of Strategic Industries and Economic Security under this section may be appealed to the Assistant Secretary for Export Administration, U.S. Department of Commerce in accordance with § 700.16 of this part.

§ 700.16 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Strategic Industries and Economic Security under § 700.15 of this part, may appeal to the Assistant Secretary for Export Administration, U.S. Department of Commerce, who shall review and reconsider the denial. Such appeals should be submitted to the Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room 3886, Washington, DC 20230, Ref: DPAS Appeals.

(b) Appeals of denied requests of exceptions from or adjustments to priority orders must be received by the Assistant Secretary for Export Administration no later than 45 days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Export Administration.

(c) Appeals of denied requests of exception from or adjustment to allocation orders must be received by the Assistant Secretary for Export Administration no later than 5 business days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 5 day period, an appeal may be accepted at the discretion of the Assistant Secretary for Export Administration.

(d) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(e) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Assistant Secretary for Export Administration.

(f) When a hearing is granted, the Assistant Secretary for Export Administration may designate an employee of the Department of Commerce to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(g) When determining an appeal, the Assistant Secretary for Export Administration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Commerce, or consult with any other persons or groups.

(h) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the appeal is being considered, unless such relief is granted in writing by the Assistant Secretary for Export Administration.

(i) The decision of the Assistant Secretary for Export Administration shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

§ 700.17 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this part, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

4. Subpart C is revised to read as follows:

Subpart C—Complying With Priority Ratings and Orders.

Sec.
700.21 Rated orders.
700.22 Elements of a rated order.
700.23 Use of rated orders.
700.24 Limitations on placing rated orders.
700.25 Acceptance and rejection of rated orders.
700.26 Preferential scheduling.
700.27 Extension of priority ratings.
700.28 Metalworking machines.

Subpart C—Complying With Priority Ratings and Orders.

§ 700.21 Rated orders.

(a) Rated orders are identified by a priority rating and a program identification symbol. Rated orders take precedence over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take precedence over DO rated orders. Program identification symbols indicate which approved program is attributed to the rated order.

(b) Persons receiving rated orders must give them preferential treatment as required by this part.

(c) All rated orders must be scheduled, to the extent possible, in a manner to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this part.

§ 700.22 Elements of a rated order.

(a) *Elements required for all rated orders.* Each rated order must include:

(1) The appropriate priority rating and program identification symbol (e.g., DO–A1, DX–A4, DO–H1);

(2) A required delivery date or dates. The words "immediately" or "as soon as possible" do not constitute a delivery date. When a "requirements contract," "basic ordering agreement," "prime vendor contract," or similar procurement document bearing a priority rating contains no specific delivery date or dates, but provides for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as "calls," "requisitions," and "delivery orders," the purchase orders supporting such contracts or agreements must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature, manual or digital, certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(4) A statement that reads in substance:

This is a rated order certified for national defense use and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation in the execution of this rated order (15 CFR part 700).

(b) If the rated order is placed in support of emergency preparedness requirements and expedited action is

necessary and appropriate to meet these requirements, the following sentences should be added following the statement set forth in paragraph (a)(4) of this section: "This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within (the rating agency will insert a time frame in the range of one through fourteen working days) working days in accordance with Section 700.25(d)(3) of the Defense Priorities and Allocations System regulation (15 CFR part 700)."

§ 700.23 Use of rated orders.

(a) *Use of rated orders.* A person may use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders. However, for MRO, the priority rating used must contain the program identification symbol H7 in addition to the rating symbol contained on the customer's rated order. For example, a person in receipt of a DO–A3 rated order who needs MRO would place a DO–H7 rated order with the person's supplier.

(b) *Use of rated orders to replace inventoried items.* A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol H1 must be used (i.e., DO–H1).

(c) *Combining rated orders.* A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol H1 (i.e., DO–H1 or DX–H1).

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by § 700.22 of this part, are included on the order with the statement required in § 700.22(d) of this part modified to read in substance:

"This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700) as it pertains to the rated quantities."

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 700.21 of this part and give preferential treatment only to the rated quantities as required by this part. This part may not be used to give preferential treatment to the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 700.15 of this part.

(e) *Rated orders and minimum commercially procurable quantities.* A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) *Federal Acquisition Regulation.* A person is not required to place a priority rating on an order for less than $50,000, or one-half Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR) (48 CFR chapter 1), see FAR 2.101 or in other authorized acquisition regulatory or management systems) whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 700.24 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a rated order pursuant to this part unless entitled to do so under the provisions of this part.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for obtaining minimum procurable quantities on each order if the minimum procurable quantity would be sufficient for all of the rated orders if combined.

(iii) Items in advance of the receipt of a rated order, *except* as specifically authorized by the Department of Commerce (see § 700.41(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or the Department of Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment (for information on requesting priority rating authority, see § 700.41 of this part).

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(b) *Limitations on Use of Ratings.* Rated orders may not be placed on the following items under the jurisdiction of the Department of Commerce; however, these items must be supplied if request is pursuant to an allocation directive described under Subpart G. These excluded items are:

(1) Copper raw materials.
(2) Crushed stone.
(3) Gravel.
(4) Sand.
(5) Scrap.
(6) Slag.
(7) Steam heat, central.
(8) Waste paper.

§ 700.25 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person capable of fulfilling a rated order shall accept every rated order received and must fill such orders in due consideration of any other rated order, and regardless of unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such

as by charging higher prices or by imposing different terms and conditions than are imposed for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by the Department of Commerce:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by the Department of Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is obligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act or the Selective Service Act (see § 700.76 of this part).

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order for all approved programs and, except as provided in paragraph (d)(2) of this section, must transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order.

(2) For rated orders involving emergency preparedness requirements and containing the language specified in § 700.22(b) of this part, notification of acceptance or rejection must be transmitted in writing or electronically within the time specified in the rated order.

Note to Paragraph (d)(2): There may be certain instances, including, for example, the emergency preparedness requirements listed in § 700.13 of this part, where a shorter time period for acceptance or rejection of the rated order may apply. The time period for acceptance and rejection of rated orders is dictated by the regulations of the Delegate Agency issuing the rating. The contract or the contracting official should identify which agency has issued the rated order and provide reference to the regulations that apply to that rated order.

(3) If the rated order is rejected, the person must provide reasons in writing (hard copy) or electronically for the rejection.

(4) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written (hard copy) or electronic confirmation must be provided within five (5) working days of the verbal notice.

§ 700.26 Preferential scheduling.

(a) *Scheduling requirement, modification of non-rated order delivery dates.* A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules for other orders is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) *Precedence of orders.* DO and DX rated orders must be given production precedence over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given precedence over DO rated orders and unrated orders.

Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and business operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order. However, if business operations cannot be altered to meet both the June 3 and July 15 delivery dates, then the DX rated order must be given priority over the DO rated order.

(c) *Conflicting rated orders.* (1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person shall give precedence to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting rated orders are scheduled to be delivered or performed on the same day, the person shall give precedence to those orders which have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in Subpart E of this part. If a customer placing a rated order objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in Subpart E of this part. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 700.24(d)(3) of this part.

(d) *Use of inventoried items to fill rated orders.* If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of the rated order as provided in § 700.23(b) of this part.

§ 700.27 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by the Department of Commerce. For example, if a person is in receipt of a DO–A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO–A3 rated order to obtain the needed semiconductors.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. Therefore, the inclusion of the rated order will continue from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 700.28 Metalworking machines.

(a) "Metalworking machines" include power driven, manual or automatic, metal cutting and metal forming machines and complete machines not supported in the hands of an operator when in use. Basic machines with a list price of $2,500 or less are not covered by this section.

(b) Metalworking machines covered by this section include:

(1) Bending and forming machines.

(2) Boring machines.

(3) Broaching machines.

(4) Drilling and tapping machines.

(5) Electrical discharge, ultrasonic and chemical erosion machines.

(6) Forging machinery and hammers.

(7) Gear cutting and finishing machines.

(8) Grinding machines.

(9) Hydraulic and pneumatic presses, power driven.

(10) Machining centers and way-type machines.

(11) Manual presses.

(12) Mechanical presses, power driven.

(13) Milling machines.

(14) Miscellaneous machine tools.

(15) Miscellaneous secondary metal forming and cutting machines.

(16) Planers and shapers.

(17) Polishing, lapping, boring, and finishing machines.

(18) Punching and shearing machines.

(19) Riveting machines.

(20) Saws and filing machines.

(21) Turning machines, lathes, including automatic.

(22) Wire and metal ribbon forming machines.

(c) A metalworking machine producer is not required to accept DO or DX rated orders calling for delivery in any month of a total quantity of any size of machine in excess of 60 percent of scheduled production of that size of machine for that month, or any DO or DX rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX and DO rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date.

5. Subpart D is revised to read as follows:

Subpart D—Industrial Priorities for Energy Programs

Sec.
700.30 Use of priority ratings for energy programs.
700.31 Application for priority rating authority.

Subpart D—Industrial Priorities for Energy Programs

§ 700.30 Use of priority ratings for energy programs.

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which maintain or further domestic energy exploration, production, refining, and transportation; maintain or further the conservation of energy; or are involved in the construction or maintenance of energy facilities.

§ 700.31 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting a request to the Department of Energy. Further information may be obtained from the U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) If the Department of Energy notifies the Department of Commerce that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, the Department of Commerce must make two findings; whether the items in question are scarce, and whether there is a need to use the priorities authority.

(1) Scarcity implies an unusual difficulty in obtaining the materials, equipment, or services in a timeframe consistent with the timely completion of the energy project. Among the factors to be used in making the scarcity finding will be the following:

(i) Value and volume of material or equipment shipments;

(ii) Consumption of material and equipment;

(iii) Volume and market trends of imports and exports;

(iv) Domestic and foreign sources of supply;

(v) Normal levels of inventories;

(vi) Rates of capacity utilization;

(vii) Volume of new orders; and

(viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities authority, the Department of Commerce will consider alternative supply solutions and other measures.

(c) After the Department of Commerce has conducted its analysis, it will advise the Department of Energy whether the two findings have been satisfied. If the findings are satisfied, the Department of Commerce will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(d) Schedule I includes a list of approved programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 216.

6. Subpart E is revised to read as follows:

Subpart E—Special Priorities Assistance

Sec.
700.40 General provisions.
700.41 Requests for priority rating authority.
700.42 Criteria for assistance.
700.43 Instances where assistance will not be provided.
700.44 Military Assistance programs with Canada.
700.45 Military Assistance programs with other nations and international organizations.
700.46 Critical Infrastructure Assistance programs with other nations and international organizations.

Subpart E—Special Priorities Assistance

§ 700.40 General provisions.

(a) To resolve problems or conflicts that may arise in the execution of priorities and allocations authorities, the Department of Commerce may exercise its authority to provide special priorities assistance to resolve such problems or conflicts. The Department of Commerce can provide special priorities assistance for any reason in

support of this part, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this part.

(1) *Examples of Special Priorities Assistance Requests.* Special priorities assistance requests may be made for a variety of reasons including:

(i) A person may request special priorities assistance to obtain priority rating authority for an item from a U.S. supplier in support of an approved program to ensure timely delivery ahead of unrated orders;

(ii) A person may request special priorities assistance to obtain priority rating authority for an item to ensure timely delivery when there are one or more rated orders for the same item; or

(iii) A person may request special priorities assistance when a U.S. supplier is unable to ensure the timely delivery of a rated order due to the production schedules of other rated orders.

(2) *Assistance for persons executing priority ratings or orders.* Persons executing priority ratings or orders may apply directly to the Department of Commerce for special priorities assistance.

(b) In the event a problem arises in the fulfillment of a rated order or other action authorized by a Delegate Agency, a person should immediately contact the appropriate contract administration officer for guidance or assistance. In turn, the contract administration officer should request assistance from that Delegate Agency to resolve the problem. If the Delegate Agency is unable to resolve the problem, then the Delegate Agency may instruct the contract administration officer to request special priorities assistance from the Department of Commerce.

(c) The Department of Commerce makes the following types of special priorities assistance available: Priority rating authority; ensuring that rated orders receive preferential treatment by suppliers; resolution of production or delivery conflicts between various rated orders; assistance in placing rated orders with suppliers; verification of the urgency of rated orders; and determination of the validity of rated orders.

(d) A request for special priorities assistance or priority rating authority must be submitted on Form BIS–999 to the local contract administration representative. Form BIS–999 may be obtained from the Delegate Agency representative or from the Department of Commerce. A sample Form BIS–999 is attached at Appendix I.

§ 700.41 Requests for priority rating authority.

(a) *Reason for request.* If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this part, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

(1) Production or construction equipment;

(2) Computers when not used as production items; and

(3) Expansion, rebuilding or replacing plant facilities.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (*e.g.,* Department of Defense Form DD 691.).

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, the Department of Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, the Department of Commerce will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time; and

(v) The time period for which the rating is being requested.

(4) The Department of Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders has been cancelled.

§ 700.42 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.,* the request must be submitted promptly and with enough time for the Delegate Agency or the Department of Commerce to develop a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 700.43 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Department of Commerce when it is determined that such assistance is warranted to meet the objectives of this part. Examples where assistance may not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

§ 700.44 Military Assistance programs with Canada.

To promote military assistance to Canada, this section provides for authorizing priority ratings to persons in Canada to obtain items in the United States in support of approved programs.

Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada in support of approved programs.

(a) The joint United States-Canadian military arrangements for the defense of North America and the integrated nature of United States and Canadian their defense industries require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(b) The Department of Commerce coordinates with the Canadian Public Works and Government Services Canada on all matters of mutual concern relating to the administration of this part.

(c) Any person in the United States ordering defense items in Canada in support of an approved program should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, the supplier or vendor should contact the Canadian Public Works and Government Services Canada, for authority to place rated orders in the United States: Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, Phase 3, Place du Portage, Level 0A1, 11 Laurier Street, Gatineau, Quebec, K1A 0S5, Canada; Telephone: (819) 956–6825; Fax: (819) 956–7827, or electronically at *DGAPrioritesdedefense.ACQBDefence Priorities@tpsgc-pwgsc.gc.ca.*

(d) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, in accordance with its procedures.

(e) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, for such assistance. Public Works and Government Services Canada will forward appropriate requests to the Department of Commerce.

(f) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to the Department of Commerce on Form BIS–999. The Department of Commerce will forward appropriate requests to the Canadian Public Works and Government Services Canada.

§ 700.45 Military Assistance programs with other nations and international organizations.

(a) *Scope.* To promote military assistance to foreign nations and international organizations, this section provides for authorizing priority ratings to persons in foreign nations or international organizations to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Finland, Italy, The Netherlands, Sweden, and the United Kingdom in support of approved programs.

(b*) Foreign nations and international organizations.* (1) Any person in a foreign nation other than Canada, Finland, Italy, The Netherlands, Sweden, or the United Kingdom, or any person in an international organization, requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should submit a request for such assistance or rating authority to: The Department of Defense DPAS Lead in the Office of the Director, Industrial Policy, 3330 Defense Pentagon, Washington, DC 20301; Telephone: (703) 697–0051; Fax: (703) 695–4885.

(i) If the end product is being acquired by a U.S. Government agency, the request should be submitted to the DPAS Lead through the U.S. contract administration representative.

(ii) If the end product is being acquired by a foreign nation or international organization, the request must be sponsored prior to its submission to DPAS Lead by the government of the foreign nation or the international organization that will use the end product.

(2) If the Department of Defense endorses the request, it will be forwarded to the Department of Commerce for appropriate action.

(c) *Requesting assistance in Finland, Italy, The Netherlands, Sweden, and the United Kingdom.*

(1) The U.S. Department of Defense has entered into bilateral security of supply arrangements with Finland, Italy, The Netherlands, Sweden, and the United Kingdom that allow the U.S. Department of Defense to request the priority delivery for U.S. Department of Defense contracts, subcontracts, and orders from companies in these countries.

(2) Any person in the United States requiring assistance in obtaining the priority delivery of a contract, subcontract, or order in Finland, Italy, The Netherlands, Sweden, or the United Kingdom to support an approved program should contact the Department of Defense DPAS Lead in the Office of the Director, Industrial Policy for assistance. Persons in Finland, Italy, The Netherlands, Sweden, and the United Kingdom should request assistance in accordance with paragraph (b)(1) of this section.

§ 700.46 Critical Infrastructure Assistance programs with other nations and international organizations.

(a) *Scope.* To promote critical infrastructure assistance to foreign nations, this section provides for authorizing priority ratings to persons in foreign nations or international organizations to obtain items in the United States in support of approved programs.

(b) *Foreign nations and international organizations.* (1) Any person in a foreign nation or international organization requiring assistance in obtaining critical infrastructure items in the United States or priority rating authority for critical infrastructure items to be purchased in the United States should submit a request for such assistance or rating authority to the Office of Policy and Program Analysis (OPPA), Federal Emergency Management Agency, U.S. Department of Homeland Security, 500 C Street, SW., Washington, DC 20472; telephone: (202) 646–3520; Fax: (202) 646–4060.

(2) The government of the foreign nation or the international organization that will use the end product must sponsor all critical infrastructure assistance requests prior to submission to the OPPA.

7. Subpart F is revised to read as follows:

Subpart F—Official Actions

Sec.
700.50 General provisions.
700.51 Rating authorizations.
700.52 Letters of understanding.

Subpart F—Official Actions

§ 700.50 General provisions.

(a) The Department of Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this part.

(b) Several of these official actions (rating authorizations, and letters of

understanding) are discussed in this subpart. Official actions that pertain to compliance (administrative subpoenas, demands for information, and inspection authorizations) are discussed in § 700.72(c) of this part. Prioritization directives and allocation directives are discussed in §§ 700.12 and 700.62, respectively, of this part.

§ 700.51 Rating authorizations.

(a) A rating authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item not normally ratable under this part; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 700.41 of this part.

§ 700.52 Letters of understanding.

(a) A Letter of understanding is an official action which may be issued to resolve special priorities assistance cases and reflects an agreement reached by all parties (the Department of Commerce, the Delegate Agency, the supplier, and the customer).

(b) A Letter of understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this part, or to take other official action. Rather, letters of understanding are used to confirm production or shipping schedules which do not impact other rated orders.

8. Subpart G is revised to read as follows:

Subpart G—Allocations in a National Emergency

Sec.

700.61 Allocation orders—when and how used.
700.62 Precedence of allocation orders over rated orders or prioritization directives.
700.63 Allocation orders.
700.64 Elements of an allocation order.
700.65 Mandatory acceptance of allocation orders.
700.66 Changes or cancellations of allocation orders.

Subpart G—Allocations in a National Emergency

§ 700.61 Allocation orders—when and how used.

(a) Allocation orders will be used only if:

(1) Use of priorities (subpart C of this part) does not provide sufficient supply of a material, service or facility to satisfy national defense requirements; or

(2) Use of such priorities would cause a severe and prolonged disruption in the supply of resources available to support normal U.S. economic activities.

(b) Allocation orders will not be used to ration materials or services at the retail level.

(c) Allocation orders, when imposed, will be distributed equitably among the suppliers of the resource(s) being allocated and not require any person to relinquish a disproportionate share of the civilian market.

§ 700.62 Precedence of allocation orders over rated orders or prioritization directives.

If a conflict should occur between an allocation order and an unrelated rated order or prioritization directive, the allocation order shall take precedence.

§ 700.63 Allocation orders.

The three types of allocation orders that may be used to communicate allocation actions are:

(a) Set-asides;

(b) Allocation directives; and

(c) Allotments.

§ 700.64 Elements of an allocation order.

All allocation orders will include:

(a) A detailed description of the required allocation action(s);

(b) Specific start and end calendar dates for each required allocation action;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the head of the Resource Agency placing the order. The signature or use of the name certifies that the order is authorized under this part and that the requirements of this part are being followed; and

(d) A statement that reads in substance: "This is an allocation order certified for national defense use. [Insert the legal name of the person receiving the order] is required to comply with this order, in accordance with the provisions of 15 CFR 700."

§ 700.65 Mandatory acceptance of allocation orders.

(a) A person shall accept every allocation order received that the person is capable of fulfilling, and must comply with such orders regardless of any rated order, from any delegate agency, that the person may be in receipt of or other commitments involving the resource(s) covered by the allocation order.

(b) A person shall not discriminate against an allocation order in any manner such as by charging higher prices for resources covered by the order or by imposing terms and conditions for contracts and orders involving allocated resource(s) that differ from the person's terms and conditions for contracts and orders for the resource(s) prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify the Department of Commerce immediately at the address, telephone or fax number in § 700.81 of this part, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days in accordance with the instructions in § 700.81 of this part. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by the Department of Commerce that the order has been changed or cancelled. Alternatively, a person may request an adjustment of or exception from an allocation order in accordance with the provisions set forth in § 700.15 of this part.

§ 700.66 Changes or cancellations of allocation orders.

An allocation order may be changed or canceled by an official action from the Department of Commerce.

9. Subpart H is revised to read as follows:

Subpart H—Compliance

Sec.

700.70 General provisions.
700.71 Records and reports.
700.72 Audits and investigations.
700.73 Compulsory process.
700.74 Notification of failure to comply.
700.75 Violations, penalties, and remedies.
700.76 Compliance conflicts.

Subpart H—Compliance

§ 700.70 General provisions.

(a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act, or this part. Such actions include audits, investigations, or other inquiries.

(b) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, or this part, is a criminal act, punishable as provided in the Defense Production Act and as set forth in § 700.75 of this part.

§ 700.71 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this part or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this part or any official action. However, this part does not

specify any particular method or system to be used.

(c) Records required to be maintained by this section must be made available for examination on demand by duly authorized representatives of the Department of Commerce as provided in § 700.72 of this part.

(d) In addition, persons must develop, maintain, and submit any other records and reports to the Department of Commerce that may be required for the administration of the Defense Production Act, the Selective Service Act, and this part.

(e) Section 705(d) of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to the Department of Commerce in connection with the enforcement or administration of the Act, this part, or an official action, is deemed to be confidential under section 705(d) of the Act and shall not be published or disclosed except as required by law.

§ 700.72 Audits and investigations.

(a) Audits and investigations are official actions involving the examination of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, the Selective Service Act, and this part have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Promptly define the scope and purpose in the official action given to the person under investigation, and

(2) Ascertain that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, the Department of Commerce may issue the following documents which constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, the Selective Service Act, or this part. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Commerce any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act, or this part.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of the Department of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act, or this part.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of the Department of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of the Department of Commerce as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization, shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail—Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years of age at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or older may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

§ 700.73 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of the Department of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, the Selective Service Act, or this part, the Department of Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, in consultation with the Chief Counsel for Industry and Security, U.S. Department of Commerce, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

§ 700.74 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, the Department of Commerce may inform the person in writing where compliance with the requirements of the Defense Production

Act, the Selective Service Act, or this part were not met.

(b) In cases where the Department of Commerce determines that failure to comply with the provisions of the Defense Production Act, the Selective Service Act, or this part was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act, this part, or an official action.

§ 700.75 Violations, penalties, and remedies.

(a) Willful violation of the provisions of the Defense Production Act, the priorities provisions of the Selective Service Act, or this part is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act is a $50,000 fine, or three years in prison, or both.

(b) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this part, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act, this part, and official actions, the following are prohibited (see section 704 of the Defense Production Act; see also, for example, sections 2 and 371 of Title 18, United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this part, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this part, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

§ 700.76 Compliance conflicts.

If compliance with any provision of the Defense Production Act, the Selective Service Act, or this part would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this part, or an official action, the person must immediately notify the Department of Commerce or the appropriate Delegate Agency for resolution of the conflict.

10. Subpart I is revised to read as follows:

Subpart I—Miscellaneous Provisions

Sec.
700.80 Applicability of this part and official actions.
700.81 Communications.

Subpart I—Miscellaneous Provisions

§ 700.80 Applicability of this part and official actions.

(a) This part and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This part and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This part and its schedules shall not be construed to affect any administrative actions taken by the Department of Commerce, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules or delegations of authority under the Defense Materials System, Defense Priorities System or the Defense Priorities and Allocations System previously issued by the Department of Commerce. Such actions, contracts, or orders shall continue in full force and effect under this part unless modified or terminated by proper authority.

(d) Any repeal of any provision of this part or any order, schedule or delegation of authority issued pursuant to this part shall not release or extinguish any penalty or liability incurred under that provision, order, schedule or delegation of authority. That provision, order, schedule or delegation of authority shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

§ 700.81 Communications.

All communications concerning this part, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone: (202) 482–3634, fax: (202) 482–5650. Communications may also be submitted electronically at *DPAS@bis.doc.gov,* with reference to the topic of the communication in the subject line.

Subpart J—[Removed]

11. Subpart J is removed.

Subpart K—[Removed]

12. Subpart K is removed.

Subpart L—[Removed]

13. Subpart L is removed.

Dated: May 28, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–13395 Filed 6–4–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1309

[Docket No. DEA–304P]

RIN 1117–AB27

Voluntary Surrender of Certificate of Registration

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to amend its regulations and to revise applicable implementing forms to clarify the registration status of a registrant who voluntarily surrenders a Certificate of Registration for cause. The effect of these proposed changes would make it clear that a voluntary surrender of a registration for cause by a registrant has the legal effect of immediately terminating the registrant's registration without any further action by DEA.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before August 6, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–304" on all written and electronic correspondence. Written

comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

Under current regulations the DEA registration of any person terminates "if and when such person dies, ceases legal existence, or discontinues business or professional practice * * *" 21 CFR 1301.52(a) and 1309.62(a). Under these provisions, no further action by DEA is needed to terminate a DEA Certificate of Registration after one of the specified events occurs. These regulations are silent about whether the automatic termination provisions apply upon a registrant's surrender of a DEA registration. Moreover, DEA forms 104 (for controlled substance registrations) and 104c (for listed chemical registrations), which are sometimes used by registrants to effectuate voluntary surrenders, state that submission of the forms "shall be authority for the Administrator of the Drug Enforcement Administration to terminate * * * my registration without an order to show cause, a hearing, or any other proceedings * * *." Thus the forms have led some registrants to believe that DEA must issue a final order revoking the registration, after submission of the forms, to terminate a DEA registration.

DEA regulations, however, do not require any further action by DEA's Administrator to terminate a DEA registration after the submission of a voluntary surrender, and in practice, DEA treats the submission of a voluntary surrender form as an immediate termination of the DEA registration at issue. The only further action taken by DEA in such cases is the entry of the surrender into DEA's registration database. Moreover, DEA regulations do not even require a registrant to use any particular format to submit a voluntary surrender. DEA accepts voluntary surrenders as long as the Registrant submits a signed statement expressing the desire to surrender a registration.

Proposed Action

To ensure that there is no confusion as to actions necessary to effectuate the voluntary surrender of a DEA registration, DEA intends to revise the relevant regulations to state that a DEA registration terminates when DEA, through any employee, receives notice of a voluntary surrender of a DEA registration.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, has reviewed this regulation and hereby certifies that it has been drafted in accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This Notice of Proposed Rulemaking merely clarifies the circumstances under which DEA registrations may be revoked or surrendered.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, Section 1(b). It has been determined that this is a "significant regulatory action" under Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

This rulemaking would not create any new recordkeeping or reporting requirements. The forms discussed in this rulemaking are internal to DEA and are used under specific law enforcement circumstances.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rulemaking will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $120 million or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rulemaking is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, Exports, Imports, Security measures.

For the reasons set out above, 21 CFR parts 1301 and 1309 are proposed to be amended as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958.

2. Section 1301.52(a) is revised to read as follows:

§ 1301.52 Termination of registration; transfer of registration; distribution upon discontinuance of business.

(a) Except as provided in paragraph (b) of this section, the registration of any person, and any modifications of that registration, shall terminate, without any further action by the Administration, if and when such person dies, ceases legal existence, discontinues business or professional practice, or surrenders a registration. Any registrant who ceases legal existence or discontinues business or professional practice shall notify the Administrator promptly of such fact. In the case of a surrender, termination shall occur upon receipt by any employee of the Administration of a duly executed DEA form 104 or any signed writing indicating the desire to surrender a registration.

* * * * *

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS, AND EXPORTERS OF LIST I CHEMICALS

3. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 886a, 958.

4. Section 1309.62(a) is revised to read as follows:

§ 1309.62 Termination of registration.

(a) The registration of any person shall terminate, without any further action by the Administration, if and when such person dies, ceases legal existence, discontinues business or professional practice, or surrenders a registration. In the case of a surrender, termination shall occur upon receipt by any employee of the Administration of a duly executed DEA form 104c or any signed writing indicating the desire to surrender a registration. Any registrant who ceases legal existence or discontinues business or professional practice or wishes to surrender a registration shall notify the Special Agent in Charge of the Administration in the area in which the person is located of such fact and seek authority and instructions to dispose of any List I chemicals obtained under the authority of that registration.

* * * * *

Dated: May 26, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2010–13521 Filed 6–4–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AC41

Combustible Dust

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of combustible dust Web Chat.

SUMMARY: OSHA invites interested parties to participate in a Web Chat on the workplace hazards of combustible dust. OSHA plans to use the information gathered in response to this Web Chat in developing a proposed standard for combustible dust.

DATES: The Web Chat will be held on June 28, 2010, at 1 p.m. EDT.

ADDRESSES:

Registration

Participants are requested to provide their name, affiliation, and e-mail address so OSHA can respond to comments or seek clarification.

Web Site

Participants can access the Web Chat at *http://www.dol.gov/dol/chat.htm.* The Web Blog will remain accessible for additional feedback through July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

- *Press inquiries.* Contact Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.
- *General and technical information regarding Combustible Dust.* Contact Mat Chibbaro, P.E., Fire Protection Engineer, Office of Safety Systems, OSHA Directorate of Standards and Guidance, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2255.
- *Technical information regarding Web Chat logistics and electronic access.* Contact Andy Bailey, DOL Web Content Manager, Office of Public Affairs, Division of Enterprise Communications, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–5946.
- *Copies of this* **Federal Register** *notice.* Electronic copies are available at *http://www.regulations.gov.* This

Federal Register notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The hazards of combustible dust encompass a wide array of materials, industries, and processes. Any combustible material can burn rapidly when in a finely divided form. Materials that may form combustible dust include, but are not limited to, wood, coal, plastics, biosolids, candy, sugar, spice, starch, flour, feed, grain, fertilizer, tobacco, paper, soap, rubber, drugs, dried blood, dyes, certain textiles, and metals (such as aluminum and magnesium). Industries that may have combustible dust hazards include, among others: animal food manufacturing, grain handling, food manufacturing, wood product manufacturing, chemical manufacturing, textile manufacturing, furniture manufacturing, metal processing, fabricated metal products and machinery manufacturing, pesticide manufacturing, pharmaceutical manufacturing, tire manufacturing, production of rubber and plastics, plastics and rubber products manufacturing, recycling, wastewater treatment, and coal handling.

OSHA is developing a standard that will comprehensively address the fire and explosion hazards of combustible dust. The Agency issued an Advanced Notice of Proposed Rulemaking (ANPR) that requested comments, including data and other information, on issues related to the hazards of combustible dust in the workplace. (74 FR 54334, Oct. 21, 2009). OSHA plans to use the information received in response to the ANPR, at the stakeholder meetings, and during the Web Chat in developing a proposed standard for combustible dust.

II. Web Chat and Stakeholder Meetings

OSHA conducted stakeholder meetings in Washington, DC, on December 14, 2009; in Atlanta, GA, on February 17, 2010; and in Chicago, IL, on April 21, 2010. This notice announces a Web Chat to gather additional information beyond that provided in the stakeholder meetings. OSHA will pose questions and interact with participants for one hour, beginning at 1 p.m. EDT on June 28, 2010. In addition to the live Web Chat, OSHA will also post additional information on the Department of Labor Blog, *http://www.dol.gov/dol/chat.htm.* and invites the public to provide feedback via comments on these entries. The Web Blog will remain accessible through July 7, 2010. OSHA will monitor the site, provide additional information, and pose additional questions when appropriate.

OSHA will introduce areas to which participants should focus their views, concerns, and issues related to the hazards of combustible dust. The Web Chat will center on major issues such as:

- Scope.
- Balance between performance and specification based requirements.
- Economic impacts.
- Definitions.

III. Public Participation

To register, follow the instructions provided on the Web site. Participants are asked to provide the following information so that OSHA can solicit clarification of comments, if necessary:

- Name.
- E-mail address.
- Organization being represented.
- Stakeholder category: government, industry, standards-developing organization, research or testing agency, union, trade association, insurance, fire protection equipment manufacturer, consultant, or other (if other, please specify).
- Industry sector (if applicable): metals, wood products, grain or wet corn milling, food (including sugar), pharmaceutical or chemical manufacturing, paper products, rubber or plastics, coal, or other (if other, please specify).

Authority and Signature

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 5–2007 (72 FR 31160).

Signed at Washington, DC, on June 1, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–13467 Filed 6–4–10; 8:45 am]

BILLING CODE 4510–26–P

POSTAL SERVICE

39 CFR Part 111

Submission of Electronic Documentation With Comailed and Copalletized Mailings

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 705 and 707 to require mail owners participating in a comailing or copalletization process for letters or flats to provide electronic documentation, through an approved method, to support their contributed mailpieces. The Postal Service also proposes to require comail and copalletization mailers to submit electronic documentation to the USPS® by an approved method.

DATES: Submit comments on or before July 7, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of "EDOC." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: David Guinther at 202–268–7769 or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: Current mailing standards do not require mailers preparing comailed or copalletized mailings, or mailers who contribute mailpieces to a consolidated comail or copalletized mailing, to submit electronic documentation to the USPS. The receipt of electronic documentation, when received prior to USPS acceptance of copalletized mailings, will enhance the electronic visibility of the mailpieces, will result in a reduction in postal handling, and will improve efficiency in the processing of copalletized mailings.

The Postal Service can accept piece-level electronic documentation through either of two methods—Mail.dat® or Mail.XML®. The original container data, included in the Mail.dat or Mail.XML file, permits the tracking of containers from their origin, through the consolidation site, and ultimately into USPS processing. Original container data is also an essential element in the generation of standardized documentation (*i.e.* qualification reports) and postage statements for comailed or copalletized mailings. Therefore, the Postal Service proposes to require all mailers associated with the preparation and presentation of comailed and copalletized mailings to transmit electronic documentation to the USPS, using properly formatted

Mail.dat or Mail.XML files. Electronic postage statements prepared through Postal Wizard will not fulfill the documentation requirement under this proposed rule.

Electronic documentation provided with copalletized mailings may include data for one or multiple mail owners. These standards would require mailers preparing mailings of letter-size pieces in trays, which include pieces to be incorporated within a copalletized mailing, to prepare separate postage statements for the portion of the mailing being accepted at the origin site, and separate statements for the portion being directed to a consolidator. Consolidators preparing copalletized mailings of trays must prepare electronic documentation showing the assignment of the trays with Intelligent Mail® tray labels to pallets bearing Intelligent Mail container placards, as well as the postage statements for payment at the consolidator site. Consolidators of letter-size pieces in trays will also be required to drop ship copalletized mailpieces at the appropriate postal facility in accordance with the entry discount claimed at the origin acceptance location.

Origin mailers preparing mailings of bundles must prepare separate postage statements for the portion of the mailing being accepted at the origin site and provide the documentation for verification for that portion being directed to a consolidator.

In accordance with DMM 705.22.0, *Full-Service Automation Option,* electronic documentation is currently required with copalletized and other mailings that include full-service Intelligent Mail letters or flats. Mailers who include full-service Intelligent Mail pieces that will later be copalletized must follow all requirements for full-service Intelligent Mail, including the use of an approved electronic method to transmit postage statements and mailing documentation to the USPS, and the use of Intelligent Mail tray labels and container placards.

The Postal Service is also proposing to require Periodicals mailers to submit electronic documentation for each comailed and/or copalletized mailing, identifying each title and version (or edition) in the mailing. For mailings that are entered at origin, and later copalletized at a consolidation site, the mail owner or preparer will be required to submit electronic documentation (Mail.dat or Mail.XML) for the copalletized portion of the mailing. Mailers consolidating multiple mailings on pallets will be required to provide the electronic submission equivalent of the comail (hard copy) documentation requirements of DMM 707.27, *Combining Multiple Editions or Publications.* For copalletized Periodicals mail, postage statements and payment will be entered at the consolidator's site.

To support the automated electronic tracking of copalletized mailpieces, the electronic documentation submitted at the origin site must indicate which bundles, trays, or sacks will be sent to a consolidator for copalletization. The standardized documentation and postage statements will be available for viewing by acceptance offices when the electronic documentation for the copalletized portion of the mailing job is updated by the consolidator through the original container data. The origin facility will then be required to transmit electronic documentation to the *PostalOne!®* system before the consolidator's electronic documentation is transmitted to the USPS.

With this change, the consolidator will be responsible for updating the electronic documentation from the mail owner or preparer for that portion of the mailing going to the consolidation site. Mailers consolidating multiple mailings on pallets must use the electronic data received from the creator of the mailing to create new electronic data. This electronic data will then be used to generate the original container data, indicating the origin of the bundles, trays or sacks comprising the copalletized mailing. For mailings of bundles, the electronic data will be used to generate postage statements and payment at the consolidator site.

Additional information concerning the submission of electronic documentation can be obtained from the USPS online publication, *A Guide to Intelligent Mail Letters & Flats,* at *http://ribbs.usps.gov.*

We are also proposing to revise portions of DMM 705.8.0, *Preparing Pallets,* to include reference to the copalletization of letter-size pieces within those sections.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations. See* 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority:

5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparing Pallets

* * * * *

[*Revise title of 8.7 as follows:*]

8.7 Copalletized, Combined, or Mixed-Price Level Palletized Mailings

8.7.1 General

[*Revise 8.7.1 as follows:*]

Copalletized, combined, or mixed-price level palletized mailings of letter-size or flat-size pieces must be prepared under the standards for the class of mail, subject to specific authorization by Business Mailer Support when required. The following conditions apply when making copalletized mailings:

1. Postage statements and mailing documentation must be transmitted to the USPS using an approved electronic method.
2. In accordance with 708.6.5 and 708.6.6, Intelligent Mail tray labels must be used on trays and sacks and Intelligent Mail container placards must be used on pallets or similar containers.
3. If consolidating multiple mailings on pallets, update the electronic data for each of the original mailings. This updated data must be reflected in the electronic data transmitted to the USPS.
4. Meet postage payment requirements as specified by Business Mailer Support.

* * * * *

8.7.3 Periodicals Publications

[*Revise 8.7.3 by adding a new third sentence as follows:*]

* * * Postage for copalletized mailings of flat-size Periodicals must be paid at the consolidator's site. * * *

* * * * *

8.7.4 Standard Mail

[*Revise the first sentence of 8.7.4 and add a new last sentence as follows:*]

To copalletize different Standard Mail letter- or flat-size mailings, the mailer must consolidate on pallets all independently sorted trays or bundles from each mailing to

achieve the finest presort level for the mailing, except that a flat-size copalletized mailing prepared under 8.11 or 8.14 using the bundle reallocation option may not always result in all bundles being placed on the finest pallet level possible.* * * Origin mailers participating in a copalletized mailing of Standard Mail letters in trays must prepare a separate postage statement for the portion entered at the origin site and another postage statement for the portion directed to the consolidator.

* * * * *

8.8 Basic Uses

These types of mail may be palletized:

* * * * *

[*Revise 8.8 by re-sequencing items f through i as the new g through j and adding a new item f as follows:*]

f. Copalletized multiple letter-size mailings, prepared in trays, subject to 8.0.

* * * * *

[*Revise title of 8.16 as follows:*]

8.16 Copalletized Letter-Size and Flat-size Pieces—Periodicals or Standard Mail

8.16.1 Basic Standards

[*Revise 8.16.1 as follows:*]

Copalletized letter- and flat-size mailings must meet the applicable standards in 8.0. In addition, if copalletized under 10.0, 12.0, or 13.0, the applicable provisions of that preparation option must also be met. Any combination of automation mailings and nonautomation mailings is subject to the restrictions in 8.14. Trays and bundles in a copalletized mailing qualify for the appropriate presort level price, regardless of the pallet level on which they are placed. Mailers participating in copalletized mailings must:

a. Transmit postage statements and mailing documentation to the USPS using an approved electronic method.

b. In accordance with 708.6.5 and 708.6.6, use Intelligent Mail tray labels on trays and sacks and Intelligent Mail container placards on pallets or similar containers.

c. If consolidating multiple mailings on pallets, update the electronic data for each of the original mailings. This updated data must be reflected in the electronic data transmitted to the USPS by the consolidator.

d. Meet postage payment requirements as specified by Business Mailer Support.

8.16.2 Periodicals

Additional standards are as follows:

* * * * *

[*Revise 8.16.2 by adding a new item d as follows:*]

d. Postage for copalletized mailings of flat-size Periodicals must be paid at the consolidator's site.

8.16.3 Standard Mail

Additional standards are as follows:

* * * * *

[*Revise 8.16.3 by adding a new item f as follows:*]

f. Origin mailers participating in a copalletized mailing of Standard Mail letters in trays must prepare a separate postage statement for the portion entered at the origin site and another postage statement for the portion directed to the consolidator.

* * * * *

707 Periodicals

* * * * *

27.0 Combining Multiple Editions or Publications

* * * * *

27.5 Documentation

* * * The following additional standards apply:

[*Revise 27.5 by adding a new item c and d as follows:*]

c. Unless excepted by Business Mailer Support (BMS), mailers combining Periodicals publications under 27.1a must transmit postage statements and mailing documentation to the USPS using a BMS-approved electronic method.

d. Mailers combining Periodicals publications under 27.1c must transmit postage statements and mailing documentation to the USPS using a BMS-approved electronic method.

[*Renumber current 27.6 through 27.8 as new 27.7 through 27.9 and add a new item 27.6 as follows:*]

27.6 Additional Standards

Mailers combining Periodicals publications under 27.1a or 27.1c must:

a. Use Intelligent Mail tray labels on trays and sacks and Intelligent Mail container placards, under 708.6.5 and 6.6, on pallets or similar containers.

b. When using a consolidator, prepare a separate postage statement for the portion of the mailing accepted at the origin site and another statement for that portion directed to a consolidator.

c. When using a consolidator under 27.1c, pay postage at the consolidator's site.

d. If consolidating multiple mailings on pallets, update the electronic data for each of the original mailings. This updated data must be reflected in the electronic data transmitted to the USPS.

f. Meet postage payment requirements as specified by Business Mailer Support.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–13574 Filed 6–4–10; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, and 307

Safeguarding Child Support Information

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created and expanded State and Federal Child Support Enforcement databases under title IV–D of the Social Security Act and significantly enhanced access to information for title IV–D child support purposes. States are moving toward more integrated service delivery to better serve the families and further the mission of the child support enforcement program, while protecting confidential data. This Notice of Proposed Rulemaking (NPRM) proposes requirements for: State Parent Locator Service responses to authorized location requests; and State Child Support Enforcement program safeguards for confidential information and authorized disclosures of this information. This proposed rule would revise certain aspects of the final rule State Parent Locator Service; Safeguarding Child Support Information Final Rule published on September 26, 2008 and effective December 30, 2010. This NPRM will prohibit disclosure of confidential and personally identifiable information to private collection agencies and expand disclosure to child welfare programs and the Supplemental Nutrition Assistance Program (SNAP).

DATES: Consideration will be given to comments received on or before August 6, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Interested persons are invited to submit written comments via regular postal mail to: Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Division of Policy; Mail Stop: ACF/OCSE/DP.

FOR FURTHER INFORMATION CONTACT: Paige Hausburg, OCSE, Division of Policy, (202) 401–5635, e-mail *paige.hausburg@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 5 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This NPRM is published under the authority granted to the Secretary of the United States Department of Health and Human Services (Secretary) by sections 1102, 453, 454, 454A, and 463 of the Social Security Act (the Act). Section 1102 of the Act, 42 U.S.C. 1302, authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the Child Support Enforcement program authorized under title IV–D of the Act (IV–D program).

The provisions of this NPRM pertaining to the Federal Parent Locator Service (Federal PLS) implement sections 453 of the Act, 42 U.S.C. 653. Section 453 requires the Secretary to establish and conduct a Federal Parent Locator Service (Federal PLS) to obtain and transmit specified information only to authorized persons for purposes of establishing parentage, or establishing, modifying, or enforcing child support obligations. Section 453 of the Act, 42 U.S.C. 653 also authorizes the Secretary to disclose information in the Federal PLS to the State Child Support Enforcement program (authorized under title IV–D of the Social Security Act), Temporary Assistance to Needy Families program (TANF or IV–A program authorized under title IV–A of the Social Security Act), Child Welfare Services program (IV–B program authorized under title IV–B of the Act), and Foster Care and Adoption Assistance program (IV–E program authorized under title IV–E of the Act) to assist States in carrying out their responsibilities under those programs. Section 463 of the Act, 42 U.S.C. 663, also permits States to use information in the Federal PLS for the purpose of enforcing any Federal or State law with respect to a parental kidnapping or making or enforcing a child custody or visitation determination. In addition, the provisions of this NPRM pertaining to the State Parent Locator Service (State PLS) implement sections 454(8) and (17), 42 U.S.C. 654(8) and (17), which require each State IV–D program to establish a State Parent Locator Service (State PLS) to locate parents by exchanging data with the Federal PLS and utilizing other information sources and records.

Several sections of the Act require safeguarding measures for information contained in State and Federal databases, including the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR). Section 454(8) requires States receiving funding under title IV–D to have a State plan providing that the State IV–D program will: (1) Establish a service to locate parents utilizing all sources of information and available records and the Federal PLS; and (2) disclose the information described in sections 453 and 463 only to the "authorized persons" specified in sections 453 and 463, subject to the privacy safeguards in section 454(26) of the Act. In addition, sections 453(m) and 463(c) restrict disclosure of confidential information maintained by the Federal PLS only to an "authorized person" for an authorized purpose and require the Secretary to establish and implement safeguards designed to restrict access to confidential information in the Federal PLS to authorized persons for authorized purposes. Section 453(l), 42 U.S.C. 653(l), also specifies that information in the FPLS shall not be used or disclosed except as expressly provided in section 453. Section 454(26), 42 U.S.C. 654(26), requires the State IV–D agency to have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties. Additionally, sections 454(16) and 454A, 42 U.S.C. 654(16) and 654a, require States to maintain computerized child support enforcement systems to carry out their responsibilities under title IV–D and to have in effect safeguards on the access to and use of data in the State's automated system.

II. Background

This NPRM will prohibit disclosure of confidential and personally identifiable information to private collection agencies and expand the disclosure of confidential and personally identifiable information to child welfare programs authorized under titles IV–B and IV–E and the Supplemental Nutrition Assistance Program (SNAP). On September 26, 2008, a final rule, following notice and comment period, entitled "State Parent Locator Service; Safeguarding Child Support Information," was published in the **Federal Register** [73 FR 56422] to address requirements for State Parent Locator Service responses to authorized location requests, State IV–D program safeguarding of confidential information, authorized disclosures of this information, and restrictions on the use of confidential data and information for child support purposes with exceptions for certain disclosures permitted by statute. The effective date given for the final rule was March 23, 2009. In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff entitled "Regulatory Review" [74 FR 4435], on March 3, 2009, the Department published a notice in the **Federal Register** [74 FR 9171] seeking public comment on a contemplated delay of 60 days in the effective date of the rule entitled "State Parent Locator Service; Safeguarding Child Support Information." In response to those comments, the Department issued a subsequent notice published in the **Federal Register** [74 FR 11879] on March 20, 2009, which delayed the effective date of the September 26, 2008 rule by 60 days until May 22, 2009, in order to permit Departmental officials the opportunity for further review of the issues of law and policy raised by this rule. However, subsequent to publication of the March 20, 2009 notice, the Department determined that additional time would be needed for officials to complete their review of the rule and to fully assess the substantive comments received in response to the March 3, 2009 notice. As a result, on April 15, 2009 a notice was published in the **Federal Register** [74 FR 17445] indicating that the Department was contemplating a further delay in the effective date of the "State Parent Locator Service; Safeguarding Child Support Information" final rule to December 30, 2010, and requesting comments on the delay of the effective date. In response to comments from the April 15, 2009 notice, the Department issued a subsequent notice, published in the **Federal Register** [74 FR 23798] on May 21, 2009 delaying the effective date of the September 26, 2008 rule to December 30, 2010.

Although the March 3, 2009 and the April 15, 2009 notices invited comments on whether a delay in the rule's effective date was needed "to allow Departmental officials the opportunity for further review and consideration," both notices also generated focused substantive comments recommending changes to several particular provisions of the final rule that warrant further consideration. In addition to supporting a delay in the effective date of the rule, the comments raised specific policy concerns regarding two areas of the September 26, 2008 final rule: (1) The rules for

disclosure of confidential and personally identifiable information about individuals maintained by State IV–D programs to a private, for-profit child support collection agency as an "agent of a child"; and (2) the child welfare data exchange provisions of the rules in light of legislation enacted in October 2008 after publication of the final rule.

With respect to disclosure of information to private collection agencies, concerns have been raised by commenters, Departmental officials, media coverage, litigation and program stakeholders that the government's disclosure of confidential information to private child support collection agencies may not serve the child's best interests. Specific comments have been raised about the risks involved in disclosing confidential data to private collection agencies not acting as a State's agent under a contractual relationship nor required to comply with ethics and confidentiality rules such as those governing State agencies and private attorneys, and whose business practices are largely unregulated and not subject to program oversight.

Additionally, commenters on the March 3 and April 15, 2009 notices stated that a delay in the effective date would give the Administration an opportunity to conduct a review of the child welfare data exchange provisions to ensure that the provisions of the rule conform to *The Fostering Connections to Success and Increasing Adoptions Act* (Pub. L. 110–351), signed into law on October 7, 2008, eleven days after the Safeguarding Final Rule was published. One commenter also indicated that the final rule appeared to prohibit the State IV–D agency from disclosing confidential information, such as child support payment records, to other State agencies, including the State food assistance program (now called the Supplemental Nutrition Assistance Program (SNAP)).

This NPRM proposes limited changes to the final regulation published on September 26, 2008 to address concerns identified by Department officials as well as those raised by commenters. Only selected portions of the "State Parent Locator; Safeguarding Child Support Information" final rule are addressed in the NPRM. The final rule published on September 26, 2008 in 73 FR 56442 will go into effect on December 30, 2010. It is our intent that the selected revised sections, as proposed in this notice, also will go into effect on December 30, 2010 via a separate final rule. We are specifically seeking comments on those issues raised by commenters as mentioned above and the proposed revisions discussed further below.

The preamble includes a discussion about the rationale behind the changes, followed by an explanation of the provisions of the proposed regulation. The major issues include a prohibition against disclosure of confidential and personally identifiable information to private child support collection agencies and expanded release of information for titles IV–B and IV–E purposes. In order to address concerns regarding disclosure of information to private child support collection agencies, we propose to define the term "agent of a child" as it is used in section 453(c)(3). Under a broad interpretation of the term "agent of a child" included in policy guidance previously issued by OCSE, a private collection agency is treated as an agent of a child in some States and thus may obtain confidential information about parents and families from the Federal PLS and State PLS. However, this term is not defined in the statute or regulation. The proposed definition of "agent of a child" included in this NPRM will prohibit the disclosure of information to private child support collection agencies concerning which the State has no contractual relationship or oversight responsibility, and also will revise sections of the rule that are inconsistent with the proposed definition of "agent of a child." The proposed definition will supersede the five policy statements issued by OCSE in 2002 and 2003 with respect to disclosure of information contained in the State PLS and the Federal PLS to private child support collection agencies. The prior policy allowed States to disclose PLS information to private collection agencies, and although never promulgated as a rule, it has been in place for several years. We are particularly interested in comments on superseding the previously-issued policy. A more detailed explanation of these policy documents, and the underlying policy considerations, are discussed in section III of the preamble.

We also propose revisions to the rule that would expand permissible disclosure of information in the Federal PLS and the State PLS to State IV–B and IV–E agencies to assist States in carrying out their responsibilities under those programs, pursuant to section 453(j)(3), as amended by *The Fostering Connections to Success and Increasing Adoptions Act of 2009* (Pub. L. 110–351).

III. Discussion of the Issues

In late 2002, OCSE issued a series of four policy statements dated December 4, 2002 addressing Federal law and regulation on disclosure of information and redirection of child support payments to private collection agencies. OCSE also issued a fifth policy statement addressing the same issues on May 23, 2003. The policy statements are:

- AT–02–04, *Providing FPLS locate services to an "agent of the child" for child support purposes;*[1]
- DCL–02–35, *Federal Guidance on Private Collection Agencies;*[2]
- IM–02–09, *Effective Practices for Working with Child Support Private Collection Agencies;*[3] and
- PIQ–02–02, *Requests by Custodial Parents for a Change of Address for the Disbursement of the Custodial Parent's Share of Child Support Collections;*[4]
- PIQ–03–05, *Guidance on Private Collection Agencies—Agent of a Child and Third Party Addresses for Correspondence.*[5]

The policy guidance issued in 2002 and 2003 stated that Federal law and regulation did not prohibit State IV–D programs from providing confidential and personally identifiable information and redirecting child support collections to private collection agencies upon request of a custodial parent-payee. The policy stated that, if permitted under applicable State law, a private collection agency could act as the "agent of a child." The term was not defined in the Act or in regulation and it was left to States to determine whether or not to release such information to private collection agencies. The policy guidance was issued by OCSE following the issuance of a General Accounting Office (now the Government Accountability Office) report regarding access to information in Federal databases and use of wage withholding by private child support collection agencies (GAO 02–349, March 2002).

Public comments received in response to the March 3 and April 15, 2009 notices, as well as recent litigation alleging unlawful actions by private child support collection agencies adverse to the interests of families

[1] Available at *http://www.acf.hhs.gov/programs/cse/pol/AT/2002/at-02-04.htm.*

[2] Available at *http://www.acf.hhs.gov/programs/cse/pol/DCL/2002/dcl-02-35.htm.*

[3] Available at *http://www.acf.hhs.gov/programs/cse/pol/IM/2002/im-02-09.htm.*

[4] Available at *http://www.acf.hhs.gov/programs/cse/pol/PIQ/2002/piq-02-02.htm.*

[5] Available at *http://www.acf.hhs.gov/programs/cse/pol/PIQ/2003/piq-03-05.htm.*

served by the IV–D program,[6] have given us sufficient concern to reassess the September 26, 2008 rule and the 2002 and 2003 policy guidance permitting disclosure of confidential information in the Federal and State databases to private collection agencies. Accordingly, this NPRM proposes revisions to relevant parts of the September 26, 2008 rule that would supersede the 2002 and 2003 policy statements with respect to disclosure of confidential and personally identifiable information in the Federal PLS and the State PLS to private child support collection agencies due to: (1) The increase in public security and privacy concerns with personally identifiable data maintained by the government and the dramatic increase in incidences of identity theft; (2) the questionable practices and fiscal instability of several large private child support collection agencies; and (3) the Department's interest in promoting policies that serve the best interest of children and families. These underlying policy considerations, discussed further below, have informed our proposed definition of "agent of the child" in proposed § 301.1, discussed in section IV.

Increase in Security and Privacy Concerns

In June 2009, the Department of Health and Human Services (HHS), Office of the Chief Information Officer, issued the HHS–OCIO Policy for Information Systems Security and Privacy (*http://www.hhs.gov/ocio/policy/hhs-ocio_policy_for_information_systems_security_and_privacy__.html*). The policy provides direction to the information technology security programs of HHS Operating Divisions and Staff Divisions for the security and privacy of HHS data in accordance with the Federal Information Security Management Act of 2002 (FISMA). The policy states that, "The HHS Information Security and Privacy Program (henceforth, "the Program") has evolved and matured over the last several years as new Federal requirements have been published and as advances in technology have been made. Citizens' concerns over the unauthorized disclosure of protected health information and personally identifiable information have placed information technology security and privacy issues at the forefront of the national dialogue, positively impacting the way in which public, private, and government organizations provide services and protect information." In recent years, Congress also has held a number of hearings highlighting rising concerns with identity theft and other confidentiality issues.[7] In light of this new HHS policy and its associated requirements, as well as the concerns expressed in Congressional hearings, we believe that more rigorous controls over access by private entities to confidential and personally identifiable data, including Social Security numbers, are warranted.

Questionable Practices of Child Support Private Collection Industry

In addition to privacy concerns, OCSE takes its obligation as steward of confidential and personally identifiable information that has been entrusted by parents and Congress very seriously. Several private child support collection agencies have had a history of consumer complaints made by custodial parents, non-custodial parents, grandparents, employers, and courts, as well as the recent litigation brought by the U.S. Postal Service and Commonwealth of Virginia cited above. The complaints allege that some private collection agencies use questionable tactics, including deceptive advertising, perpetual service contracts that prohibit cancellation, falsely representing the business as a government office, using official-looking documents to pressure employers to redirect support withheld from employees' paychecks, demanding payments from grandparents, demanding payments from non-custodial parents that are not owed, and other allegedly deceptive and abusive tactics.[8]

OCSE is aware of recent litigation filed by the United States Postal Service alleging that a private collection agency misrepresented itself as a State agency to defraud parents in several States. Two cases were filed by the State Attorney General on behalf of Virginia. Such litigation reflects a growing national concern with the business practices sometimes used by private child support collection agencies. It is the Department's position that such questionable practices should not be facilitated or subsidized by providing access to confidential information entrusted to the Federal Government and States. A recent bankruptcy filing by one of the largest private collection agencies and subsequent transfer of parents' cases to other companies with which the parents had no contact has added to our concern. This proposed rule would not prohibit or ban these private collection activities. Such companies can still acquire data directly from the custodial parents who sign up for their services or through private data search companies.

Promoting Policies That Serve the Best Interest of Children and Families

We are concerned that policies issued by the Department should generally promote the best interest of children and families. The child support program is no longer primarily a welfare reimbursement, cost recovery device for the Federal and State governments; it is now a family-first program intended to ensure families' self-sufficiency and strengthen parents' commitment to supporting their children.[9] Child support policies should help increase, not decrease, family income and stability, and strengthen, not undermine, parent-child relationships. As indicated previously, consumer complaints allege that the practices of some private child support collection agencies have had the effect of reducing child support income received by families and increasing conflict between parents, and thus do not serve the best interests of children and families.

Expansion of the Release of Information for IV–B/E Program Purposes

The *Fostering Connections to Success and Increasing Adoptions Act of 2008* (the Fostering Connections Act) was signed into law on October 7, 2008, eleven days after the publication of the Safeguarding Final Rule published on September 26, 2008. Section 105 of the Fostering Connections Act amended section 453(j)(3) of the Social Security Act to expand the authority for

[6] *United States Postal Service* v. *Child Support Services of Atlanta, Inc.,* No. 7:09–CV–111 (M.D. Ga. Feb. 19, 2010): *Commonwealth of Virginia, et al.* v. *Supportkids, Inc.,* No. 08000728–00 (Va. Cir. Ct. Richmond City Nov. 17, 2009); and *Commonwealth of Virginia, et al.* v. *Supportkids Services, Inc.,* No. 3:10–CV–73, 2010 U.S. Dist. LEXIS 30726 (E.D. Va. Mar. 29, 2010).

[7] For example, see the Committee on Oversight and Government Reform's Hearing on "Identity Theft: Victims Bill of Rights" at: *http://oversight.house.gov/index.php?option=com_content&view=article&id=4264&catid=48:hearings&Itemid=29.*

http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=db89f4c3-b2b8-42fd-8dae-934a1b317c35

http://oversight.house.gov/index.php?option=com_content&view=article&id=4286:qprivacy-the-use-of-commericial-information-resellers-by-federal-agenciesq&catid=48:hearings&Itemid=29

http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=570&comm=4.

[8] Some of these practices are described in U.S. General Accountability Office, *Child Support Enforcement: Clear Guidance Would Help Ensure Proper Access to Information and Use of Wage Withholding by Private Firms. http://www.gao.gov/new.items/d02349.pdf*

[9] See the *National Child Support Enforcement Strategic Plan FY 2005–2009,* at *http://www.acf.hhs.gov/programs/cse/pubs/2004/Strategic_Plan_FY2005-2009.pdf.*

information comparisons and disclosures of information in all registries for title IV program purposes to include child welfare and foster care programs funded under part B and part E of the Social Security Act. The new law authorizes disclosure of information in the Federal PLS and the State PLS to conduct data matches and share data with child welfare agencies "to the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under this part [D], part B or E, and programs funded under part A."

Section 103 of the Fostering Connections Act amends section 471(a) of the Social Security Act to provide additional authority to expand the scope of information disclosed to State IV–B and IV–E programs by adding paragraph (29) requiring the State to have a child welfare plan that:

(29) provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that—

(A) Specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 473(d) to receive the payments.

In addition, section 206 of the Fostering Connections Act requires the child welfare agency to make reasonable efforts to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless joint placement would be contrary to the safety or well-being of any of the siblings, and to provide for frequent visitation or other ongoing interaction between the siblings if the children are not placed in the same home. Information in the Federal PLS and State PLS regarding the location of adult relatives and siblings of children involved in child welfare and foster care cases would assist IV–B and IV–E State agencies to meet the requirements of sections 103 and 206 of the Fostering Connections Act.

Comments received in response to the March 3 and April 15, 2009 notices indicate that the amendment made to section 453(j)(3) of the Act made by the Fostering Connections Act permits disclosure of a broader range of information to IV–B and IV–E agencies for a broader range of authorized purposes that was not fully addressed in the September 26, 2008 regulation. Therefore, this proposed regulation expands disclosure of information to IV–B and IV–E agencies to assist States in carrying out their responsibilities under those programs, including locating relatives of children removed from parental custody in order to identify potential placements for the child and assist the State agency in permanency planning.

IV. Provisions in the Proposed Regulations

Part 301

Sec. 301.1 Definitions ("Agent of the Child")

As discussed above, section 453 of the Act, enacted in 1975 by Public Law 93–647, prohibits the Federal PLS from releasing confidential and personally identifiable information about individuals maintained by the IV–D program, other than to an "authorized person" for an authorized purpose. Section 453(c) defines "authorized person" as:

(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal support or to seek to enforce orders providing child custody or visitation rights (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order against a noncustodial parent for the support and maintenance of a child, or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving assistance under a State program funded under part A) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against a noncustodial parent who has a duty to support and maintain any such child; and

(4) a State agency that is administering a program operated under a State plan under subpart 1 of part B, or a State plan approved under subpart 2 of part B or under part E.

Similarly, 45 CFR 302.35(c)(3), which requires the State PLS to accept requests for confidential and personally identifiable information only from authorized persons, incorporates the definition of "authorized persons" specified in section 453(c).

As stated in section 453(c)(3), an authorized person includes "the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving assistance under a program funded under part A)." A "resident parent" lives with the child and provides the child's day-to-day care. An individual who has been appointed by court order as a child's "legal guardian" is legally responsible for the child's care and has a legal obligation to act in the child's best interest. An "attorney" has an ethical obligation to represent the interests of the child, and is subject to State licensure and professional responsibility rules.[10] The terms resident parent, legal guardian and attorney are commonly understood and therefore are not further defined herein. We also note that each of these "authorized persons" has a relationship with the child that imposes an intrinsic responsibility to assure protection of the child's welfare and interests. For example, a private attorney involved in a child support case has undertaken the responsibility to provide legal representation to the resident parent or child related to the establishment, modification or enforcement of a child support obligation. An attorney-client relationship has thus been created which imposes an ethical and fiduciary duty upon the attorney to represent the child's best interests, and the attorney is subject to a Code of Professional Responsibility. Since the term "agent of a child," on the other hand, is susceptible to broad interpretation and, as has been demonstrated, may previously have included "agents" with a pecuniary interest of their own that may be inconsistent with the child's best interests, we believe that this term warrants definition.

While the term "agent of a child" is not defined in statute or rule, section 454(11)(B) of the Act, 42 U.S.C. 654(11)(B), also enacted in 1975 by Public Law 93–647, (formerly, section 454(12) of the Act), is instructive. Section 454(11)(B) requires States to distribute child support payments as specified in sections 456 and 457, 42 U.S.C. 656 and 657. Section 454(11)(B) provides that a State plan must:

Provide that any payment required to be made under section 456 or 457 to a family shall be made to the resident parent, legal

[10] *See, e.g., In the Matter of Struthers,* 179 Ariz. 216 (Arizona Sup. Ct., 1994), where the Arizona Supreme Court disbarred a private attorney who used a variety of tactics to collect child support that violated rules of professional responsibility.

guardian, *or caretaker relative having custody of or responsibility for the child or children.* (Emphasis added.)

A "caretaker relative" is a longstanding term used in the Temporary Assistance to Needy Families (TANF) program and its predecessor program, Aid to Families with Dependent Children (AFDC), to refer to those relatives responsible for the day-to-day care of children and who are eligible to apply for cash assistance for needy families, regardless of the existence of a legal custody order or legal guardianship status.[11]

We have carefully considered the intent of Congress in designating an "agent of a child," and believe the close connection in language between sections 453(c)(3) and 454(11)(B) and the long-established understanding of "caretaker relative" for title IV–A purposes is informative. Accordingly, we propose to amend § 301.1 by adding the following definition:

Agent of a Child means a caretaker relative having custody of or responsibility for the child.

We believe that limiting the definition of "agent of the child" to "caretaker relative" is consistent with the other terms in section 453(c) which identify individuals with responsibility to protect and further the child's best interest. As indicated, the proposed definition has a statutory basis that is derived from and consistent with section 454(11)(B). The proposed definition of the term "agent of a child" recognizes the practical reality that children are sometimes left in the care of a grandmother or other relative and, even though the relative may not have been appointed by a court as the child's legal guardian or have legal custody of the child, the relative can be expected to protect and act in the child's best interest. The definition also accords with the responsibility of the government to safeguard confidential and personally identifiable information and prevent misuse of the data.

This section is open to public comment. We are specifically seeking comments on this proposed definition of "agent of a child" which will supersede the 2002 and 2003 policy options which allowed States to determine whether or not to permit disclosure of confidential and personally identifiable information to private child support collection agencies. We also are seeking comments on whether to add a definition of "attorney of the child" to the final rule.

Sec. 302.35 State Parent Locator Service

The final regulation at § 302.35(a) requires each State to maintain a State PLS to provide locate information to authorized persons for authorized purposes. This paragraph is not open for notice and comment and will not be addressed in this NPRM. The effective date of this paragraph is December 30, 2010.

The final regulation at § 302.35(b) requires the State IV–D program to maintain a central State PLS. This paragraph is not open for notice and comment and will not be addressed in this NPRM. The effective date of this paragraph is December 30, 2010.

In the final rule published on September 26, 2008, the amendments to § 302.35(c) were intended to establish safeguards for accessing locate information in the State PLS and the Federal PLS, specifically with respect to requests from a resident parent, legal guardian, attorney, or agent of a non-IV–D child. We propose to open only paragraph (c)(3) for comment. Paragraphs (c)(1), (c)(2) and (c)(4) will remain intact. The effective date of those parts of these paragraphs is December 30, 2010.

We propose to eliminate § 302.35(c)(3)(iii) which includes a provision that an agent of a child not receiving assistance under title IV–A may provide evidence of a contract that meets the requirements of State law that will allow information to be provided to that agent. We are deleting this language because of the concerns identified by Departmental officials regarding disclosure of information to private child support collection agencies as discussed earlier in the preamble. We also would renumber § 302.35(c)(3)(iv) as § 302.35(c)(3)(iii).

The Fostering Connections Act has raised questions about the extent to which data maintained in the Federal PLS and State PLS is available to assist State child welfare agencies in carrying out their program responsibilities to locate potential placements for a child removed from parental custody and for permanency planning purposes. With the enactment of the Fostering Connections Act, there are now two separate sections of the Act that provide authority for the IV–D program to disclose information to State IV–B and IV–E agencies. Section 453(c) of the Social Security Act was amended in 1997 by *The Adoption and Safe Families Act* (Pub. L. 105–89) to include State IV–B and IV–E programs as authorized persons that may receive specified information under section 453(a) about the location, income and assets of a person "who has or may have parental rights with respect to a child." Subsequently, the Fostering Connections Act amended section 453(j)(3) of the Social Security Act to authorize the Secretary to provide information to assist States in carrying out their responsibilities under part IV–B and IV–E. We are particularly seeking comments on proposed language with respect to two overarching issues. The first issue is whether the language in the Fostering Connections Act broadens the types of Federal PLS information otherwise available to State child welfare agencies under section 453 concerning parents and non-parent relatives of children involved in child welfare cases. The second issue is whether State IV–D programs should have the flexibility to provide a broader range of State PLS information to State child welfare agencies, for example, under an interagency agreement.

We are thus specifically soliciting comments on proposed section 302.35(d) regarding the scope of information that may be disclosed from the Federal PLS and State PLS concerning parents and non-parent relatives of children involved in child welfare cases pursuant to section 453(j)(3), as amended by the Fostering Connections Act. Data maintained in the Federal and State PLS may include information about the individual's location, income and employment benefits such as health insurance, assets, debts, child support payment history, and the family violence indicator (FVI), as well as other confidential information found in the automated system. We are specifically seeking comments as to: (1) Whether the information disclosed about parents of a child involved in a IV–B or IV–E case should be broader than information disclosed about non-parent relatives; (2) whether each State IV–D agency should have the option to provide a broader range of data elements to the State child welfare agency than available through the Federal PLS; and (3) the manner of data exchange between the State PLS and State child welfare agency, for example through the use of an interagency agreement or a memorandum of understanding. To that end, we have proposed language in 302.35(d)(2) to allow for a broader range of information that can be shared.

We are opening section 302.35(d) for comment. Section 302.35(d)(1) permits access by State IV–B and IV–E agencies

[11] *See, e.g.,* 42 U.S.C. 602(a)(1)(A); *Rodriguez* v. *Vowell,* 472 F.2d 622 (5th Cir.), *cert. denied* 412 U.S. 944, 93 Sup. Ct. 2777, 37 L.Ed.2d 404 (1973) ("The plain language of the Social Security Act, its legislative history, and the relevant decisional precedent make clear that the needs of the caretaker relative, as well as those of the dependent child, are to be considered in deciding if a family is eligible for an AFDC grant.")

to the State PLS locate function and the data elements listed in section 453(a) with respect to information about custodial parents, non-custodial parents, and putative fathers. We are specifically soliciting comments on this section of the regulation with respect to (1) authorized purposes for disclosure and (2) the scope of information available to IV–B and IV–E agencies about parents of children involved in IV–B and IV–E cases.

We propose to redesignate section § 302.35(d)(2) of the September 26, 2008 rule as § 302.35(d)(3) and add a new § 302.35(d)(2) to identify the information that can be shared with IV–B and IV–E agencies to locate children and their relatives involved in IV–B and IV–E cases. This paragraph, which addresses information available from the State PLS, would permit disclosure for these reasons: Information about children and their relatives involved in a IV–B or IV–E case in order to assist State child welfare agencies in carrying out their program responsibilities to locate relatives for potential placement of a child removed from parental custody, to place siblings in groups, and to otherwise assist State agencies in their permanency planning responsibilities under the authority of section 453(j) of the Act, for example, by providing information regarding the Family Violence Indicator (FVI) or information about a child's paternity status. We are specifically soliciting comments on this section of the regulation on the appropriate balance to strike between assisting IV–B and IV–E programs in placing children, and safeguarding the privacy of relatives whose information may be included in the Federal or State PLS. This section does not apply to IV–D information maintained outside of the State PLS, such as payment records.

The proposed language is clear that the State PLS information may also be disclosed to State IV–A agencies for the purpose of assisting States to carry out their responsibilities to administer title IV–A programs. These programs include the TANF program, which funds cash assistance, workforce and other services, as well as Tribal programs operating under title IV–A authority.

The final regulation at § 302.35(e) addresses locate information subject to disclosure. This portion of the regulation is not open for notice and comment and is not addressed in this NPRM. The effective date of this paragraph is December 30, 2010.

Part 303

Sec. 303.3 Location of Noncustodial Parents in a IV–D Case

This portion of the regulation is not open for notice and comment and is not addressed in this NPRM. The effective date of this paragraph is December 30, 2010.

Sec. 303.20 Minimum Organizational and Staffing Requirements

We propose to amend paragraph (b)(7) of this section of the regulation to ensure consistency throughout this chapter based on proposed amendments to §§ 302.35 and 303.70.

This section is open for public comment.

Sec. 303.21 Safeguarding and Disclosure of Confidential Information

Prior to the passage of PRWORA, the safeguarding regulation at 45 CFR § 303.21 allowed the disclosure of information connected to the administration of any Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. These needs-based programs included the Food Stamps program (now SNAP), as well as the AFDC program authorized under title IV–A (now TANF). The safeguarding rule was eliminated by interim final rule, published in the **Federal Register** on February 9, 1999 (64 FR 6237) in response to the President's Memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate obsolete regulations and mandated burdens on States, other governmental agencies, or the private sector.

As mentioned earlier in the preamble, during the comment solicitation period, the Department received a comment that the rule appeared to prohibit the State IV–D agency from disclosing such information as the child support payment records to SNAP. This was not the Department's intent. The *Food, Conservation, and Energy Act of 2008,* Public Law 110–246, enacted on June 18, 2008, amended section 453(j)(10) of the Act to permit disclosure, for purposes of administering a supplemental nutrition assistance program under the *Food and Nutrition Act of 2008,* of information on the individuals and their employers maintained in the National Directory of New Hires. To comply with the changes made to section 453(j)(10) of the Act, and, in accordance with section 454A(f)(3) of the Act, this NPRM proposes to reinstate permission for disclosure of information, including the child support payment records, to SNAP.

Accordingly, we propose to amend paragraph § 303.21(d)(1) to include disclosures of information to the State agency administering SNAP. The remainder of § 303.21 is not open for notice and comment and is not addressed in this NPRM.

This section is open to public comment.

Sec. 303.69 Requests by Agents or Attorneys of the United States for Information From the Federal Parent Locator Service (PLS)

We propose to make a technical amendment to this section of the regulation to ensure consistency throughout this chapter based on proposed amendments to § 303.70. Current § 303.69(c) references § 303.70(c); the proposed technical amendment changes the reference to § 303.70(d). We propose to amend only § 303.69(c). The remainder of § 303.69 is not open for notice and comment and is not addressed in this NPRM.

This section is open to public comment.

Sec. 303.70 Procedures for Submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (Federal PLS).

We propose to amend paragraph (a) of § 303.70 to include a provision consistent with the proposed change to § 302.35 to permit the release of information for IV–B and IV–E purposes, including implementation of the Fostering Connections Act.

This section is open to public comment.

Section 303.70 paragraphs (b)–(d) are not open for comment. These paragraphs remain unchanged. The effective date of these paragraphs is December 30, 2010.

We propose to amend paragraph (e)(1)(i) of § 303.70 to include a provision to permit disclosure of information about children and relatives involved in a IV–B or IV–E case in order to assist State child welfare agencies in carrying out their program responsibilities to locate relatives for potential placement of a child removed from parental custody, to place siblings in groups, and to otherwise assist State agencies in their permanency planning responsibilities under the authority of section 453 of the Act consistent with the proposed changes to §§ 303.35 and 303.70(a).

This section is open to public comment.

Because section 303.70(e)(2) of the rule refers to "agent of a child" and also refers to § 302.35, in which changes were proposed, this section is open for comment. The remainder of this section is not open for comment.

Part 307

Sec. 307.13 Security and Confidentiality for Computerized Support Enforcement Systems in Operation After October 1, 1997

Part 307 of the rule addresses computerized system data integrity and security. Computerized child support enforcement systems are required to have safeguards protecting the integrity, accuracy, completeness of, access to, and use of information in the computerized support enforcement system. Section § 307.13 is not opened in its entirety for comment. We are proposing a change to § 307.13(a)(3), (4)(iii) and (iv). These sections are open to public comment. The remainder of § 307.13 is not opened for comment.

We propose to amend § 307.13(a)(3) to include a provision consistent with the proposed change to § 303.21 permitting the release of information to State agencies administering SNAP.

As mentioned earlier in the preamble, this proposed regulation addresses release of information to IV–B and IV–E agencies to locate parents, children and relatives of children and other disclosures needed to carry out their program responsibilities. For these reasons we propose at § 307.13(a)(4)(iii) and (iv) that NDNH and FCR information may be disclosed without independent verification to title IV–B and IV–E agencies to locate parents and putative fathers for the purpose of establishing parentage or establishing parental rights with respect to a child and that disclosure be allowed without independent verification to title IV–D, IV–A, IV–B and IV–E agencies for the purpose of assisting States to carry out their responsibilities to administer title IV–D, IV–A, IV–B and IV–E programs.

For clarity, the following appendices lay out the type of information that can be shared. The charts reflect the information as written in the NPRM. Appendix A addresses information available to locate individuals through the State PLS. Appendix B addresses information available to locate an individual sought in a child custody/visitation or parental kidnapping case. Appendix C provides the authorities for State IV–D agencies to release information to title IV, XIX, XXI, SNAP and other specified programs.

APPENDIX A—LOCATING INDIVIDUALS THROUGH THE STATE PLS § 302.35

Authorized person/program	Authorized purpose of the request	Persons about whom information may be asked	Sources searched	Authorized information returned	Limitations[1]
Agent/attorney of a State who has the duty or authority to collect child and spousal support under the IV–D plan; Section 453(c)(1).	Establish paternity; establish, set the amount, modify, or enforce child support obligations and/or to facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed. Locate a parent or child involved in a non-IV–D child support case to disburse an income withholding collection; Section 453(a)(2).	Noncustodial Parent; Putative Father; Custodial Parent; Child; Section 453(a)(2)(A).	Federal Parent Locator Service; In-state sources in accordance with State law.	Six Elements: Person's Name, Person's SSN, Person's address, Employer's name, Employer's address, Employer Identification Number; Section 453(a)(2)(A)(iii). Wages, income, and benefits of employment, including health care coverage; Section 453(a)(2)(B). Type, status, location, and amount of assets or debts owed by or to the individual; Section 453(a)(2)(C).	See footnote.
Court that has the authority to issue an order against an NCP for the support and maintenance of child, or to serve as the initiating court in an action to seek a child support order; Section 453(c)(2).	To facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed. Locate a parent or child involved in a non-IV–D child support case.	Noncustodial Parent; Custodial Parent; Putative Father; Child.	Federal Parent Locator Service; In-state sources in accordance with State law.	Six Elements as above, plus: Wages, income, and benefits of employment, including health care coverage; Section 453(a)(2)(B). Type, status, location, and amount of assets or debts owed by or to the individual; Section 453(a)(2)(C).	No Internal Revenue Service (IRS) information provided for non-IV–D cases unless independently verified. No Multistate Financial Institution Data Match (MSFIDM) and no State Financial Institution Data Match (FIDM) information provided for non-IV–D cases. No required subsequent attempts to locate unless there is a new request.

APPENDIX A—LOCATING INDIVIDUALS THROUGH THE STATE PLS § 302.35—Continued

Authorized person/program	Authorized purpose of the request	Persons about whom information may be asked	Sources searched	Authorized information returned	Limitations[1]
Resident parent, legal guardian, attorney, or agent of a child not receiving IV–A benefits (a non-IV–D request); Section 453(c)(3)[2].	To facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed, or who has or may have parental rights with respect to the child. Locate a parent or child involved in a non-IV–D child support case.	Noncustodial Parent; Putative Father.	Federal Parent Locator Service; In-state sources in accordance with State law.	Six Elements as above, plus: Wages, income, and benefits of employment, including health care coverage; Section 453(a)(2)(B). Type, status, location, and amount of assets or debts owed by or to the individual; Section 453(a)(2)(C).	Child not receiving IV–A benefits. No IRS Information. No MSFIDM and no State FIDM information provided for non-IV–D cases. In a non-IV–D request, attestation and evidence is required as specified in § 302.35(c)(3)(i)–(iii). No required subsequent attempts to locate unless there is a new request.
State agency that is administering a Child and Family Services program (IV–B) or a Foster Care and Adoption IV–E program; Sections 453(c)(4), 453(j)(3), and 454(8).	To facilitate the location of any individual who has or may have parental rights with respect to the child, Section 453(a)(2)(iv); and to assist states in carrying out their responsibilities under title IV–B and IV–E programs; Sections 453(j)(3) and 454(8).	Noncustodial Parent; Putative Father; Custodial Parent Child; Sections 453(a)(2)(A), 453(j)(3), and 454(8).	Federal Parent Locator Service; In-state sources in accordance with State law.	Six Elements as above, plus: Wages, income, and benefits of employment, including health care coverage. Type, status, location, and amount of assets or debts owed by or to the individual; Section 453(a)(2)(C).	No IRS information unless independently verified. No MSFIDM information and no State FIDM information provided.
State agency that is administering a Child and Family Services program (IV–B) or a Foster Care and Adoption IV–E program; Sections 453(j)(3) and 454(8).	To assist states in carrying out their responsibilities under title IV–B and IV–E programs; Sections 453(j)(3) and 454(8).	Relatives of a child involved in a IV–B or IV–E case.	Federal Parent Locator Service; In-state sources in accordance with State law.	Six Elements as above.	No IRS information unless independently verified. No MSFIDM information and no State FIDM information provided.

[1] No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. See Section 453(b)(2) for release process to court or agent of the court.

[2] A Tribal IV–D program may request access to the Federal PLS under this authority. See PIQ–07–02/TPIQ–07–02, Q&R 7.

APPENDIX B—LOCATING AN INDIVIDUAL SOUGHT IN A CHILD CUSTODY/VISITATION OR PARENTAL KIDNAPPING CASE

Type of request	Authorized person/program	Authorized purpose of the request	About whom information may be requested	Sources searched	Authorized information returned	Limitations[1]
LOCATING AN INDIVIDUAL SOUGHT IN A CHILD CUSTODY OR VISITATION CASE.	Any agent or attorney of any State who has the authority/duty to enforce a child custody or visitation determination; § 463(d)(2)(A). A court, or agent of the court, having jurisdiction to make or enforce a child custody or visitation determination; § 463(d)(2)(B).	Determining the whereabouts of a parent or child to make or enforce a custody or visitation determination; § 463(a)(2).	A parent or child; § 463(a).	Federal Parent Locator Service; In-state sources in accordance with State law.	Only the three following elements: Person's address, Employer's name, Employer's address; § 463(c).	See footnote. No IRS information provided. No MSFIDM or State FIDM information provided. No subsequent attempts to locate unless there is a new request.
LOCATING AN INDIVIDUAL SOUGHT IN A PARENTAL KIDNAPPING CASE.	Agent or attorney of the U.S. or a State who has authority/duty to investigate, enforce, or prosecute the unlawful taking or restraint of a child; § 463(d)(2)(C).	Determining the whereabouts of a parent or child to enforce any State or Federal law with respect to the unlawful taking or restraint of a child; § 463(a)(1).	A parent or child; § 463(a).	Federal Parent Locator Service; In-state sources in accordance with State law.	Only the three following elements: Person's address, Employer's name, Employer's address; § 463(c).	See footnote. No IRS information provided. No MSFIDM or State FIDM information provided. No subsequent attempts to locate unless there is a new request.

[1] No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. See Section 453(b)(2) for release process to court or agent of the court.

APPENDIX C—AUTHORITY FOR STATE IV–D AGENCIES TO RELEASE INFORMATION TO NON-IV–D FEDERAL, STATE, AND TRIBAL PROGRAMS

Authority	Authorized purpose of request	Authorized person/program	Authorized information returned	Limitations
Sections 453 and 454A(f)(3) of the Act, Section 1102 of the Act; and 45 CFR 307.13.	To perform State or Tribal agency responsibilities of designated programs.	State or Tribal agencies administering title IV, XIX, and XXI, and SNAP programs.	Confidential information found in automated system.	No Internal Revenue Service information unless independently verified. No MSFIDM or State FIDM information provided. No NDNH and FCR information for title XIX and XXI unless independently verified. For IV–B/IV–E, for purpose of section 453(a)(2) of the Act can have NDNH and FCR information without independent verification. —Any other purpose requires independent verification. For IV–A NDNH/FRC information for purposes of section 453(j)(3) of the Act without independent verification. —Need verification for other purposes.

APPENDIX C—AUTHORITY FOR STATE IV–D AGENCIES TO RELEASE INFORMATION TO NON-IV–D FEDERAL, STATE, AND TRIBAL PROGRAMS—Continued

Authority	Authorized purpose of request	Authorized person/program	Authorized information returned	Limitations
Sections 453A(h)(2) and 1137 of the Act—State Directory of New Hires.	Income and eligibility verification purposes of designated programs.	State agencies administering title IV–A, Medicaid, unemployment compensation, food stamps, or other State programs under a plan approved under title I, X, XIV, or XVI of the Act.	SDNH information: Individual's name, address and SSN; employer's name, address, and Federal employer identification number.	

Paperwork Reduction Act

Section 302.35(c) contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review in tandem with the final rule published on September 26, 2008. There are no changes to this section.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. The proposed changes would not significantly alter States' child support enforcement operations. This regulation responds to State requests for guidance on data privacy issues and therefore should not raise negative impact concerns.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. We have determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments. There are no costs associated with this regulation. It clarifies the protection of confidential information contained in the records of State child support enforcement agencies.

Congressional Review

This notice of proposed rule making is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation protects the confidentiality of information contained in the records of State child support enforcement agencies. These regulations will not have an adverse impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either, imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order.

List of Subjects

45 CFR Part 302

Child support, Grants programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 307

Child support, Grant programs/social programs, computer technology, requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated: February 19, 2010.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

Approved: March 31, 2010.

Kathleen Sebelius,

Secretary of Health and Human Services.

Accordingly, the Department of Health and Human Services proposes to amend 45 CFR part 301 and to further amend 45 CFR parts 302, 303, and 307, as amended September 26, 2008 (73 FR 56443), effective March 23, 2009, and delayed March 20, 2009 (74 FR 11880), until May 22, 2009, and delayed again May 22, 2009 (74 FR 23798), until December 30, 2010, as follows:

PART 301—STATE PLAN REQUIREMENTS

1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

2. Section 301.1 is amended by adding a definition for "agent of a child" in alphabetical order to read as follows:

§ 301.1 General definitions.

* * * * *

Agent of a child means a caretaker relative having custody of or responsibility for the child.

* * * * *

PART 302—STATE PLAN REQUIREMENTS

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

4. Amend § 302.35 by revising paragraphs (c)(3) and (d) to read as follows:

§ 302.35 State parent locator service.

* * * * *

(c) * * *

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving assistance under title IV–A of the Act only if the individual:

(i) Attests that the request is being made to obtain information on, or to facilitate the discovery of, any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations;

(ii) Attests that any information obtained through the Federal or State PLS shall be used solely for these purposes and shall be otherwise treated as confidential;

(iii) Pays the fee required for Federal PLS services under section 453(e)(2) of the Act and § 303.70(f)(2)(i) of this chapter, if the State does not pay the fee itself. The State may also charge a fee to cover its costs of processing the request, which must be as close to actual costs as possible, so as not to discourage requests to use the Federal PLS. If the State itself pays the fee for use of the Federal PLS or the State PLS in a non-IV–D case, Federal financial participation is not available in those expenditures.

* * * * *

(d) *Authorized purposes for requests and scope of information provided.* The State PLS shall obtain location information under this section only for the purpose specified in paragraphs (d)(1), (d)(2) and (d)(3) of this section.

(1) *To locate an individual with respect to a child in a IV–D, non-IV–D, IV–B, or IV–E case.* The State PLS shall locate individuals for the purpose of establishing parentage, or establishing, setting the amount of, modifying, or enforcing child support obligations or for determining who has or may have parental rights with respect to a child. For these purposes, only information in the Federal PLS or the State PLS may be provided. This information is limited to name, Social Security Number(s), most recent address, employer name and address, employer identification number, wages or other income from, and benefits of, employment, including rights to, or enrollment in, health care coverage, and asset or debt information.

(2) *To assist States in carrying out their responsibilities under title IV–D, IV–A, IV–B, and IV–E programs.* In addition to the information that may be released pursuant to paragraph (d)(1) of this section, State PLS information may be disclosed to State IV–D, IV–A, IV–B, and IV–E agencies for the purpose of assisting States to carry out their responsibilities to administer title IV–D, IV–A, IV–B, and IV–E programs, including information to locate an individual who is a child or a relative of a child in a IV–B or IV–E case. Information that may be disclosed about relatives of children involved in IV–B and IV–E cases is limited to name, Social Security Number(s), most recent address, employer name and address and employer identification number.

(3) *To locate an individual sought for the unlawful taking or restraint of a child or for child custody or visitation purposes.* The State PLS shall locate individuals for the purpose of enforcing a State law with respect to the unlawful taking or restraint of a child or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act. This information is limited to most recent address and place of employment of a parent or child.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

5. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

6. Amend § 303.21 by revising paragraph (d)(1) introductory text to read as follows:

§ 303.21 Safeguarding and disclosure of confidential information.

* * * * *

(d) *Authorized disclosures.* (1) Upon request, the IV–D agency may, to the extent that it does not interfere with the IV–D agency meeting its own obligations and subject to such requirements as the Office may prescribe, disclose confidential information to State agencies as necessary to assist them to carry out their responsibilities under plans and programs funded under titles IV (including Tribal programs under title IV), XIX, or XXI of the Act, and the Supplemental Nutrition Assistance Program (SNAP), including:

* * * * *

7. Revise § 303.69(c) to read as follows:

§ 303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (PLS).

* * * * *

(c) All requests under this section shall contain the information specified in § 303.70(d) of this part.

* * * * *

8. Amend § 303.70 by revising paragraphs (a), (e) introductory text, (e)(1)(i), and (e)(2) to read as follows:

§ 303.70 Procedures for submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (Federal PLS).

(a) The State agency will have procedures for submissions to the State PLS or the Federal PLS for the purpose of locating parents, putative fathers, or children for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations; for the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act, or for the purpose of assisting State agencies to carry out their responsibilities under title IV–D, IV–A, IV–B, and IV–E programs.

* * * * *

(e) The director of the IV–D agency or his or her designee shall attest annually to the following:

(1)(i) The IV–D agency will only obtain information to facilitate the location of any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or for determining who has or may have parental rights with respect to a child, or in accordance with section 453(a)(3) of the Act for enforcing a State law with respect to the unlawful taking or restraint of a child, or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act, or in accordance

with section 453(j)(3) of the Act for the purpose of assisting State agencies to carry out their responsibilities under title IV–D, IV–A, IV–B, and IV–E programs.

* * * * *

(2) In the case of a submittal made on behalf of a resident parent, legal guardian, attorney or agent of a child not receiving assistance under title IV–A, the IV–D agency must verify that the requesting individual has complied with the provisions of § 302.35 of this chapter.

* * * * *

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS IN OPERATION AFTER OCTOBER 1, 1997

9. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

10. Amend § 307.13 by revising paragraphs (a)(3), (4)(iii), and (iv) to read as follows:

§ 307.13 Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

* * * * *

(a) * * *

(3) Permit disclosure of information to State agencies administering programs under titles IV (including Tribal programs under title IV), XIX, and XXI of the Act, and SNAP, to the extent necessary to assist them to carry out their responsibilities under such programs in accordance with section 454A(f)(3) of the Act, to the extent that it does not interfere with the IV–D program meeting its own obligations and subject to such requirements as prescribed by the Office.

(4) * * *

(iii) NDNH and FCR information may be disclosed without independent verification to IV–B and IV–E agencies to locate parents and putative fathers for the purpose of establishing parentage or establishing parental rights with respect to a child; and

(iv) NDNH and FCR information may be disclosed without independent verification to title IV–D, IV–A, IV–B and IV–E agencies for the purpose of assisting States to carry out their responsibilities to administer title IV–D, IV–A, IV–B and IV–E programs.

[FR Doc. 2010–13021 Filed 6–4–10; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 75, No. 108

Monday, June 7, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; SRS Publications Evaluation Card

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension, with no revision, of a currently approved information collection, SRS Publications Evaluation Card.

DATES: Comments must be received in writing on or before August 6, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, USDA, Southern Research Station, Science Delivery Group, 200 W.T. Weaver Boulevard, Asheville, NC 28804–3454. Comments also may be submitted via e-mail to: *lawilde@fs.fed.us.*

The public may inspect comments received at 200 W.T. Weaver Boulevard, Asheville, NC 28804–3454, Room 319, during normal business hours. Visitors are encouraged to call ahead to 828–257–4391 to facilitate entry into the building. Additionally, the public may inspect comments received on the World Wide Web, at *http://www.srs.fs.usda.gov/pubeval.*

FOR FURTHER INFORMATION CONTACT: Louise Wilde, Science Delivery Group, 828–257–4389. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 800–877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: SRS Publications Evaluation Card.

OMB Number: 0596–0163.

Expiration Date of Approval: 12/31/10.

Type of Request: Extension with no revision.

Abstract: Executive Order 12862, issued September 11, 1993, directed Federal agencies to change the way they do business, to reform their management practices, and to provide service to the public that matches or exceeds the best service available in the private sector. In response to this Executive order, the Forest Service, Southern Research Station and Pacific Northwest Research Station, developed a Publications Evaluation Card for inclusion when distributing scientific research publications.

Since the early 1920s, the Forest Service scientists have published the results of their studies about national forests and forest resources and products, in addition to their conclusions about the dynamics of natural timber stands and plantations, watershed and wildlife management, and recreational activities. These studies have provided long-term data that have become increasingly valuable to landowners and others involved in natural resource and land management. Data from the Publications Evaluation Card help Forest Service research stations determine if publications meet customers' expectations and address customers' needs. The collected information also helps scientists and authors provide relevant information on effective, efficient, responsible land management. The Government Printing Office binds the cards into all general technical reports, research papers, research notes, resource bulletins, and other technical publications printed for the Forest Service.

Respondents complete comment cards and return them to the Forest Service in person, via surface mail, or using the Internet. Data gathered in this information collection are not available from other sources. The Forest Service's Science Delivery Group collects and analyzes the data, providing feedback to individual scientists and authors with the purpose of improving future products. Curtailing this information collection would deprive customers of a convenient mechanism for providing detailed and constructive criticism of research publications.

Estimate of Annual Burden: 4 minutes.

Type of Respondents: Individuals; businesses; landowners; non-profit organizations; local, State, and foreign governments.

Estimated Annual Number of Respondents: 72,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4,800 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 1, 2010.

Carlos Rodriguez-Franco,

Acting Deputy Chief, Research & Development.

[FR Doc. 2010–13538 Filed 6–4–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

New Pneumatic Off–the-Road Tires from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the

administrative review of new pneumatic off–the-road tires ("OTR Tires") from the People's Republic of China ("PRC"). This review covers the period February 20, 2008, through August 31, 2009.

DATES: *Effective Date:* June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Andrea Staebler Berton or Raquel Silva, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–6475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2009, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on OTR Tires from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 54956 (October 26, 2009). The preliminary results of this review are currently due no later than June 9, 2010.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

On February 3, 2010, both domestic interested parties[1] submitted letters to the Department expressing concerns about the effect of a bankruptcy petition filed by GPX International Tire Corporation ("GPX"), an importer of record, on the ongoing administrative review. In response to domestic interested parties' concerns, the Department extended regulatory deadlines for Titan and Bridgestone pending resolution of those concerns. On April 30, 2010, Bridgestone informed the Department that its concerns about the GPX bankruptcy had been resolved. In addition, both Titan and Bridgestone have since made submissions to the Department in accordance with the extended regulatory deadlines.

Meanwhile, on February 24, 2010, Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC"), a mandatory respondent, submitted a withdrawal of its request for review. The Department accepted TUTRIC's withdrawal on March 15, 2010, and chose an additional mandatory respondent on May 5, 2010.

In light of the unanticipated delay resulting from issues related to GPX's bankruptcy and the recent selection of an additional mandatory respondent, we determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit. The Department requires additional time to receive questionnaire responses from the substitute mandatory respondent, analyze questionnaire responses, issue supplemental questionnaires, conduct verification, and evaluate surrogate value submissions for purposes of the preliminary results.

Therefore, the Department is extending the time limit for completion of the preliminary results of this administrative review by 120 days. The preliminary results will now be due no later than October 7, 2010.[2] The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 27, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–13581 Filed 6–4–10; 8:45 am]

BILLING CODE 3510–DS–S

[1] Titan Tire Corporation ("Titan"), and Bridgestone Americas, Inc, and Bridgestone Americas Tire Operations, LLC (collectively "Bridgestone"), both domestic producers of the like product.

[2] This new preliminary results deadline incorporates the Import Administration's tolling of all deadlines by seven calendar days due to closure of federal government offices in February 2010 from a snowstorm. For further information, please *see* Memorandum from DAS for Import Administration regarding: Tolling of Administrative Deadlines As A Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010, available at http://ia.ita.doc.gov/ia-highlights-and-news.html.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off–the-Road Tires from the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2009, the Department of Commerce (the Department) published the initiation of the administrative review of the countervailing duty order on certain new pneumatic off–the-road tires from the People's Republic of China for the period December 17, 2007 through December 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 54956 (October 26, 2009). This review covers one producer and exporter of the subject merchandise to the United States: Hebei Starbright Tire Co., Ltd.

Extension of Time Limit for the Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of the review within 120 days after the date on which the notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and to extend the 120-day period to 180 days.

Beginning on February 3, 2009, the Department received several

submissions from Titan Tire Corporation, the petitioner in this proceeding, as well as Bridgestone Americas Tire Operations, LLC and Bridgestone Americas, Inc., a domestic interested party, expressing concerns about the bankruptcy proceeding of GPX International Tire Corp., an importer of respondent's products and a related party during the period of review. According to the petitioner and the domestic interested party, the automatic stay provisions of the U.S. bankruptcy code precluded them from participating in this administrative review pending notice from the federal courts. Out of consideration for these parties' concerns, the Department issued extensions of regulatory deadlines until after the concerns of petitioner and the domestic interested party had been resolved. *See* Memorandum to the File from Andrew Huston, AD/CVD Operations, Office 6, "Due Date for Domestic Parties' Submissions," dated April 30, 2010, stating the Department's conclusion that the concerns of the petitioner and the domestic party had been resolved and making a final extension of the regulatory deadlines to May 10, 2010.

As the sum of these extensions was more than three months, the Department requires additional time to conduct a thorough analysis of all information on the record, including information submitted by the petitioner and the domestic party. Therefore, the Department finds that it is not practicable to complete the preliminary results of this review within the original time limit and is extending the deadline for completion of the preliminary results of this administrative review by 120 days.

Additionally, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government due to snowstorms in February. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Therefore, the total extension of the deadline for the preliminary results of this administrative review is 127 days, and the revised extended due date for the preliminary results is October 7, 2010.

This notice is issued and published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 28, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–13578 Filed 6–4–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Certain Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Brazil: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) (202) 482–5255 and (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2004, the Department of Commerce (the Department) published the countervailing duty order on certain hot–rolled flat–rolled carbon–quality steel products from Brazil. *See Agreement Suspending the Countervailing Duty Investigation on Hot–Rolled Flat–Rolled Carbon–Quality Steel From Brazil; Termination of Suspension Agreement and Notice of Countervailing Duty Order*. (69 FR 56040, September 17, 2004). On October 26, 2009, in response to a timely request from Usinas Siderúrgicas de Minas Gerais (Usiminas), and its subsidiary, Companhia Siderúrgica Paulista (Cosipa), the Department initiated an administrative review of the countervailing duty order on certain hot–rolled flat–rolled carbon–quality steel products from Brazil. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 54956 (October 26, 2009). This administrative review covers the period January 1, 2008 through December 31, 2008.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue preliminary results in an administrative review of a countervailing duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days.

The preliminary results of this administrative review were originally due on June 2, 2010. On February 12, 2010, the Department exercised its discretion to toll deadlines because of the closure of the Federal Government due to snowstorms. Thus, all deadlines in this segment of the proceeding were extended by seven days. *See* Memorandum to the Record from Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. As a result, the deadline for the preliminary results was tolled to June 9, 2010.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. This is the first administrative review of this countervailing duty order, which was issued in 2004. The order was issued five years after the completion of the countervailing duty investigation, and after the termination of the agreement that suspended the investigation. *See Suspension of Countervailing Duty Investigation: Certain Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Brazil*, 64 FR 38797 (July 19, 1999); *see also Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Brazil*, 64 FR 38742 (July 19, 1999). Because this administrative review is the first opportunity in more than ten years for the Department to examine assistance provided by the Government of Brazil to producers of certain hot–rolled flat–rolled carbon–quality steel products, the Department needs additional time to analyze the questionnaire responses and issue supplemental questionnaires. In accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 365 days; the preliminary results will now be due no later than October 7, 2010. Unless extended, the final results continue to

be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 1, 2010.

John M. Andersen.

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–13584 Filed 6–4–10; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0046]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consumer Focus Groups

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 ("the PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed collection of information from persons who may participate in Consumer Focus Groups.

DATES: Submit written or electronic comments on the collection of information by August 6, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0046 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7671, *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension/reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CPSC is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, the CPSC invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility; (2) the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Consumer Focus Groups (OMB Control Number 3041–0136–Extension).

Description: The Commission is authorized, under section 5(a) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2054(a), to collect information, conduct research, perform studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

To better identify and evaluate the risks of product-related incidents, the Commission staff invites and obtains direct feedback from consumers on issues related to product safety such as recall effectiveness, product use, and perceptions regarding safety issues. Through participation in certain focus groups, consumers answer questions and provide information regarding their actual experiences, opinions and/or perceptions on the use or pattern of use of a specific product or type of product, including recalled products. The information collected from the Consumer Focus Groups will help inform the Commission's evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information also may assist the Commission's efforts to support voluntary standards activities and help identify areas regarding consumer safety issues that need additional research. In addition, the information will assist with forming new ways of providing user friendly data to consumers through CPSC's Web site and information and education campaigns.

If this information is not collected, the Commission may not have available certain useful information regarding consumer experiences, opinions, and perceptions related to specific product use in its ongoing efforts to improve the safety of consumer products and safety

information on behalf of consumers. Currently, the Commission staff relies on its expert judgment about consumer behavior, perceptions, and similar information related to consumer products and product use. Not conducting the information collection activity, therefore, could reduce the quality of assessments currently completed by Commission staff. The information collection activity would likely provide the Commission staff with information that would focus the staff's assessments, or could provide insight into consumer perceptions and usage patterns that could not be anticipated by Commission staff.

We estimate the burden of this collection of information as follows. We anticipate that, over the three year period of this request, we will conduct 40 focus groups and 20 one-on-one interviews for a variety of projects. The total hours of burden to the respondents are (4 hours per person × 400 participants) + (30 minutes per person × 20 participants) = 1610 hours (537 hours budgeted per year for three years). The total annual cost is: 1610 × $29.40 (U.S. Department of Labor, Employer costs for Employee Compensation, September 2009) = $47,334 ($15,778 budgeted per year for three years).

The estimated annual cost of the information collection requirements to the Federal government is approximately $140,000 per year for three years. This sum includes nine staff months ($127,573), travel costs expended for meeting with contractors ($40,000, estimated at $1,000 per focus group), and contracts for conducting focus groups and/or one-on-one interviews ($250,000, estimated at $5,000 per focus group and $2,500 per one-on-one interview).

Dated: June 1, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–13513 Filed 6–4–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, the Defense Health Board (DHB) is scheduled to meet on July 14, 2010, in Bethesda, MD.

DATES: The meeting will be held on July 14, 2010, from 8 a.m. to 1 p.m. (see the Agenda for further details).

The administrative working meetings from 8 a.m. to 8:30 a.m. and from 11:30 a.m. to 12:30 p.m. are closed to the public.

Subject to the availability of space, the meetings from 9 a.m. to 11:30 a.m. and from 12:30 p.m. to 1 p.m. are open to the public.

ADDRESSES: The meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, ext. 1228, Fax: (703) 681–3317, *edmond.feeks@tma.osd.mil*.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is to address and deliberate pending Board issues and provide briefings for Board members on topics related to ongoing Board business.

Agenda

July 14, 2010

8 a.m.–8:30 a.m. (Closed, Administrative Working Meeting).

8:30 a.m.–9 a.m. (Attendee and Public Registration).

9 a.m.–11:30 a.m. (Open Session).

11:30 a.m.–12:30 p.m. (Closed, Administrative Working Meeting).

12:30 p.m.–1 p.m. (Open Session).

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, the meetings from 9 a.m. to 11:30 a.m. and from 12:30 p.m. to 1 p.m. are open to the public.

The Board will receive an information brief and deliberate the findings and recommendations of the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces. The Board will also receive an information brief from the Trauma and Injury Subcommittee on the Joint Theater Trauma System.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.health.mil/dhb/default.cfm*. The public is encouraged to register for the meeting.

Written Statements

Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statements must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (*see* **FOR FURTHER INFORMATION CONTACT**). If the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility), please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by June 30, 2010.

Dated: June 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–13531 Filed 6–4–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Meeting of the Defense Policy Board

AGENCY: Defense Policy Board, DoD.

ACTION: Notice.

SUMMARY: The Defense Policy Board will meet in closed session on June 23 and 24, 2010, at the Pentagon.

DATES: The meeting will be held on June 23, 2010, from 0730 hrs until 1800 hrs and on June 24, 2010, from 0730 hrs until 1030 hrs.

ADDRESSES: The meeting will be held at the Pentagon.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 703–571–9232.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App II (1982)), it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: June 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–13532 Filed 6–4–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Department of Defense Wage Committee

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held on June 29, 2010, in Rosslyn, Virginia.

DATES: The meeting will be held on Tuesday, June 29, 2010, at 10 a.m.

ADDRESSES: The meeting will be held at 1400 Key Boulevard, Level A, Room A101, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meeting meets the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: June 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–13547 Filed 6–4–10; 8:45 am]

BILLING CODE 5001–06–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 July 7, 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 e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.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: June 2, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Identifying Potentially Successful Approaches to Turning Around Chronically Low Performing Schools.

Frequency: Once.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,746.

Burden Hours: 743.

Abstract: This study seeks to identify schools that have achieved rapid improvements in student outcomes in a short period of time; illuminate the complex range of policies, programs, and practices used by these turnaround schools; and compare them to strategies employed by not improving, chronically low-performing schools. The ultimate goal of the study is to specify replicable policies, programs, and practices that hold greatest promise for further rigorous analysis. To this end, the study will collect data from school principals as well as school staff through a Web-based and telephone survey and on-site interviews in selected schools. The data will be used by the U.S. Department of Education to identify policies, programs, and practices associated with school turnaround that can be

rigorously tested in a future impact evaluation study.

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 4260. 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. 2010–13589 Filed 6–4–10; 8:45 am]

BILLING CODE 4000–01–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 July 7, 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 e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.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: June 2, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Annual Performance Reporting (APR) Forms for National Institute on Disability and Rehabilitation Research Grantees.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 276.

Burden Hours: 14,352.

Abstract: The Annual Performance Reporting Forms (APRs) are completed via the Internet. Data collected through these forms will be used to: (a) Facilitate program planning and management; (b) respond to Education Department General Administrative Regulations (EDGAR) requirements; and (c) respond to the reporting requirements of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62).

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 4263. 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. 2010–13593 Filed 6–4–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Regional Interpreter Education Centers for Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.160A.

DATES:

Applications Available: June 7, 2010.

Deadline for Transmittal of Applications: July 22, 2010.

Deadline for Intergovernmental Review: September 20, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides grants to eligible entities to establish regional interpreter training programs that will train a sufficient number of qualified interpreters to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

Priorities: These priorities and definitions are from the notice of final priorities and definitions for this program, published in the **Federal Register** on August 3, 2005 (70 FR 44834).

Definitions: For the purposes of these priorities, we use the following definitions:

Deaf means individuals who are deaf, hard of hearing, late deafened, or deaf-blind. The term makes no reference or judgment of preferred mode of communication or language preference.

Interpreter means individuals, both hearing and deaf, who provide interpreting or transliterating, or both, for deaf, hard of hearing, and deaf-blind

individuals using a variety of languages and modes of communication including but not limited to American Sign Language, Conceptually Accurate Signed English, other forms of signed English, oral communication, tactile communication, and cued speech.

Local Partner Network means a formal network of individuals, organizations, and agencies including consumers, consumer organizations, community resources, service providers (especially vocational rehabilitation (VR) agencies), VR State coordinators for the deaf, rehabilitation counselors for the deaf, and other appropriate entities with whom the Regional Interpreter Education Center will have Memoranda of Understanding or other recognized mechanisms for the provision of educational activities for interpreters.

National Interpreter Education Center means a project supported by the Rehabilitation Services Administration (RSA) to—(1) coordinate the activities of the Regional Interpreter Education Centers; (2) ensure the effectiveness of the educational opportunities offered by the Regional Interpreter Education Centers; (3) ensure the effectiveness of the program as a whole by evaluating and reporting outcomes; (4) provide technical assistance to the field on effective practices in interpreter education; and (5) provide educational opportunities for interpreter educators.

Novice interpreter means an interpreter who has graduated from an interpreter training program and demonstrates language fluency in American Sign Language and in English, but lacks experience working as an interpreter.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. This definition, which is mentioned in the Senate Report for the Rehabilitation Act Amendments of 1998, Senate Report 105–166 (Second Session 1998), is one way for States to determine if interpreters are sufficiently qualified and is based on the standard specified in the regulations implementing titles II and III of the Americans with Disabilities Act of 1990.

Regional Interpreter Education Center means a coordinated regional center to provide quality educational opportunities for interpreters at all skill levels.

Training and *education* will be used interchangeably. *Absolute Priority:* 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:

Priority One—Regional Interpreter Education Center or Centers.

The purpose of this priority is to support a coordinated Regional Interpreter Education Center or Centers to provide quality educational opportunities for interpreters at all skill levels. The educational opportunities provided by a Regional Interpreter Education Center, through collaboration with Local Partner Networks and with substantial involvement from deaf consumers, must be of sufficient scope and sequence to demonstrate an increased skill and knowledge base of the participants through the use of pre- and post-assessments. The pre- and post-assessments will measure the knowledge and skill base of the participants, both when first entering the training program and when exiting the training program, to demonstrate their enhanced knowledge and skills as interpreters as a result of the training opportunity. In addition, the primary focus of the educational opportunities must be on interpreting for consumers of VR services. Consequently, this means educating hearing and deaf interpreters to work with consumers from diverse cultural and linguistic backgrounds in diverse environments (*i.e.,* urban, rural, low socioeconomic, territories, etc.) and within a variety of contexts (*i.e.,* employment, job training, technical, medical, etc.).

Further, the educational opportunities must encompass both skill-based and knowledge-based topics, provide for both hearing interpreters and deaf interpreters, and focus on interpreting for a variety of individuals who have communication skills along the full spectrum of language from those with limited language skills to those with high-level, professional language skills. Educational opportunities must be provided for interpreters from all skill levels from novice to advanced, and the skill level of the training must be clearly identified. All training activities must involve cooperative efforts with consumers, consumer organizations, community resources, and service providers, especially VR agencies, VR State coordinators for the deaf, and rehabilitation counselors for the deaf. Delivery of educational opportunities may not be limited to traditional methods. Distance technologies and delivery, use of teams of deaf and hearing presenters, assignment of mentors, immersion experiences, intensive institutes, and other innovative practices must be used.

A Regional Interpreter Education Center funded under this priority also must do the following:

(a) Develop formal relationships with Local Partner Networks as defined in this notice.

(b) In collaboration with the National Center, Local Partner Networks, and consumers, implement effective practices in interpreter education.

(c) In collaboration with the National Center, Local Partner Networks, and consumers, implement the "Program Quality Indicators" for this program.

(d) Coordinate with existing interpreter training programs to identify and conduct outreach activities with recent and new graduates in order to provide training, including mentoring, to make them work-ready.

(e) In collaboration with the National Center, Local Partner Networks, and consumers, provide skill-based, context-based, and knowledge-based interpreter education activities of significant scope and sequence to interpreters in the identified region. Products developed by the National Center must be incorporated into the educational activities to the greatest extent appropriate. Educational opportunities must include, but not be limited to—

(1) Educating deaf individuals and practicing deaf and hearing interpreters to serve as mentors and provide mentoring to novice and working interpreters who need additional feedback and experience to become qualified;

(2) Addressing the various linguistic and cultural preferences within the deaf, hard of hearing, and deaf-blind communities through strands of specialized interpreter education;

(3) Focusing on interpreting in specialized environments such as rehabilitation, legal, medical, mental health, or multicultural environments, working with specific populations such as deaf-blind, oral, trilingual (including those who are fluent in spoken English and spoken Spanish along with both American Sign Language and Mexican Sign Language or other sign languages used by Spanish-speaking communities), or cued speech users, and improving specific skill sets such as sign-to-voice interpreting, team interpreting, sight translation, or ethical decisionmaking and professionalism;

(4) Developing interpretation and transliteration competencies for interpreters working with deaf, hard of hearing, and deaf-blind individuals with differing modes of communication, including, but not limited to, the use of language immersion experiences in American Sign Language, Conceptually Accurate Signed English, oral communication, tactile communication, and cued speech;

(5) Using state-of-the-art technologies for training on how to deliver interpreter services from remote locations and in handling various technologies during interpreter assignments (*e.g.,* microphones, assistive listening devices, cameras, lights, etc.); and

(6) Educating consumers on skills related to self-advocacy and working effectively with interpreters.

(f) In collaboration with the National Center, Local Partner Networks, and consumers, implement and deliver the specific educational activities identified in the education needs assessments.

(g) Provide information to the National Center for the purpose of promoting the educational activities of the National Center.

(h) Provide qualitative and quantitative data on the educational activities conducted, pre- and post-assessments, portfolios produced, participant demographics, and other pertinent information to the National Center for the purpose of evaluating program effectiveness.

(i) Coordinate and collaborate with the other Regional Interpreter Education Centers funded by RSA and funded through this priority.

(j) Set aside 10 percent of the project's annual budget submitted to RSA to cover the costs of specific collaborative activities between the National Center and the Regional Interpreter Education Center or Centers including, but not limited to, travel, communications, materials development, Web site development, and other collaborative efforts.

Fourth and Fifth Years of Project:

In deciding whether to continue a project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC, during the first half of the project's third year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the award have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practices and improved quality of interpreters.

(d) Evidence of the degree to which the project's activities have served each State within its designated geographic region.

Competitive Preference Priority: For FY 2010 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets this priority over an application of comparable merit that does not meet the priority.

This priority is:

Priority Two—Programs Offering at Least a Bachelor's Degree in Interpreter Education.

Within the existing priority from 34 CFR 396.33, we are establishing a priority to support applications from postsecondary institutions that offer and have awarded at least a bachelor's degree in interpreter education.

Program Authority: 29 U.S.C. 772(f).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 396. (c) The notice of final priorities and definitions for this program, published in the **Federal Register** on August 3, 2005 (70 FR 44834).

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 only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,500,000.

Estimated Average Size of Awards: $300,000.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including institutions of higher education.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, *toll free:* 1–877–433–7827. *Fax:* (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.160A.

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 person or team listed under *Accessible Format* in section VIII of this notice.

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 the equivalent of no more than 45 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 does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 7, 2010.

Deadline for Transmittal of Applications: July 22, 2010.

Applications for grants under this competition 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.7. *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: September 20, 2010.

4. *Intergovernmental Review:* This competition 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 competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this 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 Regional Interpreter Education Centers for Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who are Deaf-Blind program—CFDA Number 84.160A 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: Traci DiMartini, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza (PCP), Washington, DC 20202–2800. *FAX:* (202) 245–7591.

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 84.160A, 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 84.160A, 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

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210, 396.31, and 396.32 and are listed in the application package.

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:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is to establish interpreter training programs or to assist ongoing training programs to train a sufficient number of qualified interpreters in order to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

As required by the absolute priority, grantees must develop and implement quality indicators and measure their performance against these indicators. In addition, RSA will use the following indicators for each of the Regional Interpreter Education Centers for Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who are Deaf-Blind:

- A listing of all formal relationships with Local Partner Networks across the region.
- The percentage of interpreters at all skill levels receiving educational opportunities by the Regional Interpreter Center who successfully completed those opportunities as demonstrated through pre-and post-activities assessments, the development of portfolios, the completion of mentoring goals, the attainment of interpreter certification, etc.
- The degree to which the project's activities have contributed to changed practices and improved the quality of interpreters.
- The degree to which the project's activities have served each State within its designated geographic region.

Each Regional Center must report annually to RSA on these indicators through its annual performance report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Traci DiMartini, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue SW., room 5027, PCP, Washington, DC 20202–2800. *Telephone:* (202) 245–6425 or by *e-mail: Traci.DiMartini@ed.gov.*

If you use a TDD, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 2, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–13569 Filed 6–4–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Comprehensive Centers Program

AGENCY: Office of Elementary and Secondary Education.

ACTION: Notice of waivers for the Comprehensive Centers program and funding of continuation grants.

SUMMARY: The Secretary waives the requirements in 34 CFR 75.250 and 75.261(c)(2) of the Education Department General Administrative Regulations (EDGAR) that, respectively, generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The waivers enable the 21 current grantees under the Comprehensive Centers program to continue to receive Federal funding beyond the five-year limitation in 34 CFR 75.250.

DATES: These waivers are effective June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Frances Walter, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W113, Washington, DC 20202–5970. *Telephone:* (202) 205–9198 or by *e-mail: fran.walter@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under the Comprehensive Centers program, the Department supports grants to operate regional technical assistance centers and national content centers as authorized by sections 203 through 207 of the Educational Technical Assistance Act of 2002 (ETAA) (20 U.S.C. 9602–9606). The purpose of these centers is to provide technical assistance primarily to States as States work to help local educational agencies (LEAs) and schools to close achievement gaps in core content areas and raise student achievement in schools, and especially to help LEAs and schools to implement the school improvement provisions under section 1116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) in schools in need of improvement, as defined by section 1116(b) of the ESEA.

Eligible applicants for Comprehensive Centers grants are research organizations, institutions, agencies, institutions of higher education, partnerships among such entities, or individuals, with demonstrated ability or capacity to carry out the activities described in the notice inviting applications published in the **Federal Register** on June 3, 2005 (70 FR 53283) and corrected in the **Federal Register** on June 20, 2005 (70 FR 35415).

On March 18, 2010, we published a notice in the **Federal Register** (75 FR 13110) proposing waivers of 34 CFR 75.250 and 34 CFR 75.261(c)(2) of EDGAR in order to give early notice of

the possibility that additional years of funding under the Comprehensive Centers program may be available for current grantees through continuation awards. As outlined in that notice, it would not be in the public interest to hold new competitions under the Comprehensive Centers program because of the pending reauthorization of the ESEA and the ETAA, and the fact that the primary work of the Comprehensive Centers is to help States, LEAs, and schools implement key school improvement provisions of the ESEA. In addition, it would be contrary to the public interest to have a lapse in Comprehensive Center services pending these reauthorizations. The comments we received in response to the notice of proposed waivers were supportive of the Comprehensive Centers program and the proposed waivers.

For these reasons, the Secretary waives the requirement in 34 CFR 75.250, which prohibits project periods exceeding five years, and the requirement in 34 CFR 75.261(c)(2), which limits the extension of a project period if the extension involves the obligation of additional Federal funds. With these waivers: (1) Current Comprehensive Centers grantees will receive FY 2010 funds and continue to operate through FY 2011 and possibly beyond, and (2) we will not announce a new competition or make new awards under the Comprehensive Centers program in FY 2010.

Analysis of Comments and Changes

In response to the Secretary's invitation in the March 18, 2010, notice of proposed waivers, two parties submitted comments regarding the proposed waivers. An analysis of the comments follows.

Comment: One commenter identified specific support that a regional center and content center have provided in helping a State educational agency (SEA) to assist LEAs and schools in closing achievement gaps and raising student achievement, especially in those LEAs and schools in need of improvement and stated that the waivers would ensure that these important services can be continued without interruption.

Discussion: We note the importance of the support of the Comprehensive Centers program for school improvement initiatives and agree that it would be contrary to the public interest to have a lapse in these services.

Changes: None.

Comment: One commenter noted the important financial and programmatic contributions made by the Office of Special Education Programs within the Department's Office of Special Education and Rehabilitative Services (OSERS) to the Comprehensive Centers. The commenter credited these contributions with creating more effective communication between the Office of Elementary and Secondary Education (OESE) and OSERS, reducing needless duplication of initiatives, and increasing integration of content expertise. Finally, the commenter urged the Department to continue promoting this shared oversight by involving OSERS leadership in deliberations about the future of the Comprehensive Centers program.

Discussion: We appreciate the commenter's identification of the valuable contribution of OSERS leadership in supporting the Comprehensive Centers program, both financially and programmatically. OESE anticipates continuing this positive relationship by involving OSERS in discussions about the future of the program.

Changes: None.

These waivers of 34 CFR 75.250 and 75.261(c)(2) do not affect the applicability of the requirements in 34 CFR 75.253 (continuation of a multi-year project after the first budget period) to any current Comprehensive Centers grantee that receives a continuation award as a result of the waivers.

In addition, these waivers do not exempt current Comprehensive Centers grantees from the account closing provisions of 31 U.S.C. 1552(a) nor do they extend the availability of funds previously awarded to current Comprehensive Center grantees. As a result of 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose. These waivers do not change this requirement.

These waivers ensure that the important services provided by the current Comprehensive Centers grantees will be continued, as the Department works on reauthorization of the ESEA and ETAA and designs a Comprehensive Centers program that is aligned with the Department's technical assistance priorities. During this interim period, the activities of the current Comprehensive Centers grantees will be modified to support these technical assistance priorities.

Waivers—Comprehensive Centers Program

The Secretary waives the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding five years and extensions of project periods that involve the obligation of additional Federal funds, for the current Comprehensive Centers grantees.

Regulatory Flexibility Act Certification

The Secretary certifies that the waivers will not have a significant economic impact on a substantial number of small entities.

The small entities that will be affected by these waivers are:

(a) The FY 2005 grantees currently receiving Federal funds; and

(b) The entities that are eligible for an award under the Comprehensive Centers program (*i.e.,* research organizations, institutions, agencies, institutions of higher education, partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in the notice inviting applications published in the **Federal Register** on June 3, 2005 (70 FR 53283) and corrected in the **Federal Register** on June 20, 2005 (70 FR 35415)).

The Secretary certifies that these waivers will not have a significant economic impact on these entities because the waivers and the activities required to support the additional years of funding will not impose excessive regulatory burdens or require unnecessary Federal supervision. The waivers will impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard for continuation awards.

Paperwork Reduction Act of 1995

This notice of waivers does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in

an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* 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.*

(Catalog of Federal Domestic Assistance Number 84.283B, Comprehensive Centers Program)

Program Authority: 20 U.S.C. 9601–9608.

Dated: June 2, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–13571 Filed 6–4–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

American Electric Power Service Corporation's Mountaineer Commercial Scale Carbon Capture and Storage Project: Mason County, WV; Notice of Intent To Prepare an Environmental Impact Statement and Potential Floodplain and Wetlands Involvement

AGENCY: Department of Energy.

ACTION: Notice of Intent and Notice of Potential Floodplain and Wetlands Involvement.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR Parts 1500–1508), and DOE's NEPA implementing procedures (10 CFR Part 1021), to assess the potential environmental impacts of providing financial assistance for the construction and operation of a project proposed by American Electric Power Service Corporation (AEP). DOE selected this project for an award of financial assistance through a competitive process under the Clean Coal Power Initiative (CCPI) Program. AEP's Mountaineer Commercial Scale Carbon Capture and Storage Project (Mountaineer CCS II Project) would construct a commercial scale carbon dioxide (CO_2) capture and storage (CCS) system at AEP's existing Mountaineer Power Plant and other AEP owned properties located near New Haven, West Virginia.

For the Mountaineer CCS II Project, AEP would design, construct, and operate a CCS facility using Alstom's chilled ammonia process that would capture approximately 1.5 million metric tons annually of CO_2 from a 235-megawatt (MWe) flue gas slip stream taken from the 1,300 MWe Mountaineer Plant. The captured CO_2 would be treated, compressed, and transported by pipeline to proposed injection site(s) on AEP properties within an estimated 12 miles of the Mountaineer Plant where it would be injected into one or more geologic formations approximately 1.5 miles below ground. The project would remove up to 90 percent of the CO_2 from the 235–MWe slip stream and would demonstrate a commercial-scale deployment of the chilled ammonia process for CO_2 capture and sequestration of CO_2 in a saline formation. DOE selected this project for an award of financial assistance through a competitive process under Round 3 (second selection phase) of the CCPI Program.

The EIS will inform DOE's decision on whether to provide financial assistance to AEP for the Mountaineer CCS II Project. DOE proposes to provide AEP with up to $334 million of the overall project cost, which would constitute about 50 percent of the estimated total development cost, 50 percent of the capital cost of the project and 50 percent of the operational cost during the 3-year and 10-month demonstration period. The total project cost, including both DOE's and AEP's shares, is approximately $668 million (in 2010 dollars). The project would further a specific objective of Round 3 of the CCPI program by demonstrating advanced coal-based technologies that capture and sequester, or put to beneficial use, CO_2 emissions from coal-fired power plants.

The purposes of this Notice of Intent (NOI) are to: (1) Inform the public about DOE's proposed action and AEP's proposed project; (2) announce the public scoping meeting; (3) solicit comments for DOE's consideration regarding the scope and content of the EIS; (4) invite those agencies with jurisdiction by law or special expertise to be cooperating agencies in preparation of the EIS; and (5) provide notice that the proposed project may involve potential impacts to floodplains and wetlands.

DOE does not have regulatory jurisdiction over the Mountaineer CCS II Project, and its decisions are limited to whether and under what circumstances it would provide financial assistance to the project. As part of the EIS process, DOE will consult with interested Native American Tribes and Federal, state, regional and local agencies.

DATES: DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be received within 30 days after publication of this NOI in the **Federal Register** to ensure consideration. In addition to receiving comments in writing and by e-mail [*See* **ADDRESSES** below], DOE will conduct a public scoping meeting in which government agencies, private-sector organizations, and the general public are invited to present oral and written comments or suggestions with regard to DOE's proposed action, alternatives, and potential impacts of AEP's proposed project that DOE will consider in developing the EIS. The scoping meeting will be held at the New Haven Elementary School at 138 Mill Street in New Haven, West Virginia on Tuesday, June 22, 2010. Oral comments will be heard during the formal portion of the scoping meeting beginning at 7 p.m. [*See* Public Scoping Process]. The public is also invited to an informal session to learn more about the project and the proposed action at the same location beginning at 5 p.m. Various displays and other information about DOE's proposed action and AEP's Mountaineer CCS II Project will be available, and representatives from DOE and AEP will be present at the informal session to discuss the proposed project, the CCPI program, and the EIS process.

ADDRESSES: Written comments on the scope of the EIS and requests to participate in the public scoping meeting should be addressed to: Mr. Mark Lusk, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880. Individuals and organizations who would like to provide oral or electronic comments should contact Mr. Lusk by postal mail at the above address; telephone (412–386–7435, or toll-free 1–877–812–1569); fax (304–285–4403); or electronic mail (*Mountaineer.EIS0445@netl.doe.gov).*

FOR FURTHER INFORMATION CONTACT: For further information about this project, contact Mr. Mark Lusk, as

described above. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202–586–4600); fax (202–586–7031); or leave a toll-free message (1–800–472–2756).

SUPPLEMENTARY INFORMATION:

Background

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that include large, technically complex, projects in pursuit of innovation in a wide variety of coal technologies through the proof-of-concept stage. However, helping a technology reach the proof-of-concept stage does not ensure its continued development or commercialization. Before a technology can be considered seriously for commercialization, it must be demonstrated at a sufficient scale to prove its reliability and economically competitive performance. The financial risk associated with such large-scale demonstration projects is often too high for the private sector to assume in the absence of strong incentives.

The CCPI program was established in 2002 as a government and private sector partnership to increase investment in clean coal technology. Through cooperative agreements with its private sector partners, the program advances clean coal technologies to commercialization. These technologies often involve combustion improvements, control system advances, improved gasifier designs, pollution reduction (including greenhouse gas reduction), efficiency improvements, fuel processing techniques, and other activities.

Congress established criteria for projects receiving financial assistance under this program in Title IV of the Energy Policy Act of 2005 (Pub. L. 109–58; EPAct 2005). Under this statute, CCPI projects must "advance efficiency, environmental performance and cost competitiveness well beyond the level of technologies that are in commercial service" (Pub. L. 109–58, Sec. 402(a)). On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115) appropriated $3.4 billion to DOE for Fossil Energy Research and Development; the Department intends to use a significant portion of these funds to provide financial assistance to CCPI projects.

The CCPI program selects projects for its government-private sector partnerships through an open and competitive process. Potential private sector partners may include developers of technologies, utilities and other energy producers, service corporations, research and development firms, software developers, academia and others. DOE issues funding opportunity announcements that specify the types of projects it is seeking, and invites submission of applications. Applications are reviewed according to the criteria specified in the funding opportunity announcement; these criteria include technical, financial, environmental, and other considerations. DOE selects the projects that demonstrate the most promise when evaluated against these criteria, and enters into a cooperative agreement with the applicant. These agreements set out the project's objectives, the obligations of the parties, and other features of the partnership. Applicants must agree to provide at least 50 percent of their project's cost; for most CCPI projects, the applicant's cost share is much higher.

To date, the CCPI program has conducted three rounds of solicitations and project selections. Round 1 sought projects that would demonstrate advanced technologies for power generation and improvements in plant efficiency, economics, and environmental performance. Round 2 requested applications for projects that would demonstrate improved mercury controls and gasification technology. Round 3, which DOE conducted in two phases, sought projects that would demonstrate advanced coal-based electricity generating technologies which capture and sequester (or put to beneficial use) CO_2 emissions. DOE's overarching goal for Round 3 projects was to demonstrate technologies at commercial scale in a commercial setting that would: (1) Operate at 90 percent capture efficiency for CO_2; (2) make progress towards capture and sequestration at less than a 10 percent increase in the cost of electricity for gasification systems and a less than 35 percent increase for combustion and oxy-combustion systems; and (3) make progress towards capture and sequestration of 50 percent of the facility's CO_2 output at a scale sufficient to evaluate full impacts of carbon capture technology on a generating plant's operations, economics, and performance. The Mountaineer Commercial Scale CCS II Project was one of three selected in the second phase of Round 3. DOE entered into a cooperative agreement with AEP on February 1, 2010.

Purpose and Need for DOE Action

The purpose and need for DOE action—providing limited financial assistance to AEP's project—is to advance the CCPI program by funding projects with the best chance of achieving the program's objectives as established by Congress: Commercialization of clean coal technologies that advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies currently in commercial service.

The Mountaineer CCS II Project

AEP proposes to design, construct, and operate a CCS facility using Alstom's chilled ammonia process to capture approximately 1.5 million metric tons annually of CO_2 from a 235–MWe flue gas slip stream from the Mountaineer Plant. The captured CO_2 would be treated, compressed, and transported by pipeline to proposed injection site(s) on AEP properties within an estimated 12 miles of the Mountaineer Plant where it would be injected into one or more geologic formations approximately 1.5 miles below the earth's surface. These formations potentially include the Rose Run Formation, which is composed primarily of sandstone, and the Copper Ridge Formation, which is composed primarily of dolomite.

Proposed Carbon Capture Facility Site: AEP Mountaineer Power Plant

The proposed carbon capture facility would be located at the existing 1,300 MWe AEP Mountaineer Plant and other AEP owned property near the town of New Haven in Mason County, West Virginia. The Mountaineer Plant uses an average of approximately 10,000 tons of coal per day with coal being delivered to the facility by barge on the Ohio River, rail, and conveyors from a nearby coal mine west of the site. The Mountaineer Plant began commercial operation in 1980 and consists of a nominally rated 1,300 MWe pulverized coal-fired electric generating unit, a hyperbolic cooling tower, material delivery and unloading facilities, and various ancillary facilities required to support plant operation. The plant is equipped with air pollution control equipment including an electrostatic precipitator (ESP) for particulate control, selective catalytic reduction (SCR) for nitrogen oxides (NO_X) control, and a wet flue gas desulfurization unit for sulfur dioxide (SO_2) control. The plant includes a small chilled ammonia

process validation facility constructed in 2009 which currently captures CO_2 from a 20 MWe flue gas slip stream, and injects the captured CO_2 into the Rose Run Formation and the Copper Ridge Formation beneath the site. Two CO_2 injection wells and three monitoring wells are located on the Mountaineer Plant property to support the injection and monitoring of the injected CO_2. The property is bounded to the west by U.S. Route 62, to the east by the Ohio River, to the south by AEP's Phillip Sporn Power Plant, and one mile to the northwest (downriver) by the town of New Haven, West Virginia. A coal mine is located to the west of U.S. Route 62.

Proposed Chilled Ammonia Process Carbon Capture Facility

AEP would construct and operate a chilled ammonia process CO_2 capture system that would be located on AEP's property within the boundaries of the existing power plant. The process would use chilled ammonia to capture CO_2 and isolate it in a highly concentrated, high-pressure form suitable for sequestration. The concentrated CO_2 stream would be cooled and compressed to a supercritical state for transport via a network of pipelines to the injection sites. The process would be expected to remove approximately 90 percent of the CO_2 in the treated flue gas. The system would occupy an area of approximately 500 feet by 1,000 feet, and would process a slip-stream of flue gas after it exits the plant's flue gas desulfurization system. AEP is currently evaluating the optimum location at the plant for the proposed capture facility. Existing infrastructure (roadways, utilities) would be used; however, upgrades or construction of additional infrastructure may be required. Major equipment includes absorbers, regenerators, pumps, heat exchangers, and refrigeration equipment. In addition, maintenance facilities, water-handling equipment and laboratories would be required.

CO_2 Compression and Transport

Captured CO_2 would be compressed at the Mountaineer facility to approximately 2,000 pounds per square inch pressure and transported via pipelines to injection sites expected to be within 12 miles of the Mountaineer Plant. AEP is currently evaluating potential pipeline routes, which will depend on selection of CO_2 injection sites. However, AEP would use existing rights-of-way to the greatest extent practical. Potential pipeline routes will be considered as part of the NEPA process.

CO_2 Injection and Monitoring

Captured CO_2 would be injected into one or more geologic formations approximately 1.5 miles below the earth's surface. These formations include the Rose Run Formation, which is composed primarily of sandstone, and the Copper Ridge Formation, which is composed primarily of dolomite. The properties of these formations are known to be generally amenable to sequestration and the formations are overlaid by cap rock that would provide a seal to prevent upward migration of the CO_2. AEP is considering several of its properties in Mason County, West Virginia, for installation of CO_2 injection and monitoring wells. However, specific injection sites have not been determined as site characterization work is needed to confirm the geologic suitability of specific locations. AEP is in the process of planning characterization work at these properties that would include the drilling of at least one deep test well to evaluate subsurface geology. Information collected during these characterization efforts will be used by DOE in the EIS and by AEP to determine injection locations. Potential injection well sites will be considered as part of the NEPA process.

A monitoring, verification, and accounting (MVA) program would be implemented to monitor the injection and migration of CO_2 within the geologic formations and verify that it stays within the target formations. The MVA program must meet regulatory and CCPI Program requirements and may consist of the following components: (1) Injection system monitoring; (2) containment monitoring (via monitoring wells, mechanical integrity testing, and other means); (3) CO_2 plume tracking via multiple techniques; (4) CO_2 injection simulation modeling; and (5) experimental techniques yet to be developed.

Proposed Project Schedule

The project proposed by AEP includes four phases consisting of planning, design, construction, and operation of the CCS system. There will be a four-year DOE demonstration phase. AEP plans to start construction in 2013 and begin commercial operations (demonstration phase) by 2015. The schedule is contingent upon AEP receiving the necessary permits and regulatory approvals, as well as financial closing on all the necessary funding sources, including DOE's financial assistance. DOE's decision to provide financial assistance for detailed design, procurement of equipment, construction, and operations is contingent upon DOE's completion of the NEPA process and the EIS.

Connected and Cumulative Actions

Under the cooperative agreement between DOE and AEP, DOE would share in the cost of the CCS facilities, injection wells, monitoring wells, pipelines, supporting facilities and site infrastructure, and the operational costs during the 4-year demonstration phase. For other activities that would not occur if not for DOE funding, DOE will evaluate in the EIS and consider the potential impacts associated with these activities as connected actions.

DOE will consider the cumulative impacts of the cost-shared activities along with any other connected actions, including those of third parties. Cumulative impacts analysis will include the analysis of pollutant emissions (including greenhouse gas emission reductions) and other incremental impacts that, when added to past, present and reasonably foreseeable future impacts, may have significant effects on the human environment.

Alternatives, Including the Proposed Action

NEPA requires that an EIS evaluate the range of reasonable alternatives to an agency's proposed action. The range of reasonable alternatives encompasses those alternatives that would satisfy the underlying purpose and need for agency action. The purpose and need for DOE action—providing limited financial assistance to the proposed AEP project—are to advance the CCPI program by selecting projects that have the best chance of achieving the program's objectives as established by Congress: The commercialization of clean coal technologies that advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are currently in service.

DOE's NEPA regulations include a process for identifying and analyzing reasonable alternatives in the context of providing financial assistance through competitive selection of projects proposed by entities outside the Federal government. The range of reasonable alternatives in competitions for grants, loans, loan guarantees and other financial support is defined initially by the range of responsive proposals received by DOE. Unlike projects undertaken by DOE itself, the Department cannot mandate what outside entities propose, where they propose their project, or how they propose to do it, beyond expressing basic requirements in the funding

opportunity announcement; and these express requirements must be limited to those that further the program's objectives. DOE's decision is then limited to selecting among the applications that meet the CCPI's goals.

Recognizing that the range of reasonable alternatives in the context of financial assistance and contracting processes is in large part determined by the number and nature of the proposals received, Section 216 of DOE's NEPA implementing regulations requires the Department to prepare an "environmental critique" that assesses the environmental impacts and issues relating to each of the proposals that the DOE selecting official considers for an award (*see* 10 CFR § 1021.216). This official considers these impacts and issues, along with other aspects of the proposals (such as technical merit and financial ability) and the program's objectives, in making awards. DOE prepared a critique of the proposals that were deemed suitable for selection in this round of awards for the CCPI program.

After DOE selects a project for an award, the range of reasonable alternatives becomes the project as proposed by the applicant, any alternatives still under consideration by the applicant or that are reasonable within the confines of the project as proposed (*e.g.,* the particular location of the processing units, pipelines, and injection sites on land proposed for the project) and a "no action" alternative. Regarding the no action alternative, DOE assumes for purposes of the EIS that, if DOE decides to withhold financial assistance, the project would not proceed.

DOE currently plans to evaluate the project as proposed by AEP (with and without any mitigating conditions that DOE may identify as reasonable and appropriate), alternatives to AEP's proposal that it is still considering (*e.g.,* sales options for CO_2, location of alternative pipeline routes, and location of injection and monitoring wells on properties owned by AEP), and the no action alternative. DOE will consider other reasonable alternatives suggested during the scoping period.

Under the no action alternative, DOE would not provide funding to AEP. In the absence of financial assistance from DOE, AEP could reasonably pursue two options. It could build the project without DOE funding; the impacts of this option would be essentially the same as those of AEP's proposed action, except any DOE-required mitigations would not be imposed. Alternatively, AEP could choose not to pursue its project, and there would be no impacts from the project. This latter option would not contribute to the goal of the CCPI program, which is to accelerate commercial deployment of advanced coal technologies that provide the United States with clean, reliable, and affordable energy. However, as required by NEPA, DOE analyzes this option as the no action alternative for the purpose of making a meaningful comparison between the impacts of DOE providing financial assistance and withholding that assistance.

Alternatives considered by AEP in developing its proposed project will also be discussed in the EIS. AEP is considering locations for the injection and monitoring wells on properties selected by AEP, and the pipeline corridors to be used to transport CO_2 for sequestration.

Floodplains and Wetlands

The footprint of the proposed Mountaineer CCS II Project that would be constructed at the existing Mountaineer Plant and on other nearby AEP properties would be designed to avoid or minimize potential impacts to wetlands or floodplains. Wetland and floodplain impacts, if any, which would be expected to result from installation of monitoring and injection wells, or the construction of CO_2 pipelines or other linear features required for this project, would be identified during preparation of the EIS and described in the EIS. In the event that the EIS identifies wetlands and floodplains that would be affected by the proposed project, including as a result of pipeline routes, injection facilities, or connected actions, DOE will prepare a floodplain and wetland assessment in accordance with its regulations at 10 CFR Part 1022, and include the assessment in the EIS.

Preliminary Identification of Environmental Issues

DOE intends to address the issues listed below when considering the potential impacts resulting from the construction and operation of AEP's proposed project and any connected actions. This list is neither intended to be all-inclusive, nor to be a predetermined set of potential impacts. DOE invites comments on whether this is the correct list of important issues that should be considered in the EIS. *The preliminary list of potentially affected resources or activities and their related environmental issues includes:*

- *Air quality resources:* Potential air quality impacts from emissions during construction and operation of the CCS facilities and appurtenant facilities on local sensitive receptors, local environmental conditions, and special-use areas, including impacts to smog and haze and impacts from dust and any significant vapor plumes, including greenhouse gas emissions;
- *Water resources:* Potential impacts from water utilization and consumption, plus potential impacts from wastewater discharges;
- *Infrastructure and land use:* Potential environmental and socioeconomic impacts associated with the project, including delivery of feed materials and distribution of products (*e.g.,* access roads, pipelines);
- *Visual resources:* Potential impacts to the view shed, scenic views (*e.g.,* impacts from the injection wells, pipelines, and support facilities for the injection wells and pipelines), and internal and external perception of the community or locality;
- *Solid wastes:* Pollution prevention and waste management issues (generation, treatment, transport, storage, disposal or use), including potential impacts from the generation, treatment, storage, and management of hazardous materials and other solid wastes;
- *Ecological resources:* Potential on-site and off-site impacts to vegetation, wildlife, threatened or endangered species, and ecologically sensitive habitats;
- *Floodplains and wetlands:* Potential wetland and floodplain impacts from construction of project facilities, pipelines and other facilities;
- *Traffic:* Potential impacts from the construction and operation of the facilities, including changes in local traffic patterns, deterioration of roads, traffic hazards, and traffic controls;
- *Historic and cultural resources:* Potential impacts related to site development and the associated linear facilities (pipelines, etc.);
- *Geology:* Potential impacts from the injection and storage of CO_2 on underground resources such as ground water supplies, mineral resources, and fossil fuel resources;
- Fate and stability of CO_2 being sequestered;
- *Health and safety issues:* Potential impacts associated with use, transport, and storage of hazardous chemicals (including ammonia), and CO_2 capture and transport to the sequestration site(s);
- Socioeconomic impacts, including the creation of jobs;
- Disproportionate adverse impacts on minority and low-income populations;
- *Noise and light:* Potential impacts from construction, transportation of materials, and facility operations;

• *Connected actions:* Potential development of support facilities or supporting infrastructure;

• Cumulative effects that result from the incremental impacts of the proposed project when added to other past, present, and reasonably foreseeable future projects;

• Compliance with regulatory and environmental permitting requirements; and

• Environmental monitoring plans associated with the carbon capture facility and CO_2 sequestration activities.

Public Scoping Process

This Notice of Intent initiates the scoping process under NEPA, which will guide the development of the Draft EIS. To ensure identification of issues related to DOE's Proposed Action and AEP's Proposed Project, DOE seeks public input to define the scope of the EIS. The public scoping period will end 30 days after publication of this NOI in the **Federal Register.** Interested government agencies, private-sector organizations and individuals are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts that should be addressed, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address. Written, e-mailed, or faxed comments should be received by Friday, July 9, 2010 (*see* **ADDRESSES**).

DOE will conduct a public scoping meeting at the New Haven Elementary School at 138 Mill Street in New Haven, West Virginia, on Tuesday, June 22, 2010. Oral comments will be heard during the formal portion of the scoping meeting beginning at 7 p.m. The public is also invited to learn more about the project at an informal session at this location beginning at 5 p.m. DOE requests that anyone who wishes to speak at this public scoping meeting should contact Mr. Mark Lusk, either by phone, e-mail, fax, or postal mail (*see* **ADDRESSES**).

Those who do not arrange in advance to speak may register at the meeting (preferably at the beginning of the meeting) and may be given an opportunity to speak after previously scheduled speakers. Speakers will be given approximately five minutes to present their comments. Those speakers who want more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit all speakers to five minutes initially and provide second opportunities as time permits. Individuals may also provide written materials in lieu of, or supplemental to, their presentations. Oral and written comments will be given equal consideration.

DOE will begin the formal meeting with an overview of AEP's proposed project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands the comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting. A stenographer will record the proceedings, including all oral comments received.

Issued in Washington, DC, this 2nd day of June 2010.

James J. Markowsky,

Assistant Secretary, Office of Fossil Energy.

[FR Doc. 2010–13568 Filed 6–4–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–013]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Haier From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–013) that grants to Haier Group and Haier America Trading, L.L.C. (Haier) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedure for certain basic models containing relative humidity sensors and adaptive control anti-sweat heaters. Under today's decision and order, Haier shall be required to test and rate its refrigerator-freezers with adaptive control anti-sweat heaters using an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611, E-mail: *Michael.Raymond@ee.doe.gov.*

Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 287–6111, E-mail: *Jennifer.Tiedeman@hq.doe.govmailto:.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Haier a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters, provided that Haier tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Haier from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on May 27, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Haier Group and Haier America Trading, L.L.C. (Case No. RF–013).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A, which provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." 42 U.S.C. 6291–6309. Part A of Title III includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy

use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3).

Today's notice involves residential electric refrigerator and refrigerator-freezer products covered under part A of Title III. The test procedure for residential electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On January 11, 2010, Haier filed a petition for waiver from the test procedures applicable to residential refrigerators and refrigerator-freezers. Haier's petition was published in the **Federal Register** on March 11, 2010. 75 FR 11522. In that notice, DOE announced its grant of an interim waiver to Haier. The Haier petition pertains to new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls. These controls detect a broad range of temperature and humidity conditions and respond by activating adaptive heaters, as needed, to evaporate excess moisture. Haier's technology is similar to that used by General Electric Company (GE), Whirlpool Corporation (Whirlpool), Electrolux, and Samsung Electronics America, Inc. (Samsung). The GE, Whirlpool, Electrolux, and Samsung waivers were granted February 27, 2008 (73 FR 10425), May 5, 2009 (74 FR 20695), December 15, 2009 (74 FR 66338), and March 18, 2010 (75 FR 13122), respectively.

Assertions and Determinations

Haier's Petition for Waiver

In its January 2010 petition, Haier sought a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the test procedure takes neither ambient humidity nor adaptive technology into account. DOE did not receive any comments on the Haier petition. Haier requested that it be permitted to use the same alternate test procedure DOE prescribed for GE, Whirlpool and other refrigerators and refrigerator-freezers equipped with a similar technology. The alternate test procedure applicable to the GE, Whirlpool, Samsung and Electrolux products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the respective decisions and orders referenced above. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Haier petition for waiver. The FTC staff did not have any objections to granting a waiver to Haier.

Conclusion

After careful consideration of all the material that was submitted by Haier and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by Haier Group and Haier America Trading, L.L.C. (Case No. RF–013) is hereby granted as set forth in the paragraphs below.

(2) Haier shall not be required to test or rate the following Haier models on the basis of the current test procedures contained in 10 CFR part 430, subpart B, appendix A1. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

RBFS21SIBP	RBFS21SIBE	RBFS21SIBS	RBFS21TIBP	RBFS21TIBE
RBFS21TIBS	RBFS21EDBP	RBFS21EDBE	RBFS21EDBS	HB21QC10NP
HB21QC10NE	HB21QC10NS	HB21QC40NP	HB21QC40NE	HB21QC40NS
HB21QC70NP	HB21QC70NE	HB21QC70NS	HB21FC10NP	HB21FC10NE
HB21FC10NS	HB21FC40NP	HB21FC40NE	HB21FC40NS	HB21FC70NP
HB21FC70NE	HB21FC70NS	HB25QC10NP	HB25QC10NE	HB25QC10NS
HB25QC40NP	HB25QC40NE	HB25QC40NS	HB25QC70NP	HB25QC70NE
HB25QC70NS	HB25FC10NP	HB25FC10NE	HB25FC10NS	HB25FC40NP
HB25FC40NE	HB25FC40NS	HB25FC70NP	HB25FC70NE	HB25FC70NS
H21BFC45				

(3) Haier shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the Haier products listed in paragraph (2) only:

(A) The following definition is added at the end of Section 1:

1.13 Variable anti-sweat heater control means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in

accordance with HRF–1–1979, section 7.2 through section 7.4.3.3, except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be off during one test and on during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the result of the second test will be derived by performing the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the on position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{ON} = E + (Correction Factor)

where E is determined by sections 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the off position.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

where:

Anti-sweat Heater Power
= A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

where A1–A10 are defined in the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F. System-loss Factor = 1.3

(4) Representations. Haier may make representations about the energy use of its adaptive control anti-sweat heater refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on May 27, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–13539 Filed 6–4–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number EERE–BT–PET–0024]

Energy Efficiency Program for Consumer Products: Commonwealth of Massachusetts Petition for Exemption From Federal Preemption of Massachusetts' Energy Efficiency Standard for Residential Non-Weatherized Gas Furnaces

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of comments received on Petition for Exemption.

SUMMARY: This notice announces the availability of materials related to a petition filed by the Commonwealth of Massachusetts seeking an exemption from Federal preemption of certain energy efficiency standards. It also provides an opportunity for rebuttal to those comments that have already been received by the Department of Energy (DOE) in response to this petition.

DATES: DOE will accept rebuttal statements, from the Commonwealth of Massachusetts until, but no later than, July 7, 2010.

ADDRESSES: The January 28, 2010 **Federal Register** notice (75 FR 4548) is available for review on the Internet at: *http://www.eere.energy.gov/buildings/appliance_standards/pdfs/ma_exemption_012810.pdf.*

A document entitled "Massachusetts Petition for Exemption from Preemption" is available for review on the Internet at: *http://www.eere.energy.gov/buildings/appliance_standards/pdfs/ma_state_petition.pdf.*

Comments received are available for review on the Internet at: *http://www.eere.energy.gov/buildings/appliance_standards/state_petitions.html.*

Comments may also be obtained from Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, EE–2J, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or by telephone (202) 586–2945.

Please submit comments, identified by docket number EERE–BT–PET–0024 by any of the following methods:

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

2. *E-mail: MAExemptPetition@ee.doe.gov.* Include either the docket number EERE–BT–PET–0024, and/or "Massachusetts Petition" in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

5. *Instructions:* All submissions received must include the agency name and docket number for this proceeding. For detailed instructions on submitting comments and additional information on the proceeding, see section 2 above of this document.

Docket: For access to the docket to read the background documents relevant to this matter, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: The Massachusetts Petition; correspondence from Massachusetts, correspondence from DOE, and any comments received. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

Please note: DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials. Electronic copies of the Petition are available online at DOE's Web site at the following URL address: *http://www.eere.energy.gov/buildings/appliance_standards/state_petitions.html.*

FOR FURTHER INFORMATION CONTACT:

Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7892, or e-mail: *Mohammed.Khan@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8145, e-mail: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 28, 2010, DOE published a notice announcing the receipt of a petition submitted by the Commonwealth of Massachusetts. (75 FR 4548) That petition—Petition for Exemption from Federal Preemption of Massachusetts' 90% Annual Fuel Utilization Efficiency Standard for Non-weatherized Gas Furnaces (hereafter "Massachusetts Petition" or "Petition")—sought a waiver of preemption from DOE to permit a standard affecting non-weatherized gas furnaces to remain in effect. The Massachusetts standard is higher than the current Federal standard for these products.

To help DOE evaluate the merits of the Massachusetts Petition, the January notice invited interested members of the public to comment on the petition and to submit any additional information related to the criteria that DOE must evaluate when considering a waiver petition seeking an exemption from Federal preemption. These criteria are outlined generally in 42 U.S.C. 6297(d). DOE provided interested parties with an opportunity to comment through March 29, 2010. The comments received are available for public review at the DOE's Web site and can be accessed at the specified URL address provided in the **ADDRESSES** section listed above.

As required by law, this notice provides a rebuttal comment period to permit the submission of rebuttals to those comments that have already been received by DOE, as well as any other supporting information or data that would assist the agency in evaluating the merits of the Massachusetts petition. The availability of the initial comments and the specific rebuttal comment period provided in this notice are in satisfaction of the requirements under 42 U.S.C. 6297(d)(2).

DOE invites all interested parties to comment on any aspects of the petition and on those comments that have been submitted and docketed in response to that petition. After examining all relevant submissions, including any rebuttal comments, DOE will issue its final decision in a manner consistent with the schedule laid out in its January 2010 notice.

Issued in Washington, DC, on May 27, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–13544 Filed 6–4–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9159–8]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2173.03; Reporting Requirements under EPA's Green Power Partnership and Combined Heat and Power Partnership; was approved on 05/07/2010; OMB Number 2060–0578; expires on 06/30/2012; Approved with change.

EPA ICR Number 2343.03; Focus Group Research for Fuel Economy Label Designs for Advanced Technology Vehicles (Phase 3); was approved on 05/13/2010; OMB Number 2060–0632; expires on 08/31/2010; Approved with change.

EPA ICR Number 2368.01; Questionnaire for Steam Electric Power Generating Effluent Guidelines (New); was approved on 05/20/2010; OMB Number 2040–0281; expires on 05/31/2013; Approved with change.

EPA ICR Number 2207.03; Exchange Network Grants Progress Report (Renewal); was approved on 05/27/2010; OMB Number 2025–0006; expires on 11/30/2011; Approved without change.

EPA ICR Number 2240.03; NESHAP for Area Sources: Polyvinyl Chloride and Copolymer Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium (Renewal); 40 CFR part 63, subparts A, DDDDDDD, EEEEEEE, FFFFFFF, and GGGGGGG, was approved on 05/27/2010; OMB Number 2060–0596; expires on 05/31/2013; Approved without change.

EPA ICR Number 2046.05; NESHAP for Mercury Cell Chlor-Alkali Plants; 40 CFR part 63, subpart A and 40 CFR part 63, subpart IIIII; was approved on 05/27/2010; OMB Number 2060–0542; expires on 05/31/2013; Approved without change.

Comment Filed

EPA ICR Number 1648.07; Requirements for Control Technology Determinations from Major Sources in Accordance with Clean Air Act Section 112(j) (Proposed Rule); in 40 CFR part 63; OMB filed comment on 05/21/2010.

Dated: June 1, 2010.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2010–13622 Filed 6–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0015; FRL–9159–4]

Release of Final Document Related to the Review of the National Ambient Air Quality Standards for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The Office of Air Quality Planning and Standards (OAQPS) of EPA is announcing the availability of a final document titled, *Quantitative Risk and Exposure Assessment for Carbon Monoxide* (REA). The REA describes

quantitative analyses that have been conducted as part of the review of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO).

DATES: The REA will be available on or about May 28, 2010.

ADDRESSES: The document will be available primarily via the Internet at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/co/s_co_index.html.*

FOR FURTHER INFORMATION CONTACT: For questions related to this document, please contact Dr. Deirdre Murphy, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *murphy.deirdre@epa.gov;* telephone: 919–541–0729; fax: 919–541–0237.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Presently, EPA is reviewing the NAAQS for CO. The EPA's overall plan and schedule for this review is presented in the *Plan for Review of the National Ambient Air Quality Standards for Carbon Monoxide.*[1] A draft of this integrated review plan was released for public review and comment in March 2008 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on April 8, 2008 (73 FR 12998). Comments received from that consultation and from the public were considered in finalizing the plan for the review.

As part of EPA's review of the primary (health-based) CO NAAQS, the Agency has conducted qualitative and quantitative assessments characterizing the health risks associated with exposure to ambient CO. The EPA's plans for conducting these assessments, including the proposed scope and methods of the analyses, were presented in a planning document titled, *Carbon Monoxide National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment* (Scope and Methods Plan). This planning document was released for public comment in April 2009 and was the subject of a consultation with the CASAC on May 13, 2009 (74 FR 15265). First and second external review drafts of the REA were released for CASAC review and public comment in October 2009 (74 FR 55843) and February 2010 (75 FR 10252), respectively, and were the subjects of CASAC review meetings in November 2009 (74 FR 54042) and March 2010 (75 FR 9206), respectively. In preparing the final REA, EPA has considered comments received from CASAC and the public on these earlier draft documents. The REA document announced today conveys the approaches taken to assess exposures to ambient CO and to characterize associated health risks, as well as presents key results, observations, and related uncertainties associated with the quantitative analyses performed. This document will be available on or about May 28, 2010, through the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_index.html.* This document may be accessed in the "Documents from Current Review" section under "Risk and Exposure Assessments."

Dated: May 27, 2010.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–13620 Filed 6–4–10; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA 452R–08–005; August 2008; Available: *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pd.html.*

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9159–6]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Bridgeport (the City) Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a late waiver request from the Buy America requirements of ARRA section 1605(a) under the authority of section 1605(b)(1) [applying subsection (a) would be inconsistent with the public interest] to the City for the purchase and use of 280 linear feet of large diameter 36″ PVC pipe, manufactured in Edmonton, Alberta, Canada and which was used in and incorporated into an ARRA project prior to December 3, 2009. This is a project specific waiver and only applies to the use of the specified product for the ARRA project discussed in this notice. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The City's waiver request included a timeline summary from October 3, 2009 thru December 30, 2009 describing the attempted Buy American compliance by the applicant, consulting engineer, contractor and pipeline materials supplier. Thus, it appears that the supplier on behalf of the City, the ARRA recipient, did an extensive, seemingly comprehensive, and ultimately unsuccessful search for a U.S. manufacturer who could meet the project specifications.

The Regional Administrator is making this determination based on the review and recommendations of the Drinking Water Unit. The City has provided sufficient documentation to support their request.

DATES: *Effective Date:* May 25, 2010.

FOR FURTHER INFORMATION CONTACT: Johnny Clark, DWSRF ARRA Program Management Analyst, Drinking Water Unit, Office of Water & Watersheds (OWW), (206) 553–0082, U.S. EPA Region 10 (OWW–136), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and OMB's regulations at 2 CFR Part 176, Subpart B, the EPA hereby provides notice that it is granting a late project waiver request of the

requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City for the purchase and use of 280 linear feet of large diameter 36″ PVC pipe, manufactured in Edmonton, Alberta, Canada, which was incorporated into an ARRA project prior to December 3, 2009. The City was unable to find an American manufacturer to meet the project specific requirements for what by industry's standards is a small amount of large diameter 36″ PVC pipe.

There are several noteworthy factors regarding this waiver analysis. First, it is a late request because the waiver request came after the goods had been used in the project. Second, under 2 CFR 176.130(c)(1), the applicable non-compliance provision regarding unauthorized use of foreign manufactured goods, EPA is authorized to process a waiver under 2 CFR 176.120(a) if "the need for such determination otherwise was not reasonably foreseeable." EPA has further outlined this process in its April 28, 2009 memorandum: Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009" (the April 28 memorandum). Third, EPA has determined that the reason the City did not seek a waiver when they procured the foreign pipe was based on a mistaken interpretation of the international agreements provision of section 1605(d). However, at the time of that mistake, Bridgeport had done all due diligence in seeking a U.S.-made alternative and had developed all necessary information to support an availability waiver at that time. Fourth, EPA has determined, with the assistance of a technical review produced by its national contractor, that the documentation the City developed in the course of due diligence conducted at the time of that mistake and subsequent due diligence upon learning of the mistaken interpretation of section 1605(d) was sufficient to support both a determination by EPA that the City implemented the requirements of Section 1605 in good faith and the grant of a waiver by EPA. Fifth, EPA has determined under these circumstances that the need for such a waiver was not reasonably foreseeable. Therefore, under the authority of 2 CFR 176.120 and 176.130(c)(1), and as explained in the April 28 memorandum, EPA will process the waiver request as if it was requested in a timely manner. Sixth, EPA has determined that it would have evaluated a waiver request had the recipient applied for a waiver prior to using the foreign pipe in the ARRA project. EPA has determined that granting this waiver will serve the public interest because it avoids penalizing the City for the use of a non-U.S.-made good for which the City has sufficiently established that there were no U.S.-made alternatives. And, this determination takes into account the City's due diligence and good faith effort to implement the requirements of section 1605.

The non-compliant pipe was installed due to the City's pipeline materials supplier's (United Pipe & Supply) assumption and interpretation that the Canadian-manufactured pipe was acceptable under the North American Free Trade Agreement (NAFTA). The pipeline materials supplier, on behalf of the City, completed an unsuccessful search for a U.S. manufacturer that could meet the project specifications and timeline after the pipe was installed. The City's waiver request dated January 4, 2010, describes actions taken with regards to the attempted Buy American compliance by the applicant, consulting engineer, contractor, pipeline materials supplier, and EPA Region 10. The memorandum notes that "While an honest oversight was made by the supplier, it is apparent that not only could their domestic manufacturer not supply the material, but all other American companies were and are unable to do so".

A Canadian-manufactured 280 linear feet of large diameter 36″ PVC pipe was installed as part of the applicant's ARRA project between October 13, 2009 and December 3, 2009. Prior to the installation, United Pipe & Supply had intended to use pipe manufactured domestically and supplied by JM Eagle, based in Los Angeles, California. However, the specified pipe was unavailable and JM Eagle required an order of 5,000 linear feet of pipe to run production. Only 280 feet was needed for the project. JM Eagle was able to supply sun bleached pipe, but this option would not meet specifications for the project. United Pipe & Supply conducted its own search for domestic manufacturers. The pipeline material supplier contacted manufacturer representatives from five manufacturers: Vinyl Tech, Crestline, Royal Group, and IPEX, based in Phoenix, Arizona, Chehalis, Washington, Woodbridge, Ontario, and Toronto, Ontario, respectively. Only IPEX, in addition to JM Eagle, had the capacity to produce this specific large-diameter pipe, and only IPEX had the pipe in stock. The pipe was purchased from IPEX and installed prior to December 3, 2009. A subsequent request for a Buy American certification uncovered that the specific IPEX pipe was manufactured in Edmonton, Alberta, Canada. At that time, United Pipe & Supply believed that although the pipe was manufactured in Canada, it "would be an acceptable option under NAFTA," and that "the interpretation [that] the 'obligation' of the act did not apply since this project was under the threshold of the [$]7.443 million dollars." United Pipe & Supply was later informed by its attorney that it misunderstood the interaction between ARRA and NAFTA. EPA Region 10 asked the applicant to research "the domestic availability of this material and gather documentation." On December 29, 2009, United Pipe & Supply contacted IPEX, in addition to the three domestic suppliers JM Eagle, Diamond Plastics (Grand Island, Nebraska), and North American Pipe (Houston, Texas), to inquire about the general availability of the pipe. Diamond Plastics did not have the requested amount of pipe in stock and required a minimum order (approximately 4,000 feet) to run production. North American Pipe also did not have any in stock and would not produce such a limited amount of pipe. To confirm these findings on domestic suppliers, United Pipe & Supply contacted the Uni-Bell PVC Pipe Association, the North American association of PVC pipe manufacturers. A regional representative of the organization confirmed these findings.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided under section 1605(b) if EPA determines that: (1) applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

This ARRA-funded project involved installation of new PVC pipe used as a contact chamber in an effort to provide sufficient chlorination to the distribution system, thereby allowing the City to continue providing water disinfection to the consumers. A primary water supply well for the City

was shown to be hydraulically connected to the Columbia River and chlorination was required. Prior to installation of the Canadian-manufactured PVC pipe and completion of the proposed project, the distribution system configuration did not allow for sufficient chlorine contact time. Without the appropriate contact time, the disinfection process could not have been completed prior to water reaching the consumers. The project originally estimated the need for 340 linear feet of large diameter 36″ pipe to allow for ample and sufficient chlorine contact time to provide treatment and disinfection to the water however, after additional engineering analysis, it was noted that only 280 linear feet was needed for project specifications. EPA finds these considerations as stated by the City provide ample functional justification for their specification.

The April 28 memorandum defines "public interest" as those cases which possibly involve national implications of such a waiver. Based on additional research by EPA's consulting contractor (Cadmus), and to the best of the Region's knowledge at this time, the City attempted without success, to meet the Buy American requirements. Furthermore, the purpose of the ARRA provisions is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to revise their design or potentially choose a more costly and less effective project. The imposition of ARRA Buy American requirements on such projects eligible for DWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA; to create or retain jobs.

The Drinking Water Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to meet the following criteria listed under section 1605(b) and in the April 28 memorandum: Applying the Buy American requirements of ARRA would be inconsistent with the public interest.

The basis for this project waiver is the authorization provided in section 1605(b)(1), due to the lack of any U.S. production of what by industry's standards is a small amount (280 linear feet) of large diameter 36″ PVC pipe, in order to meet the City's design schedule and specifications. The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having reviewed all available documentation, statements, invoices, and related correspondence, EPA has established both a proper basis to specify the particular good required for this project, and that categorization of similar waiver requests from Gwinnett County, GA (granted 12/18/09) and Old Town, ME (granted 2/12/10) when the manufactured goods involved there had already been used in and incorporated into the ARRA project, that EPA has evaluated and considered the City's waiver request as of January 4, 2010 to be considered under section 1605(b)(1) authority for public interest waivers. The City is hereby granted a waiver from the Buy American requirements of section 1605(a) of Public Law 111–5 for the purchase of 280 linear feet of large diameter 36″ PVC pipe. This supplementary information constitutes the detailed written justification required by section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: May 25, 2010.

Dennis J. McLerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2010–13529 Filed 6–4–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 22, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Carlyle Financial Services Harbor, L.P., Washington, D.C.; CGFSP Coinvestment, L.P.; Carlyle Global Partner Master Coinvestment Cayman, L.P.; Carlyle Global Financial Services Partners, L.P.; TCG Financial Services, L.P.; Carlyle Financial Services, Ltd.; TC Group Cayman Investment Holdings, L.P.; TCG Holdings Cayman II, L.P.; DBD Cayman, Limited; TCG Financial Services Investment Holdings, L.P.; and Carlyle Financial Services Holdings, Ltd., all of Grand Cayman, Cayman Islands; Daniel A. D' Aniello; William E. Conway, Jr.; and David M. Rubenstein, all of Washington, D.C.; and Carlyle Investment Management, L.L.C.; TC Group, L.L.C.; and TCG Holdings, L.L.C., all of Wilmington, Delaware; to acquire voting shares of Hampton Roads Bankshares, Inc., Norfolk, Virginia, and thereby indirectly acquire voting shares of Shore Bank, Onley, Virginia.

Board of Governors of the Federal Reserve System, June 2, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–13541 Filed 6–4–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be

conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Jacksonville Bancorp, Inc., Jacksonville, Florida; to merge with Atlantic BancGroup, Inc., and thereby indirectly acquire Oceanside Bank, both of Jacksonville Beach, Florida.

Board of Governors of the Federal Reserve System, June 2, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–13543 Filed 6–4–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Industrial and Commercial Bank of China, Limited, Beijing, China; to acquire 100 percent of the voting shares of Strong City Securities, LLC, Newton, New Jersey, and thereby indirectly acquire voting shares of Fortis Securities LLC, New York, New York, and thereby engage in securities brokerage transactions, pursuant to section 225.28 (b)(7)(i), and in riskless principal transactions, pursuant to section 225.28(b)(7)(ii), both of Regulation Y.

Board of Governors of the Federal Reserve System, June 2, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–13542 Filed 6–4–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Medicaid Program: Proposed Implementation of Section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 for Adjustments to the Federal Medical Assistance Percentage for Medicaid Federal Matching Funds

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice with comment period.

SUMMARY: For purposes of Title XIX (Medicaid) of the Social Security Act, the Federal Medical Assistance Percentage (FMAP), defined in section 1905(b) of the Social Security Act, for each state beginning with fiscal year 2006 is subject to adjustment pursuant to section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3. Section 614 provides for a recalculation of the FMAP disregarding identifiable significantly disproportionate employer pension or insurance fund contributions for a state. These contributions, when counted, increase state personal income and, by operation of the statutory formula to calculate the FMAP, would decrease the FMAP for the state. This notice announces the proposed methodology that the U.S. Department of Health and Human Services will use to determine the need for, and amount of, any such recalculation of the FMAP for a state.

DATES: *Comment Date:* To be assured consideration, comment must be received at the address provided below, no later than 5 p.m. EST on July 7, 2010.

ADDRESSES: Because of staff and resource limitations, we can only accept comments by regular mail. You may mail written comments (one original and one copy) to the following address only: Department of Health and Human Services, Room 447D, *Attention:* FMAP Adjustment Notice—CHIPRA, 200 Independence Ave., SW., Washington, DC 20201.

Submitting Comments: We welcome comments from the public on all issues set forth in this notice with comment period to assist us in fully considering issues and developing policies. Please provide a reference to the section on which you choose to comment.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1905(b) of the Social Security Act defines the Federal Medical Assistance Percentage (FMAP), which is used to determine the share of federal matching funds paid to each state for medical assistance payments under an approved Medicaid State plan under Title XIX of the Social Security Act. These FMAP rates are also used to determine federal matching fund rates for state expenditures for assistance payments under certain social service programs under Title IV of the Social Security Act and for child health assistance expenditures under the Children's Health Insurance Program under title XXI of the Social Security Act. In other **Federal Register** issuances, we have addressed changes to these FMAP rates required under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

This notice addresses adjustments to the FMAP rates that are applicable only to the Medicaid program and required by Section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Section 614 specifies that certain significantly disproportionate employer pension or insurance fund contributions shall be disregarded when computing the per capita income used to calculate the FMAP. The statutory formula for calculating the FMAP is based on the ratio of the state's per capita income to the per capita income of the entire United States. Under this formula, states with higher per capita income levels could have lower FMAP rates than states with lower per capita income levels. Significantly disproportionate employer pension or insurance fund contributions increase state personal income and, by operation of the statutory formula, could result in lower FMAPs than if those contributions were disregarded. CHIPRA requires adjustments to the Fiscal Year 2006

(FY06) through Fiscal Year 2010 (FY10) Medicaid FMAP rates and to any future FMAP calculation.

B. Calculation of the FMAP Adjustment under CHIPRA

Section 614 of CHIPRA requires that the Title XIX Medicaid FMAP shall be adjusted for any states that had significantly disproportionate employer pension and insurance fund contributions. A significantly disproportionate employer contribution is defined as any identifiable employer contribution towards pension or other employee insurance funds that is estimated to accrue to residents of such state for a calendar year if the increase exceeds 25 percent of the total increase in state personal income. The personal income data set originally used in calculating FMAP rates shall be used for making this adjustment to the FMAP rates.

The required adjustment is a recalculation of the FMAP rate disregarding any significantly disproportionate employer pension or insurance fund contribution in computing the state per capita income, but not disregarding such contributions in computing the United States per capita income used in the FMAP calculation. Section 614(c) provides that in no case shall a state have its FMAP reduced because of the application of this disregard.

Section 614(b)(3) specifies a special adjustment for negative growth in state personal income. In that instance, for the purposes of calculating the FMAP for a calendar year, an employer pension and insurance fund contribution shall be disregarded to the extent that it exceeds 125 percent of the amount of employer contribution in the previous calendar year. The methodology to implement this provision will be addressed in a future **Federal Register** notice.

C. Methodology Utilized in the Calculation of the Adjustment to the Medicaid FMAP

This Notice announces the methodology that the U.S. Department of Health and Human Services (HHS) proposes to use in implementing the employer contribution disregard required by Section 614 of CHIPRA. The proposed approach reflects the absence of a federal source of reliable and timely data on pension and insurance contributions by individual employer and state.

We propose to identify significantly disproportionate employer pension or insurance contributions for a state by reviewing contributions identified by the state. We believe that states may have greater access to timely and relevant data on such contributions than is available from federal data sources. We would request that any state that believes an individual employer has made a significantly disproportionate employer or insurance contribution provide data on that individual employer contribution to HHS. The state may submit official audited financial statements for the employer for the year of the contribution (starting with the year 2003) and the prior year. If the state does not submit official audited financial statements for the employer, the state may submit other evidence that the increase in the employer's contribution is likely to exceed 25 percent of the increase in the state's personal income in that year.

After a state submits written notification that such a contribution occurred, HHS will verify the state's data. As part of this verification process, HHS will search the Security Exchange Commission (SEC) filings or the Internal Revenue Service (IRS) 5500 Annual Return/Report of Employee Benefit Plan database to find the employer's contributions for the relevant two-year period. If HHS is unable to verify the state's submitted data, no FMAP adjustment will be made after the state's data for an employer is verified, HHS will allocate employer contributions in both years to the state according to the methodology used by the Department of Commerce Bureau of Economic Analysis. Under that methodology, employer contributions to pension and insurance funds are distributed according to state wages and salaries by the employer's industry subsector. Then, HHS will determine whether the state increase in the employer contribution exceeds the trigger of 25 percent of the increase in total state personal income.

If the employer contribution is significantly disproportionate, HHS will disregard the state-allocated contribution, *i.e.*, subtract it from the state's personal income in that year. HHS will calculate the FMAP adjustment for the state using the revised state per capita income based on the newly calculated state personal income. Since the FMAP calculation involves the average per capita income for three years, the FMAP adjustment will be calculated for each fiscal year affected by the state's revised per capita income. For instance, a significantly disproportionate employer contribution in 2003 would affect the FMAPs for FY06 (based on state per capita income for calendar years 2001, 2002, and 2003), FY07 (based on state per capita income for calendar years 2002, 2003, and 2004), and FY08 (based on state per capita income for calendar years 2003, 2004, and 2005).

HHS will release a final Notice of the CHIPRA methodology after receipt and review of comments to this Notice. Following the release of the final Notice, states may submit data on disproportionate employer contributions made between 2003 and 2008 to HHS by the end of FY 2010. Future submissions of data shall be submitted by the end of the next fiscal year following the year end of the employer's annual financial statement that includes the disproportionate employer contribution.

To summarize this methodology, after receipt of a state submission, HHS will verify the employer contributions from SEC filings or IRS 5500 reports for the year of the contribution and the prior year. If the employer contributions are verified, HHS will allocate the employer contributions for the state for both years and determine whether the state increase in the employer contribution exceeds the trigger of 25 percent of the increase in the state's personal income. If the employer contribution meets the definition of significantly disproportionate by exceeding the trigger, HHS will recalculate the FMAP rates for the corresponding fiscal years. The Centers for Medicare & Medicaid Services (CMS) will then calculate the changes in federal medical assistance payments resulting from the adjusted FMAP rates for the state's applicable fiscal years. If HHS is unable to verify the state's submitted data, then no FMAP adjustment will be made.

In addition to comments on the proposed methodology, we request comments on how prevalent significantly disproportionate employer contributions to pension or insurance funds may be in a particular state or industry and whether a state may currently qualify for this adjustment.

Effective Dates: The adjusted percentages will be effective under title XIX of the Social Security Act for fiscal years 2006 and beyond, beginning October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Rose Chu or Thomas Musco, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

Dated: May 18, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–13680 Filed 6–4–10; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Improving the Therapeutic Effectiveness of Foreign Proteins

Description of Invention: Foreign proteins are recognized by the immune system, which typically responds by creating neutralizing antibodies to the foreign protein. While this is helpful in response to an infection or the administration of a vaccine, it is troublesome when foreign proteins are administered for the treatment of disease in a non-vaccine capacity (*e.g.,* an immunotoxin, therapeutic antibody, protein replacement therapy, etc.). These neutralizing antibodies decrease the therapeutic effectiveness of the protein, ultimately resulting in the inability to administer the foreign protein to a patient with any benefit. Thus, if a particular disease requires multiple administrations, the chance of achieving a successful response with the foreign protein becomes unlikely.

A particular instance where neutralizing antibodies have reduced therapeutic effectiveness is the use of immunotoxins for treatment of cancer. Immunotoxins comprise an antibody domain for targeting a surface antigen on a cancer cell and a toxin domain that is capable of killing the targeted cell. The toxin domain is typically a modified form of a bacterial toxin, such as Pseudomonas exotoxin A, and is therefore recognized as a foreign protein by the patient's immune system. Although immunotoxins have an initial therapeutic effect, the effectiveness is ultimately mitigated by neutralizing antibodies against the toxin domain of the immunotoxin. Thus there is a clear need to reduce the formation of neutralizing antibodies in patients who are administered a foreign protein like an immunotoxin.

This technology addresses this need by reducing the formation of neutralizing antibodies through the co-administration of the immunosuppressive agent CP–690,550 with a therapeutic foreign protein. Specifically, the inventors found that co-administering CP–690,550 and an immunotoxin to a mouse model reduced the production of neutralizing antibodies to the immunotoxin. These results suggest that the use of CP–690,550 in combination with any foreign protein therapeutic could allow multiple cycles of therapy and result in improved therapeutic efficacy.

Applications:

- Improved efficacy of treatments that utilize the foreign proteins that can be neutralized by patient immune systems.
- Administration of CP–690,550 with an immunotoxin, for the treatment of cancers such as mesothelioma, lung cancer, leukemia, lymphoma, ovarian cancer, etc.

Advantages:

- Broad applicability to any treatment where a foreign protein is used as a therapeutic agent.
- Overcomes a persistent challenge to the use of protein biologics as therapeutics.
- Reduction of the immune response by a patient reduces the production of neutralizing antibodies, increasing the success rate of the treatment.
- Fewer neutralizing antibodies increases the duration in which a foreign protein can achieve a therapeutic concentration.
- Fewer neutralizing antibodies also allows multiple rounds of effective administration of the foreign protein.
- Longer duration for a therapeutic concentration and the ability to administer multiple doses increase the chances of a therapeutic response.

Development Status: Preclinical stage of development; preliminary mouse model data.

Inventors: David J. FitzGerald (NCI) *et al.*

Patent Status: U.S. Provisional Application No. 61/304,293 (E–082–2010/0–US–01).

For more information, see:

1. Pastan *et al.* PCT Publication WO 2009/032954 "Deletions in Domain II of Pseudomonas Exotoxin A that Reduce Non-Specific Toxicity."
2. Pastan *et al.* U.S. Patent Publication 2009/0142341 "Mutated Pseudomonas Exotoxins with Reduced Antigenicity."
3. Changelian *et al.* Science 2003 Oct 31;302(5646):875–878. "Prevention of organ allograft rejection by a specific Janus kinase 3 inhibitor." [PubMed: 14593182].
4. Pastan *et al.* U.S. Patent 7,355,012 "Mutated Anti-CD22 Antibodies with Increased Affinity to CD22 Expressing Leukemia Cells."

Licensing Status: Available for licensing.

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Laboratory of Molecular Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, PhD at 301–435–3131 or *hewesj@mail.nih.gov* for more information.

Parkin and PINK1-Based Therapies for Parkinson's Disease and Other Mitochondrial Diseases

Description of Invention: This technology provides methods for treating Parkinson's disease and other diseases associated with mitochondrial dysfunction.

Mutations in mitochondrial DNA (mtDNA) are responsible for a broad spectrum of inherited diseases, with symptoms that can range from mild to very severe. Accumulated mutations in mtDNA have also been linked to the pathogenesis of common diseases such as cancer, diabetes mellitus, and neurodegenerative disorders. In Parkinson's disease, for example, the accumulation of defective mitochondria appears to be responsible for the loss of midbrain neurons that produce dopamine neurotransmitter, which is a key feature of this disease.

In their recent work, Dr. Richard Youle and co-investigators have linked the fields of mitochondrial quality control and the genetics of Parkinson's disease. They have discovered that the Parkin protein is selectively recruited to damaged mitochondria, and promotes autophagic degradation of these mitochondria; ablation of Parkin increases levels of damaged mitochondria in cells. They have also discovered that another protein associated with mitochondrial disease,

the mitochondrial PTEN-induced kinase-1 (PINK1), accumulates on the surface on damaged mitochondria, and that the presence of full-length PINK1 is necessary and sufficient for Parkin recruitment to the mitochondria. Thus, both Parkin and PINK1 play specific and important roles in mitochondrial quality control and disposal.

This technology describes methods of treating Parkinson's disease or other mitochondrial diseases such as KSS (Kearns Sayre syndrome), MERRF (Myoclonus epilepsy ragged-red fibers), MELAS (mitochondrial encephalomyopathy, lactic acidosis and stroke-like episodes), NARP (Neuropathy ataxia, retinitis pigmentosa), and LHON (Leber hereditary optic neuropathy) by increasing PINK1 or Parkin expression or activity, as well as methods of reducing the number of defective mitochondria in a cell by increasing PINK1 or Parkin expression or activity.

Applications:

• Development of therapies for Parkinson's disease and other diseases associated with mitochondrial dysfunction.

• Development of individualized treatment regimens for mitochondrial diseases through *ex vivo* or *in vitro* testing of candidate drugs.

Inventors: Richard J. Youle *et al.* (NINDS).

Related Publications:

1. A Abeliovich. Parkinson's disease: Mitochondrial damage control. News and Views, Nature 2010 Feb 11:463:744–745. [PubMed: 20148026].

2. D Narendra *et al.* PINK1 is selectively stabilized on impaired mitochondria to activate Parkin. PLoS Biol. 2010 Jan 26;8(1):e1000298. [PubMed: 20126261].

3. D Narendra *et al.* Parkin-induced mitophagy in the pathogenesis of Parkinson disease. Autophagy. 2009 Jul;5(5):706–708. [PubMed: 19377297].

4. D Narendra *et al.* Parkin is recruited selectively to impaired mitochondria and promotes their autophagy. J Cell Biol. 2008 Dec 1;183(5):795–803. [PubMed: 19029340].

Patent Status: U.S. Provisional Application No. 61/256,601 filed 30 Oct 2009 (HHS Reference No. E–225–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Tara Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Neurological Disorders and Stroke is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize methods of treating mitochondrial diseases by increasing PINK1 or Parkin expression or activity. Please contact Dr. Martha Lubet at 301–435–3120 or *lubetm@mail.nih.gov* for more information.

A Highly Sensitive ELISA for Detection of Serum Levels of Soluble IL-15 Receptor Alpha

Description of Invention: The invention is an ELISA based assay that can be used in the clinical setting to detect the presence of soluble human IL-15 receptor (IL-15R) in the serum or plasma.

Interleukin-15 (IL-15), a cytokine has potential as an immunotherapeutic agent for cancer treatment because it is a critical factor for the proliferation and activation of natural killer (NK) and CD8+ T-cells.

In addition to studies directed toward augmenting IL-15 action to increase patient immune responses to their tumor, IL-15R alpha play a pathogenic role in leukemia and autoimmune disorders. IL-15 and IL-15R alpha are coexpressed in association with a number of autoimmune disorders including rheumatoid arthritis, psoriasis, inflammatory bowel disease, multiple sclerosis, chronic liver disease, and refractory celiac syndrome including that disease associated with the development of enteropathy associated CD8 T-cell lymphoma. An assay for the released serum form of IL-15R alpha is required to evaluate these IL-15R alpha inducing agents.

Applications:

• The assay has the potential of being a commercial assay for clinical use to detect soluble human IL-15R alpha (sIL-15R alpha) in serum or plasma.

• The assay will help in predicting the efficacy of IL-15-based therapies since high levels of IL-15R are thought to be necessary to optimize the therapeutic effects of IL-15.

• The assay can be used to identify patients who can be good candidates for IL-15 therapy.

• The assay may also help clinicians identify patients susceptible to diseases associated with disorders of IL-15R expression.

Advantages:

• The assay is in the industry accepted ELISA format.

• This non-radioactive ELISA assay has a sensitivity of 1pg/ml that is significantly more sensitive than the current industry detection level of 20 pg/ml.

Development Status: Developed at the proof-of concept level and laboratory setting. Clinical validation of the assay is currently being planned.

Market: The assay can be used in the clinical setting to detect very low levels of IL-15R alpha in the serum or plasma of patients.

IL-15R alpha disorders have been demonstrated in leukemia and autoimmune disorders such as rheumatoid arthritis, multiple sclerosis, celiac disease, and psoriasis as well as those with disorders associated with the retrovirus, HTLV-I. Additionally, select lymphomas express IL-15R alpha.

Inventors: Thomas A. Waldmann and Jing Chen (NCI).

Related Publication: Waldmann TA. The biology of interleukin-2 and interleukin-15: Implications for cancer therapy and vaccine design. Nat Rev Immunol. 2006 Aug;6(8):595–601. [PubMed: 16868550].

Patent Status:

• U.S. Provisional Application No. 61/241,265 filed 10 Sep 2009 (HHS Reference No. E–079–2009/0–US–01).

• U.S. Provisional Application No. 61/242,595 filed 10 Sep 2009 (HHS Reference No. E–079–2009/1–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Sabarni Chatterjee, PhD; 301–435–5587; *chatterjeesa@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Metabolism Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, PhD at 301–435–3131 or *hewesj@mail.nih.gov* for more information.

Dated: June 1, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–13606 Filed 6–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of

federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Software System for Analysis of Extremely Large Experimental Dataset and Multidimensional Drug Discovery

Description of Invention: This invention is a computer software suite that will enable its user to investigate extremely large experimental datasets in a simple yet multidimensional manner. The software, *Omnimorph,* allows multidimensional investigation of any form of data including experimental datasets in biomedical science using either gene arrays or proteomics. *Omnimorph* allows the user to look for extremely subtle correlated differences between experimental datasets which will allow the investigator to discover far more drug- or disease-specific factors than other analytical methods currently used. The software of present invention has been employed in the targeted discovery of G protein-independent receptor-based pharmacotherapeutics. These discoveries represent an entirely new GPCR-based G protein-independent pharmacopeia. Therefore, the *Omnimorph* is not only newly developed software, but the *Omnimorph* suite can also be used as a simple and unbiased tool to detect novel and unexpected modes of GPCR-based drug actions. This could potentially alter the way drugs are developed and screened in the future.

Applications:

- Development and screen for pharmaceutical drugs.
- Biomedical research.

Development Status:

- The invention has been fully developed.
- The software will be readily available if so requested.

Inventors: Stuart R. Maudsley *et al.* (NIA).

Patent Status: HHS Reference No. E–143–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*; or Michael Shmilovich, Esq.; 301–435–5019; *ShmilovichM@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute on Aging, Laboratory of Neurosciences-Receptor Pharmacology Unit, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, PhD at 301–435–3131 or *hewesj@mail.nih.gov* for more information.

Sound Attenuation Canopy for Reducing Noise Transmitted Through Suspended Ceilings

Description of Invention: Available for licensing and commercial implementation in commercial facilities design and construction are intellectual property rights covering a sound attenuation canopy for reducing noise transmitted through suspended ceiling systems commonly used in most office buildings. The canopy is designed to absorb sound energy and effectively reduce the direct path of sound travelling within open plenum suspended ceilings like those used in most office building environments. The canopy can also act as an umbrella to shield loose debris and dust which may be located in the plenum and potentially fall when ceiling suspended return-air grilles are moved or accessed. The canopy has an added benefit of reducing heating or cooling loss which may naturally ventilate through the return air plenum grille from a conditioned office space below. Also, the canopy controls leakage of heating and cooling, reducing loads on the central building systems thereby lessening energy costs and extending the life-cycle of the building's physical plant.

The canopy does not impede natural air flow for ventilating the plenum cavity but deters the spread of smoke or fire between the plenum and the office space below. The canopy can also act as a secondary air balancer or K Factor balancer to equate supply and return air to control room temperature. The canopy is pliable and therefore allows for ease of adjustment within varying plenum conditions as well as readily installed in ceiling plenums.

Applications:

- Building design and construction.
- Sound attenuation.
- Energy load reduction.

Inventors: Judit A. Quasney, Franklin Koh, John P. Jenkins, Robert M. Alexander, Daniel P. O'Brien (NIAID).

Patent Status: U.S. Patent Application No. 12/764,872 filed 21 Apr 2010 (HHS Reference No. E–102–2010/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov*.

Dated: June 1, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–13597 Filed 6–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Task Force on Community Preventive Services

Name: Task Force on Community Preventive Services meeting.

Times and Dates: 8 a.m.–5:30 p.m. EST, June 16, 2010. 8 a.m.–1 p.m. EST, June, 17, 2010.

Place: Centers for Disease Control and Prevention, 2500 Century Center, Atlanta, GA 30329.

Status: Open to the public, limited only by space available.

Purpose: The mission of the Task Force is to develop and publish the *Guide to Community Preventive Services (Community Guide),* which is based on the best available scientific evidence and current expertise regarding essential public health and what works in the delivery of those services.

Matters to be discussed: (1) Updates of prior reviews on the following topics: Reducing Vaccine-Preventable Diseases; Increasing Screening for Breast, Cervical, and Colorectal Cancer.

(2) New reviews on: Immunization Information Systems; Collaborative Care for the Management of Depressive Disorders and Communication Campaigns with Product Distribution.

Agenda items are subject to change as priorities dictate.

Contact person or additional information: Freda Parker, Community Guide Branch, Centers for Disease Control and Prevention, 1600 Clifton Road, M/S E–69, Atlanta, GA 30333, phone: 404.498.1119.

Dated: May 28, 2010.

Tanja Popovic,

Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–13514 Filed 6–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; CTSA Renewal.

Date: October 13–14, 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: 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.*

(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: June 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13582 Filed 6–4–10; 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; NCRR SBIR2 Contract Review.

Date: June 30, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Executive Board Room, Bethesda, MD 20817.

Contact Person: Guo Zhang, PhD, MD, Scientific Review Administrator, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1064, MSC 4874, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel; Conference Grants 2010.

Date: July 15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, Bethesda, MD 20892, 301–435–0965.

Name of Committee: National Center for Research Resources Special Emphasis Panel.

Date: July 20, 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: Sheri A. Hild, PhD, Scientific Review Officer, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Blvd, Rm. 1082, Bethesda, MD 20892, 301–435–0811, *hildsa@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: June 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13579 Filed 6–4–10; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel.

Date: July 13, 2010.

Time: 1 p.m. to 2 p.m

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6701 Democracy Blvd., 1074, Bethesda, MD 20892.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, National Institutes of Health, National Center for Research Resources, Office of Review, Room 1074, 6701 Democracy Blvd., MSC 4874, Bethesda, MD 20892, 301–435–0965, *newmanla2@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: June 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13576 Filed 6–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 22 and 23, 2010, from 8 a.m. to 4:30 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College, 3501 University Boulevard East, Adelphi, MD. The conference center telephone number is 301–985–7300.

Contact Person: Kristine T. Khuc, c/o Melanie Whelan, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6100, Silver Spring, MD 20993–0002, FAX: 301–847–8737, to reach by telephone before June 8, 2010, please call 301–827–7001; to reach by telephone after June 8, 2010, please call 301 796–9001, e-mail: *Kristine.khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512529 and 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committees will discuss Risk Evaluation and Mitigation Strategies (REMS) for extended-release and long-acting opioid analgesics. As a part of the materials for the meeting, FDA anticipates presenting a proposal for a class-wide opioid REMS and will solicit feedback from the advisory committees and public on the components of that proposal. The need for adequate pain control is an element of good medical practice. In this context, some persons suffering from pain need access to potent opioid drug products; however, inappropriate prescribing, addiction, and death due to prescription opioid abuse and misuse have been increasing over the last decade.

FDA intends to make background material available to the public no later than 2 business days before the meeting. For this particular meeting, FDA anticipates that the briefing materials will not contain information that, under certain circumstances, could be considered exempt from public disclosure under the Freedom of Information Act. Therefore, FDA anticipates making the briefing materials available on our Web site no later than 2 weeks before the day the advisory committee meeting is scheduled to occur. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 8, 2010. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 9:15 a.m. on July 23, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 29, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 2, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristine T. Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–13535 Filed 6–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 15, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Paul Tran, c/o Melanie Whelan, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6100, Silver Spring, MD 20993–0002, FAX: 301–847–8737, to reach by telephone before June 8, 2010, please call 301–827–7001; to reach by telephone after June 8, 2010, please call 301–796–9001, e-mail: *Paul.Tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On July 15, 2010, the committee will discuss the safety and efficacy of new drug application (NDA) 22–580, proposed tradename QNEXA (phentermine/topiramate) Controlled Release Capsules, by VIVUS, Inc., as an adjunct to diet and exercise for weight management in patients with a body mass index of 30 kilograms (kg) per square meter, or a body mass index equal to or greater than 27 kg per square meter if accompanied by weight-related co-morbidities.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 30, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 22, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 23, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–13534 Filed 6–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Joint Meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Endocrinologic and Metabolic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 13, 2010, from 8 a.m. to 6 p.m. and on July 14, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Paul Tran, c/o Melanie Whelan, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6100, Silver Spring, MD 20993–0002, FAX: 301–847–8737, to reach by telephone before June 8, 2010, please call 301–827–7001; to reach by telephone after June 8, 2010, please call 301–796–9001, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512536 and 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On both days, the committees will focus primarily on the cardiovascular safety of AVANDIA (rosiglitazone maleate) Tablets, GlaxoSmithKline, a drug approved for blood glucose control in adults with type 2 diabetes mellitus. Data specific to rosiglitazone to be presented will include results from the Rosiglitazone Evaluated for Cardiac Outcome and Regulation of Glycemia in Diabetes (RECORD) Trial, observational data, health claims data, and a meta-analysis of controlled clinical trials. In addition, the FDA will present its meta-analysis of several trials of ACTOS (pioglitazone hydrochloride) Tablets, Takeda Pharmaceuticals North America, Inc., another thiazolidinedione for the same indication, in response to public documents comparing the safety of rosiglitazone to pioglitazone based on different meta-analyses performed on each of these two drugs.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the

location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 28, 2010. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 9:15 a.m. on July 14, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 18, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 21, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–13533 Filed 6–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Projects (SIPs): SIP 10–033, Innovative Approaches To Preventing Teen Pregnancy Among Underserved Populations and SIP 10–035, Impact of High School Start Times on the Health and Academic Performance of High School Students, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5:30 p.m., June 21, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "SIP 10–033, Innovative Approaches to Preventing Teen Pregnancy among Underserved Populations & SIP 10–035, Impact of High School Start Times on the Health and Academic Performance of High School Students."

Contact Person for More Information: Michelle Mathieson, Public Health Analyst, National Center for Chronic Disease and Health Promotion, Office of the Director, Extramural Research Program Office, CDC, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–3068, E-mail: *mth8@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 28, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–13518 Filed 6–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Projects (SIPs): Examining the Impact of Cognitive Impairment on Co-Occurring Chronic Conditions SIP 10–037 and Epidemiologic Follow-Up Study of Newly Diagnosed Epilepsy SIP 10–039, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8:30 a.m.–6 p.m., June 23, 2010 (Closed).

Place: W Hotel—Buckhead, 3377 Peachtree Road, NE., Atlanta, GA 30326, (678) 500–3100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Examining the Impact of Cognitive Impairment on Co-Occurring Chronic Conditions SIP 10–037 and Epidemiologic Follow-up Study of Newly Diagnosed Epilepsy SIP 10–039."

Contact Person for More Information: Michelle Mathieson, Public Health Analyst, National Center for Chronic Disease and Health Promotion, Office of the Director, Extramural Research Program Office, CDC, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–3068, E-mail: *mth8@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 28, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–13519 Filed 6–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey (NHANES) DNA Samples: Guidelines for Proposals To Use Samples and Cost Schedule

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Health and Nutrition Examination Survey (NHANES) is a program of periodic surveys conducted by the National Center for Health Statistics (NCHS) of the Centers for Disease Control and Prevention (CDC). Examination surveys conducted since 1960 by NCHS have provided national estimates of the health and nutritional status of the U.S. civilian non-institutionalized population. To add to the extensive amount of information collected for the purpose of describing the health of the population, DNA specimens were collected during three NHANES surveys. DNA is available in the form of crude lysates of cell lines derived from 7,159 participants enrolled in Phase II of NHANES III (1991–1994). In addition, DNA purified from whole blood is also available from 7,839 participants enrolled in the NHANES 1999–2002 and 4,615 participants enrolled in NHANES 2007–2008. All specimens (NHANES III, NHANES 1999–2002 and NHANES 2007–2008) were sent to the Division of Laboratory Sciences (DLS) at the National Center for Environmental Health (NCEH) for processing. DNA samples from these specimens are being made available to the research community for genetic analyses.

No funding is provided as part of this solicitation. NCHS will review proposals twice a year, in January and July. Proposals will be reviewed by a technical panel and by an internal Secondary Review Committee of senior CDC scientists. The Secondary Review Committee will perform a programmatic review based on the results of the technical review panel and consider the scientific and technical results from the first level of review, important programmatic considerations such as program priorities, program relevance, and other criteria germane to this announcement and to CDC. Projects approved by both reviews will be submitted to the NCHS Ethics Review Board for final approval.

Approved projects that do not obtain funding on their own will be canceled. A more complete description of this program follows.

DATES:

- *Submission of Proposals:* On January 1 and July 1 of each year.
- *Scientific Review:* 30 days after proposal submission date.
- *Secondary Review:* Approximately 30 days after Scientific review is complete.
- *Ethics Review Board:* Approximately 30 days after Secondary review is complete.
- *Notification of approval:* Approximately 30 days after ERB approval.
- *Anticipated distribution of samples:* Approximately 60 days after all approvals are obtained.

Note: Timeframe may vary depending on the nature of the proposal and the results of each level of review. Unforeseen circumstances could result in a change to this schedule.

ADDRESSES: To send comments and for information, contact: Geraldine McQuillan, PhD, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, Phone: 301–458–4371, Fax: 301–458–4028, E-Mail: *NHANESgenetics@cdc.gov.*

Authority: Sections 301, 306 and 308 of the Public Health Service Act (42 U.S.C. 241, 2421 and 242m).

SUPPLEMENTARY INFORMATION: The goals of NHANES are (1) To estimate the number and percentage of people in the U.S. population and designated subgroups with selected diseases and risk factors for those diseases; (2) to monitor trends in the prevalence, awareness, treatment and control of selected diseases; (3) to monitor trends in risk behaviors and environmental exposures; (4) to analyze risk factors for selected diseases; (5) to study the relation among diet, nutrition and health; (6) to explore emerging public health issues and new technologies; (7) to establish and maintain a national probability sample of baseline information on health and nutritional status.

The availability of the NHANES III DNA samples has been previously announced (Thursday, August 8, 2002 [67 FR 51585], Friday, January 13, 2006 [71 FR 22248]), Thursday, October 18, 2007 [72 FR 59094] and Thursday, September 3, 2009 [(74 FR 45644)]. NHANES III DNA samples are in the form of crude cell lysates available from the cell lines derived from samples obtained from Phase II (1991–1994) participants. DNA concentrations are unknown and vary between samples (*see* NHANES III DNA Samples section for a description).

Beginning in 1999, NHANES became a continuous, annual survey rather than a periodic survey. For a variety of reasons, including disclosure and reliability issues, the survey data are released on public use data files every two years. In addition to the analysis of data from any two year cycle, it is possible to combine two cycles to increase sample size and analytic options. Blood samples for DNA purification were collected from participants age 20 or more years in survey years 1999–2002 and 2007–2008. Purified DNA samples are available from these survey years in a single set from each survey cycle. DNA samples can be obtained and analyzed with survey data from the NHANES 1999–2000 or 2001–2002 or all four years combined (NHANES 1999–2002) and NHANES 2007–2008. The data release cycle for the NHANES during the period in which DNA specimens were collected is described as NHANES 1999–2000, NHANES 2001–2002 and NHANES 2007–2008.

See: http://www.cdc.gov/nchs/nhanes/nhanes99_00.htm, http://www.cdc.gov/nchs/nhanes/nhanes01-02.htm, http://www.cdc.gov/nchs/nhanes/nhanes2007-2008/nhanes07_08.htm for additional details.

Identifiable health information collected in the NHANES is kept in strictest confidence. During the informed consent process, survey participants are assured that data collected will be used only for stated purposes and will not be disclosed or released to others without the consent of the individual in accordance with section 308(d) of the Public Health Service Act (42 U.S.C. 242m). In NHANES 1999–2002 and 2007–2008, a separate consent form was signed by eligible participants who agreed to the storing of specimens for future genetic research. Only participants that consented specifically to future genetic research in 1999–2002 and 2007–2008 will be available for analyses. Genetic variation results will be linked to the requested information from the NHANES public use data file by the Division of Health and Nutrition Examination Surveys (DHANES) staff. All analyses must be done through an NCHS Research Data Center (RDC) approved mechanism to assure confidentiality.

Research Proposals Categories

Note that the following proposal categories differ from those used in

previous announcements for use of NHANES III DNA samples (Thursday, August 8, 2002 [67 FR 51585] and Friday, January 13, 2006 [71 FR 22248].

Category (A): Studies involving the typing of the complete set of NHANES DNA samples (NHANES III, 7,159 samples; NHANES 1999–2002, 7,839 samples; NHANES 2007–2008, 4,615 samples) for proposals that investigate specific research hypotheses that relate tests of selected genes and demographic or demographic and phenotypic data available from NHANES. This category is open for proposals for use of NHANES III, NHANES 1999–2002 and NHANES 2007–2008 samples. A total of ten full sets of samples for each survey will be available for any review cycle. The investigator will specify which DNA bank, NHANES III, NHANES 1999–2002 or 2007–2008, they are requesting as well as the genetic analyses to be conducted on the samples. The investigator will also include in the research protocol an analytic plan that includes a list of NHANES demographic and clinical variables that would be used for the data analyses. The researcher will conduct the genetic analyses of the approved variations on the samples that are labeled with a unique identification number that is not directly linkable to the public use file and therefore, anonymous to the researcher. To analyze these data with the NHANES public use data, the researcher will provide the genetic variation results with the identification numbers to the Division of Health and Nutrition Examination Surveys. The identification numbers will be matched to the requested variables from public use files data by DHANES staff for analyses that must be conducted through the NCHS RDC or its equivalent. Proposals are limited to the testing of 1,000 genetic variations or less. NCHS cannot guarantee that frequencies for all genetic variations can be published due to confidentiality concerns.

After the NCHS has completed the initial quality control assessment, researchers will be given up to six months to conduct a more comprehensive quality assurance review. The timeframe allowed for this review will depend on the number and characteristics of the genetic tests submitted. At the completion of this review, an announcement will be made to the public announcing the availability of the genetic variation results and the opportunity to link these results to other NHANES data for secondary data analysis. The list of currently available SNPs is available at: *http://www.cdc.gov/nchs/nhanes/genetics/genetic_types.htm.*

All samples will be distributed in complete sets of samples of 96 well plates. NHANES III DNA is in the form of crude cell lysates. There will be a total of 7,159 NHANES III samples distributed in a total of 75 plates with an additional four plates of quality control samples. There are 7,839 NHANES 1999–2002 purified DNA samples. These will be distributed into 82 plates with approximately five plates of quality control samples. There are 4,615 purified DNA samples available from NHANES 2007–2008. These will be distributed into 49 plates with approximately three plates of quality control samples.

Note: If the investigator would like to propose a subsample of the full set please contact the Program to discuss feasibility.

Category (B): Additional research using samples already obtained from previous solicitations: Researchers that have obtained NHANES DNA samples from previous solicitations and have sufficient DNA left may request to do additional tests on the remaining DNA. Proposals under this Category must be submitted and approved before the DNA samples were scheduled to be destroyed or returned. The investigator will specify the genetic analyses to be conducted on the samples. The investigator will also include in the research protocol an analytic plan that includes a list of demographic and clinical variables that would be used for the data analyses.

Category (C) Proposals involving whole-genome genotyping of DNA samples: All proposals for whole-genome genotyping of more than 1,000 genetic variations must provide funding for the testing to the NHANES program so that the testing can be done under an NHANES contract. If funding is available, CDC intends to provide whole genome-genotyping data from NHANES III and NHANES 1999–2002 samples. These data will be available for secondary data analysis.

NHANES III DNA Samples

The laboratory will distribute aliquots of crude cell lysates. DNA concentrations vary and are estimated to range from 7.5–65 ng/μL with an average of approximately four micrograms in 100 μL. Each 96 well plate will be bar-coded and labeled with a readable identifier. Quality control samples (approximately 384 samples) will be sent at no charge, either inserted with the NHANES samples or in separate plates, as blind replicates and/or blanks. Description of these samples and cost has been previously published *see:* (Friday, January 13, 2006 [71 FR 22248]).

NHANES 1999–2002 and 2007–2008 DNA Samples

The laboratory will distribute aliquots of purified DNA of normalized concentrations of 50 ng/μL whenever possible. Some samples may fall below this threshold. Forty microliters of each specimen will be supplied. The amount of DNA in each aliquot may vary but will be on average approximately two micrograms. Each 96 well plate will be bar-coded and labeled with a readable identifier. Quality control samples (NHANES 1999–2002, approximately 480 samples; NHANES 2007–2008, approximately 288 samples) will be sent at no charge, either inserted with the NHANES samples or in separate plates, as blind replicates and/or blanks.

Proposed Cost Schedule for Providing NHANES DNA Samples

Costs are determined both for NCEH and NCHS and include the physical materials needed to process the samples at the NCEH laboratory, as well as the materials to process the requests for samples at NCHS. These costs include salaries of the staff needed to conduct these activities at each Center. The fee is estimated to cover the costs of processing, handling, and preparing the samples. Technical panel travel and expenses are based on the panel meeting twice a year. The space estimate is based on acquiring storage and sample aliquoting space in the laboratory. The cost per samples for NHANES III samples is the same as published in 2006 (Friday, January 13, 2006 [71 FR 22248]) and the cost for NHANES 1999–2002 and NHANES 2007–2008 are the same as published in 2007 (Thursday, October 18, 2007 [72 FR 5904]).

Total costs	Cost per sample full set, 99–02 & 07–08	Cost per sample partial set, 99–02 & 07–08 (special request)	Cost per sample full set, NHANES III	Cost per sample partial set, NHANES III (special request)
Materials	$0.89	$2.19	$0.85	$1.90
Labor	4.60	25.30	3.30	22.00
Application review and other administrative expenses	0.54	3.09	0.35	2.69
Space	0.17	1.12	0.13	0.97
Subtotal	6.20	31.70	4.63	27.56
NCHS overhead (18 percent)	1.12	5.71	0.83	4.97
Subtotal	7.32	37.41	5.46	32.52
CDC/FMO overhead (0.9 percent)	0.66	3.37	0.49	2.93
Total sample cost per sample	7.98	40.78	5.95	35.45
Total cost per proposal	99–02: $63,555 07–08: $36,828	NA	42,596.36	NA
Total cost per Category B proposal: for data handling	99–02: $6,255 07–08: $3,683	[1]	4,260	[1]

[1] 10 percent of original cost of samples.

Procedures for Proposals

The investigator should follow these instructions for preparation of proposals. Once testing is complete the IRB protocol is closed and the project is transferred to the Research Data Center (RDC). The content of the IRB protocol becomes the RDC project description and the project is covered by the umbrella RDC IRB Protocol. Protocols must be written using the outline below. All proposal categories need a full research proposal for review. In addition to the cover page, the research proposal should contain the title of the research project, the name, address phone number and E-mail address of the lead investigator along with the name of the institution where the genotyping will be conducted, and the category of proposal (A, B or C) submitted. Office of Human Research Protections assurance numbers for the institutions engaged in the research project should be included. CDC investigators need to include their Scientific Ethics Verification Number. E-mail submission of the proposal is encouraged.

The proposals should be a maximum of 20 single-spaced typed pages, excluding figures and tables, using ten cpi type density. Please use appendices sparingly. If a proposal is approved, the title, specific aims, name, and phone number of the author will be maintained by NCHS and released if requested by the public. Unapproved proposals will be returned to the investigator and will not be maintained by NCHS.

Since the number of sets of DNA is limited, proposals will be reviewed by the technical panel and then will be reviewed by a secondary review panel composed of CDC officials. The technical panel will determine if the proposal is technically sound and if so, the technical panel will rank the proposal on a scale of 0–100. Proposals that are rejected will not be scored.

Applications will also be reviewed by an internal Secondary Review Committee which will perform a programmatic review based on the results of the peer review for technical merit. The Secondary Review Committee considers the scientific and technical merit results from the first level of review, important programmatic considerations such as program priorities, program relevance, and other criteria germane to this announcement and to CDC. The Secondary Review Panel will be comprised of senior CDC scientists. Approved proposal will then be reviewed by the CDC/NCHS Ethics Review Board (ERB) to ensure appropriate human subjects protections are provided, in compliance with 45 CFR 46.

Category A, B and C Proposals should include the following information:

(1) *Cover sheet:* See Example in Sample Proposal on *http://www.cdc.gov/rdc/B3Prosal/PP320.htm* Also include, the name of the institution where the genotyping will be conducted, which category, and Office of Human Research Protections assurance numbers for the institutions engaged in the research project should be included. Plus, CDC investigators need to include their Scientific Ethics Verification Number.

(2) *Abstract:* Please limit the abstract to 300 words.

(3) *Specific Aims:* List the broad objectives; describe concisely and realistically what the research is intended to accomplish, and state the specific hypotheses to be tested.

(4) *Background and Public Health Significance:* (A) Describe the public health significance of the proposed research. (B) Discuss how the results will be used. Analyses should be consistent with the NHANES mission to assess the health of the nation. The Panel will ensure that the proposed project does not go beyond either the general purpose for collecting the samples in the survey or the specific stated goals of the proposal.

(5) *Design, Method, and Output:* (A) *Research Design and Methods:* Describe the analytic and statistical methods to be employed. Include power calculations. For all proposal categories, include a detailed description of the laboratory methods. The characteristics of the laboratory assay, such as reliability, validity, should be included with appropriate references. The potential difficulties and limitations of the proposed procedures should also be discussed. Address adequate methods planned for handling and storage of samples. (1) Category A proposals will be provided with approximately 480 quality control samples at no additional cost. Approved projects must run these quality control samples and submit the results from the NHANES DNA samples. (2) Category B proposals will be required to use residual quality control samples. The proposal should contain a discussion of additional quality control procedures the laboratory will use to assure the validity of the test results. Address adequate methods planned for handling and storage of samples. (B). *Output:* Please describe any output that you would like to take out of the RDC: Please be detailed as this section helps

the Review Committee assess disclosure risk. Include detailed examples of table shells, models, and/or graphs. How will you present the results of this project? (C). *Data Dictionary:* Includes (1) NCHS Restricted Data Dictionary (2) NCHS Public Use Data Dictionary (3) Non-NCHS Data Dictionary *see: http://www.cdc.gov/rdc/B3Prosal/PP323.htm.* The appropriateness and adequacy of the methodology proposed to reach the research aims as well as the appropriateness of using the NHANES a complex, multistage probability sample of the national population, to address the goals of the proposal will be assessed.

(6) *Additional information for NHANES:* (A) *Discussion Regarding the Race/Ethnicity Variables:* If the research is limited to specific race or ethnic groups (only applicable for a subsample request) or if information about the race or ethnicity of the subjects is requested, indicate the reason for analyzing race/ethnicity and how the results will be interpreted. Discuss the potential for group harm. (B) *Clinical Relevance of Research Findings:* The samples under this Plan are available for genetic research, not genetic testing. Therefore, it is the intent of the program to approve only those proposals that would yield meaningful research, but not clinically relevant information for the participants. Researchers should justify that the test results should not be reported to the subjects. (C) *Period of Performance:* Specify the project period. The period may be up to three years. At the end of the project period, any unused samples must be returned to the NHANES DNA Specimen Bank in accordance with instructions from the Division of Environmental Laboratory Science. Extensions to the period of performance may be requested. (D) *Funding:* Include the source and status of the funding to perform the requested laboratory analysis. Investigators will be responsible for the cost of processing and shipping the samples (*See table*). Also, in general information for RDC.

(7) *References*

(8) *Résumés/CV:* Please include a 2-page CV for each member of the research team in this document (not as attachments).

Public Availability of Data

Genetic test results from all studies using NHANES DNA samples will be made available to the public for secondary data analyses. After the NCHS quality control review is completed, researchers will be given up to six months to conduct a more comprehensive quality assurance review. The final quality control review timeframe will be negotiated between the researcher and the NCHS Project Officer and will depend on the number and characteristics of the genetic tests submitted. This time for final review is provided before the announcement is made to the public that the test results are available for submission of proposals for secondary data analyses. The list of currently available genotypes will be outlined on: *http://www.cdc.gov/nchs/nhanes/genetics/genetic_types.htm.* Proposals for secondary data analyses linking NHANES public use data with genetic variation data will be reviewed by the Research Data Center on a rolling basis see: *http://www.cdc.gov/rdc/B3Prosal/PP320.htm* for proposal guidelines.

Requirements for the Inclusion of Women and Racial and Ethnic Minorities in Research

In NHANES III, NHANES 1999–2002, and NHANES 2007–2008 race/ethnicity was derived by combining responses to questions on race and Hispanic origin. For NHANES III, These categories are defined as non-Hispanic white, non-Hispanic black, or Mexican American. For NHANES 1999–2002, and NHANES 2007–2008, these categories are defined as non-Hispanic white, non-Hispanic black, Mexican American or Other Hispanics. Individuals who did not self-select into these categories were classified as "other". If proposal requests a subsample and excludes one or more race/ethnic groups or a gender, this exclusion must be justified.

CDC is also sensitive to the stigmatization of racial/ethnic specific populations through inappropriate reporting and interpretation of findings. For all proposals that request information on race/ethnicity for the samples selected, the investigator should discuss the reason for analyzing race/ethnicity, how the results will be interpreted, and the potential for group harm.

Submission of Proposals

Proposals can be submitted immediately. The review process will begin approximately 60 days from the publication of the notice and will include all proposals submitted as of that date.

Electronic submission of proposals is encouraged. Please submit proposals to: Geraldine McQuillan, PhD, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, Phone: 301–458–4840, Fax: 301–458–4028 E-Mail: *NHANESgenetics@cdc.gov.*

Approved Proposals

The genetic results will be sent back to NCHS so they can be linked to the requested NHANES III, NHANES 1999–2002 or NHANES 2007–2008 public use data. Analysis will be done in the Research Data Center.

Agency Agreement

A formal signed agreement in the form of a Materials Transfer Agreement (MTA) with individuals who have projects approved and funding has been secured will be completed before the release of the samples. This agreement will contain the conditions for use of the DNA as stated in this document and as agreed upon by the investigators and CDC. A key component of this agreement is that no attempt will be made to link the results of the proposed research to any other data, including, but not limited to, the NHANES public use data sets outside the Research Data Center. Also, the investigator agrees that the samples cannot be used for commercial purposes. A list of genes generated from the testing of the NHANES samples will be made available to the public for potential solicitation of proposals for secondary data analysis after the quality control process has been completed (approximately six months after NCHS receives the genetic variation results). These secondary data analysis proposals must also be reviewed by the ERB.

Progress Reports

A progress report will be submitted annually. CDC/NCHS/ERB continuation reports are also required annually if testing is not completed within a year. An ERB continuation form will be sent to the researcher each year for project update.

Termination of ERB Protocol

At the end of laboratory testing the Ethics Review Board Protocol will be closed. All data analysis will be conducted through the NCHS Research Data Center (RDC). For secondary data analysis project an analytic plan must be submitted to the RDC to set up the analytic data set. *See: http://www.cdc.gov/nchs/r&d/rdc.htm* for guidelines.

Disposition of Results and Samples

No DNA samples provided can be used for any purpose other than those specifically requested in the proposal and approved by the Genetics Technical Panel, the Secondary Review Committee and the NHANES ERB. No sample can be shared with others, including other investigators, unless specified in the proposal and so approved. Any unused

samples must be returned upon completion of the approved project. These results, once returned to NCHS and quality controlled, will be part of the public domain. Genetic test results from all studies using NHANES DNA samples will be made available to the public for secondary data analyses. After the NCHS quality control review is completed, researchers will be given up to six months to conduct a more comprehensive quality assurance review. The final quality control review timeframe will be negotiated between the researcher and the NCHS Project Officer and will depend on the number and characteristics of the genetic tests submitted. Data analyses will be conducted at the NCHS' Research Data Center or similar environment provided by NCHS. Proposals for secondary data analyses are accepted on a rolling basis (*http://www.cdc.gov/nchs/nhanes/genetics/genetic_types.htm*).

Send Requests for Information

Geraldine McQuillan, PhD, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, Phone: 301–458–4371, Fax: 301–458–4028, E-Mail: *NHANESgenetics@cdc.gov.*

Dated: May 24, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–13517 Filed 6–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Procedures and Costs for Use of the Research Data Center

AGENCY: National Center for Health Statistics, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and request for comments.

Authority: Section 306 of the Public Health Service Act, as amended (42 U.S.C. 242k) and Public Law 103–333.

SUMMARY: This notice provides information about the Research Data Center (RDC) operated by the National Center for Health Statistics (NCHS) within the Centers for Disease Control and Prevention (CDC). The Research Data Center was established in 1998 to provide a mechanism whereby researchers can access detailed data files in a secure environment, without jeopardizing the confidentiality of respondents. Historically, the data files accessed in the RDC have consisted of NCHS survey data and vital statistics. RDC has recently begun accepting data files that were not produced from NCHS survey data. In order to assure that all data files are processed in a consistent manner, the original guidelines for accessing files in the RDC are being reviewed and revised as necessary. As part of the revision process, potential users are being given the opportunity to provide input on how the procedures of the RDC can best serve their research needs. This notice describes how to submit proposals requesting use of the data, mechanisms to access the RDC, requirements, use of outside data sets, costs for using the RDC, and other pertinent topics. We are seeking comments on these procedures and will post the final procedures on the NCHS Web site.

ADDRESSES: Send comments concerning this notice to Peter Meyer, National Center for Health Statistics, 3311 Toledo Road, Room 4113, Hyattsville, MD 20782, or e-mail to *pmeyer1@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Meyer, telephone 301–458–4375.

SUPPLEMENTARY INFORMATION:

Operational Procedures for Use of the Research Data Center; National Center for Health Statistics; Centers for Disease Control and Prevention

Table of Contents

Background
Methods of Access to Data
Submission of Research Proposals Using NCHS Data
Proposal Review
Researcher Supplied Data
General Procedures for Onsite Access
General Procedures for Remote Access
Confidentiality and Human Subjects Protection
Disclosure Review Process
Costs for Using the RDC

National Center for Health Statistics Research Data Center Procedures

Background

The National Center for Health Statistics (NCHS) releases and hosts a range of statistical data products on the health and well-being of the nation and its health care system. Statistical tabulations (tables) present data in predetermined categories such as age, race, sex or geographic region that are important to describe health status and trends. In addition, statistical microdata containing health and related variables are published so that outside analysts may conduct original research and special studies to address issues of public health science and policy. Section 308 (d) of the Public Health Service Act and the NCHS Staff Manual on Confidentiality do not permit the release of data that are either identified or identifiable to persons outside of NCHS. In order to preserve privacy and confidentiality, details that might identify or facilitate the identification of persons and entities participating in NCHS surveys and data systems either owned or hosted by NCHS are not released in published data products. Examples of data elements that might be abridged or suppressed to prevent reidentification are geographic identifiers, genetic data, details of sample design, and variables such as age or income that might exist in other databases.

Despite the wide dissemination of NCHS data through publications, Web releases, etc., the inability to release files with these sensitive variables limits the utility of NCHS data for research, policy, and programmatic purposes and sets a boundary on one of the Department of Health and Human Service's goals: to increase our capacity to provide state and local area estimates. In pursuit of this goal and in response to the public research community's interest in restricted data, NCHS established the NCHS Research Data Centers (RDCs), a place where Guest Researchers can access detailed data files in a secure environment, without jeopardizing the confidentiality of respondents. Access for Guest Researchers is regulated by the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) and other Federal statutes. The RDCs provide restricted access to NCHS data and non-NCHS data. Guest Researchers function under the supervision of NCHS employees and are subject to the same provisions of law with regard to confidentiality as NCHS employees. Instructions for developing a research proposal can be found in Appendix II. Special requirements for use of non-NCHS data can be found in Appendix III, Project-Specific Requirements.

Methods to Access Data

Restricted NCHS data or data hosted by NCHS can be made accessible through the RDC. To gain access to these data, Guest Researchers must submit a proposal for review and approval. Once the proposal is approved, Guest Researchers meeting certain criteria are allowed access, under strict supervision, to restricted statistical microdata file(s). There are four modes of access: (1)

NCHS RDC, (2) Remote Access System, (3) Census RDC, (4) Staff-Assisted.

1. *NCHS RDC*—Guest Researchers conduct their research on-site at one of the NCHS RDCs. The NCHS RDCs are secure research facilities located at NCHS headquarters in Hyattsville, MD and at the Centers for Disease Control and Prevention in Atlanta, GA, where Guest Researchers meeting certain criteria are allowed access, under strict supervision, to restricted statistical microdata file(s). The NCHS RDC workstations are "stand alone" and have no link to the NCHS network, the CDC–NCHS mainframe, or the internet. There is sufficient storage on the workstations. PC–SAS, SUDAAN, and STATA are installed on the workstations and additional programming/analytic languages can be added as needed. Drives on the workstations for removable media such as USB ports are configured so as to be inaccessible to users. The workstations are configured such that users are given read only access to requested data files and can write only onto the local workstation's hard drive. These restrictions ensure that users cannot remove information that has not been subjected to a review for confidentiality. Guest Researchers are able to take the results of their analyses off-site only after disclosure review by an NCHS RDC Analyst.

2. *Remote Access*—Through remote access Guest Researchers are able to electronically submit analytical computer programs using SAS and SUDAAN. After their proposals are approved, Guest Researchers are registered with the RDC remote access system and are required to accept the procedures and programming limitations to be followed in accessing data. For example, users cannot use PROC TABULATE or PROC IML, nor are functions allowed that are capable of producing listings of individual cases such as LIST and PRINT. Additionally, functions which may select individual cases are not allowed (R_, FIRST., LAST., and others). Guest Researchers send programs to, and receive output from, the remote system through a secure communication network. Their programs execute on a computer in the RDC. Both submitted programs and output are subjected to a programmed disclosure review and may also be subjected to a manual review. For example, the output is scanned for cells containing less than five observations. If any are found, not only is that cell suppressed, but several additional cells will also be suppressed (complementary suppression). The .log file is also scanned with particular attention to certain types of error conditions that may spawn case listings. Some projects are not suitable for the remote access method. Researchers should consider the programming limitations of the remote access system when choosing this method of access. However, the data stewards and RDC staff may also deem the project inappropriate for remote access during the review process.

3. *Census RDC*—Guest Researchers can have the same access that is available to them at NCHS at one of the Census RDCs. Analytic data sets are constructed at the NCHS RDC according to specifications included in the research proposal and are then securely transferred to the Census data processing facility in Bowie, Maryland. Users can then view the data using "front end dumb terminals" at a Census RDC. The data do not leave the Bowie facility. The Guest Researcher's output is sent via a secure communication network to RDC staff for disclosure review. Once the output has been approved for release, it is sent via email to the Guest Researcher. A listing of available Census RDC locations can be found here: *http://webserver02.ces.census.gov/index.php/ces/researchlocations.*

4. *RDC Staff-Assisted Research*—This is mainly useful for those planning to use statistical software programming languages other than SAS or who are not able to travel to the RDC facility. Under this method, an approved researcher e-mails a statistical software program to the assigned RDC Analyst who runs the program and, after disclosure review, provides the output to the researcher via a secure communication network. More extensive programming services are also available.

Each of the access modes has an associated cost which offset equipment, space rental, and staff overhead. The staff overhead includes the time and resources necessary for creating the analytical file, monitoring progress, setting up equipment and data files, disclosure limitation review, and file management. Since these reflect varying demands on resources, accurate cost estimates cannot be given without complete knowledge of the proposed research.

Submission of Research Proposals Using NCHS Data

To access restricted data through the RDC, researchers must first submit a proposal. The proposal serves four main purposes:

1. To make sure that researchers have a defined research question.

2. To determine what restricted variables are needed to complete the project.

3. To assess disclosure risk based on the types of output and requested restricted variables.

4. To determine the mode of access and the required software.

Researchers must submit proposals that are detailed enough in their data specifications to permit RDC staff to easily determine what data elements are required. Prospective researchers are encouraged to check with RDC staff prior to writing their proposals to ensure that the data of interest can be made available to them. Researchers should develop their proposals in a way that facilitates the ability of the RDC staff to create the analytic files required by the project. Proposals should be explicit regarding the variables needed as well as any case selection required. Only those data items required to conduct the proposed analyses will be included in the analytic data file and the proposals should address why the requested data are needed for the proposed study. Overly large and complex projects, or poorly defined projects will require extensive communication between RDC staff and the researchers proposing the project, and this can cause the process to move slowly. The RDC allows researchers to supply external sources of data to be merged with RDC data. These external sources of data supplied by the researcher may consist of proprietary data collected and "owned" by the researcher or other publicly available data obtained by the researcher such as Census data.

Proposal Review

Upon receipt, the RDC Director will assign the proposal to an RDC Analyst who will review the proposal for completeness and feasibility. Then the RDC Analyst will distribute the proposal to the Review Committee which consists of (at minimum) the Director of the NCHS RDC, the RDC Analyst, the NCHS Confidentiality Officer, and a representative of the data producing program. The review takes 6–8 weeks.

The following criteria apply to proposal review:

1. Risk of disclosure of restricted information.

2. Appropriate use of the data and concurrence with the intended use for which it was collected. Including assurance that the use of the data is in accordance with the informed consent procedures associated with the collection of the data.

3. Scientific and technical feasibility of the project.

4. Availability of resources at the RDCs.

For projects using NCHS data, whether the proposed project is in accordance with the mission of the NCHS "* * * to provide statistical information that will guide actions and policies to improve the health of the American people."

The Review Committee can make one of three decisions: approve, revise/resubmit, or disapprove. Guest Researchers should note that approval of their application does not constitute endorsement by NCHS of the substantive, methodological, theoretical, or policy relevance or merit of the proposed research. Rather, NCHS approval constitutes a judgment that this research, as described in the application, is not an illegal or unethical use (as determined by the informed consent and original reason for collecting the data) of the requested data file and does not jeopardize the confidentiality of the data. Approval of a proposal does not explicitly or implicitly guarantee that all output generated by the analysis will be released. Output that poses a disclosure risk will be suppressed.

Researcher Supplied Data

The Guest Researcher may supply two types of data: (1) Publically available NCHS data and (2) external non-NCHS sources of data. Researchers must supply these data at prior to when they intend to access it, regardless of method. The RDC Analyst will accept Guest Researcher data files in SAS, STATA, or ASCII format (flat files) with variables either column delimited or column specific. Other formats may also be proposed. The merging of Guest Researcher-supplied data with NCHS in-house data will be done by an NCHS RDC Analyst prior to the arrival of the Guest Researcher. Depending on the variables used to merge the data, they may or may not be removed from the final analytical data set. For instance, if state and county are used to add Census variables to an NCHS data set, state and county will be removed after the merge unless otherwise specified.

Most projects involving NCHS data will require the Guest Researcher to download the public files from the internet and create an extract that includes only the variables required for this project. There are a few exceptions that the RDC Analyst will discuss as needed with the Guest Researcher.

- The public-use file can only include those variables required for analysis. Please do not send the entire public-use files.
- Original NCHS Variables must have the name they are given in the public-use data set. If the Guest Researcher wants to rename the variables, please include the original variable name in the variable description.
- Derived Variables must be labeled with the variables from which they were derived and any arithmetic manipulation must be explained.
- Public-Use Mortality Variables: Please do not include any public-use mortality variables or variables derived from the public-use mortality data if the project involves restricted mortality variables.
- Any attempt to include variables that may lead to re-identification of subjects or establishments is considered a disclosure violation and will result in the cessation of your project and possible legal actions.

The non-NCHS data may consist of proprietary data collected and owned by the Guest Researcher or other publicly available data obtained such as Census data. Guest Researchers are responsible for interacting with RDC Analyst to ensure that their data can be merged with the NCHS supplied data and the format of the data is consistent with it. Guest Researchers are also responsible for ensuring that the data they provided has been consented for merging.

The RDC may retain copies of datasets but they will not be made available to anyone other than the Guest Researcher without written permission.

General Procedures for Onsite Access

1. Guest Researchers may work at the NCHS RDCs only under supervision of RDC staff and only during normal working hours (Monday-Friday, 9:00 a.m.–5:00 p.m.). Admittance to the RDC is limited to the Guest Researchers included in the Research Proposal. Guest Researchers are required to show photo identification before admittance. A maximum of 3 collaborating Guest Researchers can sit at a computer station in the RDC.

2. Computers will be pre-loaded with the approved datasets by NCHS staff approximately one day prior to the Guest Researcher's use of the RDC. Once the analysis is completed, the RDC Analyst will remove the datasets from the RDC computer. The data will be hosted on the RDC internal system for one year after the last time it was accessed by the Guest Researcher.

3. Guest Researchers must be able to conduct their analysis with the software specified in their research proposal.

4. Guest Researchers are not allowed to bring documents, manuals, books, etc., that may enable them to identify and disclose confidential information they access in the RDC. Neither are they allowed to bring cell phones, pagers, or other devices into the RDC which would enable them to communicate with persons outside of the RDC.

5. All computer output generated by statistical programs and all handwritten notes based on such computer output are subject to disclosure review by NCHS staff before removal from the RDC.

6. Guest Researchers may not save output, files, or programs to transportable electronic media. RDC staff may copy output or programs to transportable media, if requested.

7. Guest Researchers' analytic data set will be specified thoroughly in the research proposal. The analytic data set for a project may include multiple cycles of a survey or variables from multiple sources. Under no circumstance will Guest Researchers be permitted any opportunity to merge datasets on their own.

General Procedures for Remote Access

1. Guest Researchers must register an email address that is credibly secure.

2. Data requests must be in the form of SAS programs. However, certain SAS commands/statements are not allowed through remote access.

3. The remote access system does not allow users to write permanent datasets in its disk space. Jobs that attempt to create permanent datasets or files are flagged, terminated, and an error message is sent to the Guest Researcher.

4. The remote access system limits Guest Researchers' time and storage. No single program is allowed more than one hour to complete execution or to generate output in excess of 5 MB.

5. Guest Researchers should contact their RDC Analyst immediately if they have inadvertently produced output that could be used to identify subjects/respondents or if they cannot complete their analysis due to automated disclosure protocols. The RDC Analyst will provide reasonable assistance in completing the analysis while still protecting confidentiality.

Confidentiality and Human Subjects Protection

In order to access restricted data files in the RDC, Guest Researchers must sign an NCHS Designated Agent Agreement (Appendix IV), the Agreement Regarding Conditions of Access to Confidential Data in the Research Data Center of the National Center for Health Statistics (Appendix V), and the Researcher Affidavit of Confidentiality (Appendix VI). All members of the

research team that work directly with the data must sign these forms. NCHS reserves the right to terminate any project at any time if it deems that an investigator's actions may compromise confidentiality, the ethical standards of behavior in a research environment, and/or protocols developed by NCHS to protect the data itself. The Guest Researcher may also be barred from future use of the RDCs.

As mentioned earlier, confidentiality protection at NCHS is governed by Section 308(d) of the Public Health Service Act, PHSA, and (42 U.S.C. 242m). Specifically,

> No information, if an establishment or person supplying the information or described in it is identified, obtained in the course of activities undertaken or supported under Sections 304, 305, 306, 307, or 309 may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose and (1) in the case of information obtained in the course of health, statistical or epidemiological activities under Section 304 or 306, such information may not be published or released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulations of the Secretary) to its publication or release in other form * * *

Having read and familiarized themselves with the Designated Agent Agreement and understanding the legal framework under which NCHS operates, including Section 308(d) of the Public Health Service Act, 308d (for all data) and the Confidential Information Protection and Statistical Efficiency Act (for all data collected, edited, linked, merged, transformed, or manipulated at NCHS in any way since January 1, 2003), the researchers agree:

1. To make no copies of any files or portions of files to which they are granted access except those authorized by NCHS Research Data Center staff.
2. Not to use any technique to circumvent suppression algorithms or other disclosure minimization protocols developed by the RDC even if the intent is not to re-identify study subjects or respondents.
3. To return to RDC staff all NCHS restricted materials with which they may be provided during the conduct of their research at NCHS and other materials as requested.
4. Not to use any technique in an attempt to learn the identity of any person, establishment, or sampling unit not identified on public use data files.
5. To hold in strictest confidence the identification of any establishment or individual that may be inadvertently revealed in any documents or discussion, or analysis. Such inadvertent identification revealed in their analyses will be immediately brought to the attention of RDC staff.
6. Not to remove any printouts, electronic files, documents, or media until they have been scanned for disclosure risk by RDC staff.
7. Not to remove from NCHS any written notes pertaining to the identification of any establishment, individual, or geographic area that may be revealed in the conduct of their research at NCHS.
8. To the inspection of any material they may bring to or remove from the NCHS RDC.
9. To submit to NCHS RDC Analyst for disclosure limitation review any papers or reports submitted for publication.
10. To comport themselves in a manner consistent with principles and standards appropriate to a scientific research establishment.

Any willful disclosure of confidential statistical information by the Guest Researcher is punishable under CIPSEA and carries a fine of up to $250,000 and up to 5 years in prison.

The NCHS RDCs expect that all Guest Researchers will adhere to established standards and principles for carrying out statistical research and analyses. Guest Researchers must conduct only those analyses which received approval. Failure to comply with RDC rules and regulations will result in cancellation of the research activity and potential disbarment from future research activities in the RDCs. In the case where Ethics Review Board (ERB) approval is required to conduct research, NCHS will notify relevant ERBs of infringements of protocol approvals.

Disclosure Review Process

All output will undergo disclosure review by an RDC Analyst and/or the remote access system. In general, disclosure review is consistent with the guidelines published in the NCHS Staff Manual on Confidentiality.

RDC staff review data summaries to assure maintenance of respondent confidentiality. Tables containing cells with fewer than 5 observations may not be released to the data user. These cells will be suppressed. If Guest Researchers require output of an intermediary nature that contains counts of less than five and believes that the release would not compromise confidentiality, they should contact their assigned RDC Analyst or the Director. To assure that small cells cannot be calculated from the other cells in the same row or column, the totals for the rows and columns containing the small cell are also suppressed. Once disclosure review is completed, Guest Researchers receive electronic copies of the final tabulations.

Output generated through RDC access mechanisms will be subject to a review that will include, but not be limited, to the following procedures:

1. In no table should all cases of any line or column be found in a single cell.
2. In no case should the total figure for a line or column of a cross-tabulation be less than 5. One acceptable way to solve the problem is to use a statistical disclosure limitation technique such as rounding.
3. In no case should a quantity figure be based upon fewer than five cases.
4. In no case should a quantity figure be released to the Guest Researcher if one case contributes more than 60 percent of the amount.
5. In no case should data on an identifiable case, nor any of the kinds of data listed in preceding items A–D, be derivable through subtraction or other calculation from the combination of output on a given study.
6. Low level geography will not be included in output provided to the Guest Researchers.

The reviews will all be performed by an NCHS RDC Analyst who is trained in statistics and statistical disclosure limitation. For more information consult the *Report on Statistical Disclosure Limitation Methodology: http://www.fcsm.gov/working-papers/wp22.html*.

Costs for Using the RDC

Guest Researchers using the NCHS RDCs will be charged for space and equipment rental and staff time necessary for supervision, disclosure limitation review, maintenance of computer facilities (including both hardware and software), and the creation and maintenance of data files required by the Guest Researcher. The cost per project (or creation of an analytic file) is given below:

Set-Up

- New file creation

There is a minimum setup charge of $750 per day. An additional $750 per day is charged as needed for file creation and for special handling, such as the merging of additional data or creating custom file formats. More complex projects may require discussion between the Guest Researcher and RDC staff to determine the cost of file creation.

On-Site

- Daily programming costs

$300 per day (consecutive 2-day minimum and 10-day maximum, with extensions negotiated subject to scheduling requirements). Time on-site in the RDC can be scheduled in daily increments but the minimum reservation is 2 consecutive days. Scheduling time at the RDC is on a first-come, first-served basis.

Staff-Assisted

- $750 per day.

Remote

- $750 per month.

Payment is expected in advance of the use of the RDC. A check, money order, or Interagency Agreement payable to "DHHS Statistical Services" must be received 7 business days prior to the scheduled start date of use of the RDC.

Payments should be mailed to: Research Data Center, Attn: Peter Meyer, National Center for Health Statistics, 3311 Toledo Road, Suite 4113, Hyattsville, MD 20782.

FULL Document with appendices available at: *http://www.cdc.gov/nchs/data/r&d/Guidelines_10_14_08c.pdf.*

Dated: May 28, 2010.

James Stephens,

Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–13516 Filed 6–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0006; National Flood Insurance Program Policy Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0006; FEMA Form 086–0–1, Flood Insurance Application; FEMA Form 086–0–2, Flood Insurance Cancellation/Nullification Request Form; FEMA Form 086–0–3, Flood Insurance General Change Endorsement; FEMA Form 086–0–5, Flood Insurance Preferred Risk Policy Application; FEMA Form 086–0–4, V–Zone Risk Factor Rating Form and Instructions.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 7, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Flood Insurance Program Policy Forms.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0006.

Form Titles and Numbers: FEMA Form 086–0–1, Flood Insurance Application; FEMA Form 086–0–2, Flood Insurance Cancellation/Nullification Request Form; FEMA Form 086–0–3, Flood Insurance General Change Endorsement; FEMA Form 086–0–5, Flood Insurance Preferred Risk Policy Application; FEMA Form 086–0–4, V–Zone Risk Factor Rating Form and Instructions.

Abstract: In order to provide for the availability of policies for flood insurance, policies are marketed through the facilities of licensed insurance agents or brokers in the various States. Applications from agents or brokers are forwarded to a servicing company designated as fiscal agent by the Federal Insurance Administration. Upon receipt and examination of the application and required premium, the servicing company issues the appropriate Federal flood insurance policy.

Affected Public: Individual and Households, Business or other for-profit, Farms, State, local, or Tribal Government.

Estimated Number of Respondents: 123,361. Please note that the number of respondents was misprinted in the 60-day **Federal Register** Notice at 75 FR 9918, March 4, 2010. The correct number is 123,361.

Frequency of Response: Annually.

Estimated Average Hour Burden per Respondent: .0769 Hours.

Estimated Total Annual Burden Hours: 9,480.58.

Estimated Cost: The estimated cost due to annual operation or maintenance costs associated with this collection equal $6,387,400. There are no annual start-up or capital costs.

Dated: May 28, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–13604 Filed 6–4–10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0033]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0030; Request for the Site Inspection, Landowners Authorization/Ingress/Egress Agreement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0030; FEMA Form 010–0–09 (formerly 90–1), Request for the Site Inspection; FEMA Form 010–0–10 (formerly 90–31), Landowner's Authorization Ingress-Egress Agreement.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning

FEMA's temporary housing assistance provides temporary housing to eligible applicants or victims of federally declared disasters. This information is required to determine that the infrastructure of the site supports the installation of the unit, obtains permission for the unit to be placed on the property and ensured written permission of the property owner is obtained to allow the housing unit on the property to include ingress and egress.

DATES: Comments must be submitted on or before August 6, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2010–0033. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2010–0033 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact William Fiorini, Program Specialist, (202) 212–1228 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C 5174) authorizes the President to provide mobile homes and other readily fabricated dwellings to eligible applicants who require temporary housing as a result of a major disaster. Title 44 CFR 206.117 provides the requirements for disaster-related housing needs of individuals and households who are eligible for temporary housing assistance. The information collected provides the facts necessary to determine the feasibility of the proposed site for placement of temporary housing and so that FEMA can have access to place the temporary housing unit as well as retrieve it at the end of the use.

Collection of Information

Title: Request for the Site Inspection, Landowners Authorization/Ingress/Egress Agreement.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0030.

Form Titles and Numbers: FEMA Form 010–0–09 (formerly 90–1), Request for the Site Inspection; FEMA Form 010–0–10 (formerly 90–31), Landowner's Authorization Ingress-Egress Agreement.

Abstract: FEMA's temporary housing assistance provides temporary housing to eligible applicants or victims of federally declared disasters. This information is required to determine that the infrastructure of the site supports the installation of the unit. This collection also obtains permission for the unit to be placed on the property, and the property owner certifies that they will not have a lien placed against the unit for their own debts will maintain the property so that FEMA can remove the unit when required.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 1,700 Hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total No. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or households.	FEMA Form 010–0–9/Request for the Site Inspection.	5,000	1	5,000	0.17	850	$28.00	$23,800
Individuals or households.	FEMA Form 010–0–10/Landowner's Authorization Ingress-Egress Agreement.	5,000	1	5,000	0.17	850	28.00	23,800
Total	.....	5,000	.....	10,000	.....	1,700	.....	47,600

Estimated Cost: There are no annual capital, start-up, maintenance or operation costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: May 28, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–13616 Filed 6–4–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0011]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0033; Residential Basement Floodproofing Certification

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0033; FEMA Form 086–0–24, Residential Basement Floodproofing Certificate.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 7, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Residential Basement Floodproofing Certification.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0033.

Form Titles and Numbers: FEMA Form 086–0–24, Residential Basement Floodproofing Certificate.

Abstract: The Residential Basement Floodproofing Certification is completed by an engineer or architect and certifies that the basement floodproofing meets the minimum floodproofing specifications of FEMA. This certification is for residential structures located in non-coastal Special Flood Hazard Areas in communities that have received an exception to the requirement that structures be built at or above the Base Flood Elevation (BFE). Residential structures with certification showing the building is flood proofed to at least 1 foot above the BFE are eligible for lower rates on flood insurance.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: 3.25 Hours.

Estimated Total Annual Burden Hours: 325 Hours.

Estimated Cost: The annual operations and maintenance cost for the services of the engineer or contractor is $35,000. There are no annual capital or start-up costs associated with this collection.

Dated: June 2, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–13608 Filed 6–4–10; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N050; 40136–1265–0000–S3]

Tennessee National Wildlife Refuge, Henry, Benton, Decatur, and Humphreys Counties, TN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Tennessee National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by July 7, 2010.

ADDRESSES: Send comments, questions, and requests for information to: Ms. Tina Chouinard, Refuge Planner, Fish and Wildlife Service, 6772 Highway 76 South, Stanton, TN 38069. The Draft CCP/EA is available on compact disk or in hard copy. You may also access and download a copy of the Draft CCP/EA from the Service's Internet Web Site: *http://southeast.fws.gov/planning/* under "Draft Documents."

FOR FURTHER INFORMATION CONTACT: Ms. Tina Chouinard; telephone: 731/432–0981.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Tennessee NWR. We started the process through a notice in the **Federal Register** on April 2, 2008 (73 FR 17994).

On December 28, 1945, President Harry S. Truman signed Executive Order No. 9670 establishing the Tennessee NWR. The following day, the Department of the Interior and the Tennessee Valley Authority (TVA) entered an agreement that the lands would henceforth be reserved for use as a wildlife refuge. Tennessee NWR runs along 65 miles of the Tennessee River in Henry, Benton, Decatur, and Humphreys Counties, Tennessee. The refuge is comprised of three units: Duck River Unit (26,738 acres), Big Sandy Unit (21,348 acres), and Busseltown Unit (3,272 acres), for a total acreage of 51,358 acres.

Big Sandy is the northern-most unit, located at the junction of the Big Sandy and Tennessee Rivers, about 12 miles north of the town of Big Sandy. Most of the lands on this unit are upland and forested with little wetland management capabilities. Waterfowl management activities primarily consist of providing sanctuary on the waters and mudflats of Kentucky Lake and agriculture crops for foraging habitats.

The Duck River Unit is located at the junction of the Duck and Tennessee Rivers in Humphreys and Benton Counties. A wide variety of habitats is

available for waterfowl and other waterbirds, including agriculture, moist-soil, mudflats, forested wetlands, and scrub-shrub.

The Busseltown Unit is located along the western bank of the Tennessee River, in Decatur County roughly 5 miles northeast of Parsons, Tennessee. It is primarily managed for waterfowl by providing agriculture foraging habitats. Some moist-soil and scrub-shrub habitats are also available.

All three units were used extensively for agriculture in the 1800s and early 1900s. The two northern units were named for the rivers which run through them, while the much smaller Busseltown Unit was named after Johnse Bussel, an earlier settler to the area who established a store and home in the area that later became known as Busseltown. The mixture of open water, wetlands, woodlands, croplands, and grasslands creates a mosaic of wildlife-rich habitats. The refuge provides valuable wintering habitat for migrating waterfowl. It also provides habitat and protection for threatened and endangered species.

The establishing and acquisition authorities for Tennessee NWR include the Migratory Bird Conservation Act (16 U.S.C. 715–715r) and Fish and Wildlife Coordination Act (16 U.S.C. 661–667). In addition, Public Land Order 4560 identified the purposes of the refuge to be "to build, operate and maintain sub-impoundment structures; produce food crops or cover for wildlife; to regulate and restrict hunting, trapping and fishing and to otherwise manage said lands and impoundment areas for the protection and production of wildlife and fish populations" (Public Land Order 1962).

The refuge also supports an abundance of wildlife, including over 650 species of plants, 303 species of birds, and 280 species of mammals, fish, reptiles, and amphibians.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, 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, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Significant issues addressed in this Draft CCP/EA include: (1) Managing for invasive species, migratory birds, and species of special concern; (2) managing mixed pine upland and bottomland hardwood forests; (3) enhancing wildlife-dependent public uses, especially environmental education and interpretation programs; (4) addressing climate change; and (5) increasing permanent staff.

CCP Alternatives, Including Our Proposed Alternative

We developed four alternatives for managing the refuge and chose Alternative D as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each below:

Alternative A—Current Management (No Action)

In general, Alternative A would maintain current management direction. Public use patterns would remain relatively unchanged from those that exist at present.

The refuge would continue to contribute to healthy and viable native wildlife and fish populations representative of the Lower Tennessee-Cumberland River Ecosystem, with special emphasis on waterfowl and other migratory birds.

We would continue the moist-soil management program on about 1,600 acres. There would be no active forest management, but we would continue evaluation of past forest treatments for increasing habitat for priority species on the Big Sandy peninsula. The cooperative farming and refuge staff (force account) program would continue cultivating crops on about 3,000 acres for the benefit of waterfowl and resident game species. Bottomland hardwood forest habitat would not be actively managed, but we would continue current water management of about 5,160 acres of impounded water management units.

Working with partners, we would continue to provide mudflats during August–September for shorebird and early migratory waterfowl, scrub-shrub habitat, and desirable aquatic plants. We would also continue annual spraying and biological control of alligatorweed, privet species, sesbania, purple loosestrife, encroaching woody vegetation, spatterdock, and parrot feather. Mechanical control (i.e., mowing and disking) of certain upland plants would be conducted as needed. There would be no active monitoring, management, or education related to climate change.

We would continue to manage cultural resources consistent with Section 106 of the National Historic Preservation Act. The refuge's size and boundaries would not change.

Under Alternative A, we would continue to provide visitor services under the existing public use review and development plan approved in 1986. We would continue to allow managed, limited hunting for deer, turkey, squirrel, raccoon, and resident Canada goose, as well as to provide opportunities for fishing. We would continue to offer opportunities for wildlife observation and photography throughout the refuge, and to provide environmental education services to the public, including limited visits to schools, environmental education workshops, and on-site and off-site environmental education programs.

Under Alternative A, we would maintain the current staff of 13, including the refuge manager, deputy refuge manager, two refuge biologists, refuge ranger, refuge planner, two law enforcement officers, three heavy equipment operators, administrative officer, and assistant refuge manager. The current office, bunkhouse, storage, and maintenance shop at the Duck River Unit and the existing inventory of heavy equipment, tractors, refuge roads, levees, water control structures, and pumps would be maintained. We would maintain our existing partnerships.

Alternative B—Public Use Emphasis

In general, Alternative B would emphasize enhanced public use on the refuge. With regard to native fish and wildlife, this alternative would be quite similar to Alternative A in many respects. Alternative B would differ from Alternative A by developing partnerships with non-governmental organizations and the public in efforts to inventory non-game and aquatic species and possibly in certain habitat management activities.

Alternative B would be very similar to the actions described under Alternative A in aiming to maintain existing habitat management programs, practices, and actions.

Under Alternative B, we would increase water management efforts

toward increasing sport fishing opportunities within the 5,160 acres of impoundments. We would also offer additional education and interpretation of importance of early drawdowns of Kentucky Lake to shorebirds and other migratory birds.

Under Alternative B, we would provide additional education and interpretation of invasive species for the public. With regard to climate change, under Alternative B the refuge would relate climate change to the Service's wildlife mission in environmental education programs. However, there would still be no active monitoring or management related to climate change.

Under Alternative B, we would manage cultural resources consistent with Section 106 of the National Historic Preservation Act. We would prioritize areas for possible minor boundary expansions to accommodate and better serve refuge visitors.

Alternative B would emphasize wildlife-dependent public use more than any other alternative. Under Alternative B, within 5 years of CCP approval, we would draft, approve, and begin to implement a new visitor services plan using the current format for such documents. Hunting opportunities would be increased for deer and maintained for turkey, squirrel, raccoon, and resident Canada goose, and new hunts would be considered.

We would provide opportunities for fishing by furnishing adequate launching facilities, bank fishing areas, and over the life of the CCP, provide additional ADA-compliant piers to accommodate anglers of all abilities.

We would continue to offer opportunities for wildlife observation and photography throughout the refuge. We would also aim to increase wildlife observation/photography opportunities with blinds and a boardwalk, and within 2 years of CCP approval, open a seasonal wildlife drive in the Duck River Bottoms. We would continue to provide environmental education services to the public, including limited visits to schools, workshops, and on-site and off-site programs, as well as work with partners to expand environmental education facilities and opportunities on and near the refuge. The existing interpretive program would be expanded.

Under Alternative B, within 5 years of CCP approval, we would work with partners to construct a combined headquarters and visitor center, incorporating "green" technology, on the Big Sandy Unit. Within 15 years of CCP approval, we would build a visitor contact station at the Duck River Unit. Alternative B would maintain the office, storage, and maintenance facilities at Duck River Unit, and the existing inventory of heavy equipment, tractors, refuge roads, levees, water control structures, and pumps. The bunkhouse would also be replaced.

Under Alternative B, we would maintain our current staff of 13. Four new staff members would be added, including two refuge rangers, one law enforcement officer, and one office assistant. Under Alternative B, we would strengthen our volunteer programs, friend's group, and partnerships by investing an increased portion of staff time into nurturing these promising relationships.

Alternative C—Wildlife Management Emphasis

Alternative C aims to intensify and expand wildlife and habitat management on the refuge. This would increase benefits for wildlife species, which fulfills the refuge purpose and goals. Public use opportunities and our efforts to provide visitor services would remain approximately as they are now.

Concerning waterfowl, under Alternative C, we would provide adequate habitats to meet the foraging needs of 182,000 ducks for 110 days and other habitats that are needed for loafing, roosting, molting, etc. This is a 50 percent increase in the number of ducks under Alternatives A and B. Alternative C would also maintain seasonally closed waters, roads, and land areas to provide sanctuary for waterfowl. In addition, Alternative C would increase seasonally closed areas, including the closure of Busseltown and Honey Point Ferry roads.

Alternative C would provide adequate corn and wheat browse to meet the needs of about 16,000 migratory Canada geese for 90 days, the same as Alternatives A and B. In contrast with these two alternatives, however, Alternative C would also readjust population levels as suggested by future needs; that is, it would follow adaptive management principles.

To promote wood duck reproduction, Alternative C would maintain 200–250 nesting boxes (compared to 175 boxes in Alternatives A and B), expanding the program to the Big Sandy and Busseltown Units. It would also continue to meet the banding goals of the Mississippi Flyway Council.

Under this alternative, we would create and enhance existing habitat for secretive marshbirds, sufficient to support 25 nesting territories for king rail pairs. Within 10 years of CCP approval, we would provide at least 200–300 acres of foraging sites in multiple impoundments for both northbound and southbound shorebirds during migration, and we would conduct population and habitat surveys to evaluate shorebird use and invertebrate densities within managed and unmanaged habitat. To benefit long-legged wading birds, as under Alternative A, we would continue to provide for both secure nesting sites and ample foraging habitat.

While neither Alternative A nor B would conduct active management for grassland birds, Alternative C would consider providing 50–100 acres in 1–3 tracts for Henslow's sparrow and other grassland species in the Big Sandy Unit. We would strive to increase the quality of forest habitat to provide for a sustainable increase in the populations of priority forest interior migratory birds. We would also continue to monitor and protect bald eagle nesting sites and count wintering bald eagles on the refuge.

We would continue to manage populations of resident game species such as deer, turkey, squirrel, raccoon, and resident Canada goose, as under Alternatives A and B.

Within 10 years of CCP approval, we would develop and implement more baseline inventories for non-game mammals, reptiles, amphibians and invertebrates. Similarly, within 15 years of CCP approval, we would aim to determine species composition, distribution, and relative abundance of fishes and invertebrates occurring on the refuge.

Alternative C would continue to protect all Federal listed species, in particular the Indiana and gray bats and listed mussels, under the Endangered Species Act. In addition, it would endeavor to determine the distribution and abundance of Indiana and gray bats and listed mussels on the refuge and protect and enhance, if possible, the habitat needed by these species.

As necessary, we would continue and expand nuisance animal species control using approved techniques to help achieve refuge conservation goals and objectives.

Alternative C would expand or intensify existing habitat management programs, practices, and actions. We would improve the moist-soil management program on about 1,600 acres by expanding the invasive exotic plant control program, water management capabilities, and the use of management techniques that set back plant succession. In cooperation with partners, we would reactivate the forest management program for the benefit of priority forest interior migratory birds and resident game species.

Over the life of the CCP, Alternative C would eliminate cooperative farming and reduce total farmed acreage, while increasing the acreage of unharvested cropland through force account or contract farming to meet foraging needs of waterfowl and habitat for other native species. It would also increase acreage of hard mast producing bottomland hardwood forest species.

We would increase water management capabilities by subdividing existing impoundments, creating new impoundments, and increasing water supply (*i.e.,* pumps, wells, and structures) for migratory birds. Working with partners, we would continue to provide mudflats during August-September for shorebird and early migratory waterfowl, scrub-shrub habitat, and desirable aquatic plants, as in Alternative A.

We would expand control efforts of invasive species through active methods of removal. These methods would work towards reducing infestations and eliminating populations whenever feasible. In response to possible adverse impacts from climate change, we would monitor wildlife and habitats and utilize adaptive management.

Under Alternative C, we would continue to manage cultural resources consistent with Section 106 of the National Historic Preservation Act. We would also target minor boundary expansions to reduce adjacent threats to the refuge and to expand habitat management opportunities.

We would continue to provide visitor services under the existing public use review and development plan approved in 1986. For the duration of the CCP, we would manage game populations to maintain quality hunting opportunities while maintaining habitat for federal trust species. We would also continue to provide fishing opportunities, but find partners to help maintain boat ramps and associated facilities.

We would also continue to offer opportunities for wildlife observation and photography throughout the refuge, and to provide environmental education services to the public, including limited visits to schools, environmental education workshops, and on-site and off-site environmental education programs.

Within 5 years of CCP approval, we would work with partners to construct a combined headquarters and visitor center, incorporating "green" technology, on the Big Sandy Unit, and within 15 years of CCP approval, would build a visitor contact station at the Duck River Unit. Alternative C would maintain the storage and maintenance facilities at Duck River Unit, and the existing inventory of heavy equipment, tractors, refuge roads, levees, water control structures, and pumps. The bunkhouse would also be replaced. Lastly, this alternative would add one open and one enclosed equipment storage facility, one no-till grain drill, one self-propelled spray rig, low ground pressure dozer, one aquatic excavator, and one 24-inch centrifugal pump and engine.

Under Alternative C, we would maintain our current staff of 13. We would also add five staff positions, including one forester, one forestry technician, two heavy equipment operators, and one tractor operator. We would maintain our existing partnerships.

Alternative—Enhanced Wildlife Management and Public Use Program (Proposed Alternative)

Alternative D, our proposed alternative, would enhance both our wildlife management and public use programs. In general, Alternative D is very similar to Alternative C on the wildlife and habitat goals and objectives, and very similar to Alternative B on the public use goal and objectives.

Concerning waterfowl, under Alternative D, we would provide adequate habitats to meet the foraging needs of 121,000–182,000 ducks (or a range specified by the North American Waterfowl Management Plan) for 110 days and other habitats that are needed for loafing, roosting, molting, etc. This objective includes a range that matches Alternative A at the low end and Alternative C at the high end. As in the three previous alternatives, Alternative D would also maintain seasonally closed waters, roads, and lands to provide sanctuary for waterfowl. In addition, Alternative D would increase seasonally closed areas, including closure of Busseltown and Honey Point Ferry Roads.

Alternative D would provide adequate corn and wheat browse to meet the needs of about 16,000 migratory Canada geese for 90 days, the same as Alternatives A and B. In contrast with these two alternatives however (but like Alternative C), Alternative D would also readjust population levels as suggested by future needs; that is, it would follow adaptive management principles.

To promote wood duck reproduction, Alternative D would maintain 200–250 nesting boxes (compared to 175 boxes in Alternatives A and B), expanding the program to the Big Sandy and Busseltown Units. It would also continue to meet the banding goals of the Mississippi Flyway Council.

Under this alternative, we would create and enhance existing habitat for secretive marshbirds, sufficient to support 15–25 nesting territories for king rail pairs, which is more than Alternatives A and B, but somewhat less than Alternative C. Within 10 years of CCP approval, the refuge would provide at least 100 acres of foraging sites in multiple impoundments for both northbound and southbound shorebirds during migration, and would conduct population and habitat surveys to evaluate shorebird use and invertebrate densities within managed and unmanaged habitat. To benefit long-legged wading birds, as in each of the alternatives, we would continue to provide for both secure nesting sites and ample foraging habitat.

Alternative D, like Alternative C, would consider providing 50–100 acres in 1–3 tracts for Henslow's sparrow and other grassland species in the Big Sandy Unit. We would strive to increase the quality of forest habitat to provide for a sustainable increase in the populations of priority forest interior migratory birds. We would also continue to monitor and protect bald eagle nesting sites and count wintering bald eagles on the refuge.

As in each of the alternatives, we would continue to manage populations of resident game species such as deer, turkey, squirrel, raccoon, and resident Canada goose.

To learn more about all wildlife species at the refuge, within 10 years of CCP approval, we would develop and implement more baseline inventories for non-game mammals, reptiles, amphibians and invertebrates. Similarly, within 15 years of CCP approval, we would aim to determine species composition, distribution and relative abundance of fishes and invertebrates occurring on the refuge. We would try to develop partnerships with other agencies, non-governmental organizations, and the public in efforts to inventory non-game and aquatic species and participate in the implementation of appropriate management activities.

Alternative D would continue to protect all Federal listed species, in particular the Indiana and gray bats and listed mussels, under the Endangered Species Act. In addition, it would endeavor to determine the distribution and abundance of Indiana and gray bats and listed mussels on the refuge and protect and enhance, if possible, the habitat needed by these species.

As necessary, and as under Alternative C, we would continue and expand nuisance animal species control using approved techniques to help

achieve refuge conservation goals and objectives.

Alternative D would expand or intensify existing habitat management programs, practices, and actions. We would improve the moist-soil management program on about 1,600 acres by expanding the invasive exotic plant control program, water management capabilities, and the use of management techniques that set back plant succession. In cooperation with partners, we would reactivate the forest management program on the refuge for the benefit of priority forest interior migratory birds and resident game species. Alternative D would incorporate a comprehensive fire management program into upland forest habitat.

Over the life of the CCP, Alternative D would redirect management actions to increase the acreage of unharvested cropland to meet foraging needs of waterfowl and habitat for other native species. It would also increase acreage of hard mast producing bottomland hardwood forest species.

We would increase water management capabilities by subdividing existing impoundments, creating new impoundments, and increasing water supply (i.e., pumps, wells, and structures) for migratory birds. While doing this, we would also make a concerted effort to accommodate sport fishing opportunities where and when circumstances allow.

Working with partners, we would continue to provide mudflats during August–September for shorebird and early migratory waterfowl, scrub-shrub habitat, and desirable aquatic plants, as under Alternatives A and C. As under Alternative B, we would also provide additional education and interpretation of importance of early drawdowns of Kentucky Lake.

We would expand control efforts of invasive species through active methods of removal. These methods would work towards reducing infestations and eliminating populations whenever feasible. Additional education and interpretation of invasive species would be provided.

In response to possible adverse impacts from climate change, we would monitor wildlife and habitats and utilize adaptive management. We would also relate climate change to the Service's wildlife mission in environmental education programs and pursue opportunities for carbon sequestration with native trees.

Alternative D would continue to manage cultural resources consistent with Section 106 of the National Historic Preservation Act. Alternatives A, B, and C would also do so, but only Alternative D would begin to implement a cultural resources management plan within 5 years of CCP approval. Alternative D would pursue and prioritize minor boundary expansions to: (1) Reduce adjacent threats to the refuge; (2) expand habitat management opportunities; and (3) accommodate refuge visitors.

Under Alternative D, within 5 years of CCP approval, we would draft, approve, and begin to implement a new visitor services plan. Hunting opportunities would be increased for deer, and we would continue to allow managed, limited hunting for turkey, squirrel, raccoon, and resident Canada goose. No youth waterfowl hunt or rabbit and quail hunting would be considered. We would provide opportunities for fishing by furnishing adequate launching facilities, bank fishing areas, and over the life of the CCP, would provide additional piers to accommodate anglers of all abilities.

We would aim to increase wildlife observation/photography opportunities with blinds and a boardwalk, and within 2 years of CCP approval, open a seasonal wildlife drive in the Duck River Bottoms. We would continue to provide environmental education services to the public, including limited visits to schools, workshops, and on-site and off-site programs, as well as work with partners to expand environmental education facilities and opportunities on and near the refuge. The existing interpretive program would be expanded.

Under Alternative D, within 5 years of CCP approval, we would work with partners to construct a combined headquarters and visitor center, incorporating "green" technology, on the Big Sandy Unit. Within 15 years of CCP approval, we would build a visitor contact station at the Duck River Unit. Alternative D would maintain the storage and maintenance facilities at the Duck River Unit, and the existing inventory of heavy equipment, tractors, refuge roads, levees, water control structures, and pumps. The bunkhouse would also be replaced. Lastly, this alternative would add one open and one enclosed equipment storage facility, one no-till grain drill, one self-propelled spray rig, low ground pressure dozer, one aquatic excavator, and one 24-inch centrifugal pump and engine.

Under Alternative D, we would expand our current staff by 12, including forester, forestry technician, two engineering equipment operators, a tractor operator, two refuge rangers, a law enforcement officer, an assistant manager, two biological technicians, and an office assistant. Under Alternative D, as in Alternative B, we would strengthen our volunteer programs, friend's group, and partnerships by investing an increased portion of staff time into nurturing these promising relationships.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: April 22, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–13520 Filed 6–4–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N061; 40136–1265–0000–S3]

Felsenthal National Wildlife Refuge, Ashley, Bradley, and Union Counties, AR; Overflow National Wildlife Refuge, Ashley County, AR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Felsenthal and Overflow National Wildlife Refuges (NWRs) for public review and comment. Felsenthal, Overflow, and Pond Creek NWRs are managed as a Complex. A separate CCP was prepared for Pond Creek NWR. In this Draft CCP/EA, we describe the

alternative we propose to use to manage these refuges for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by July 7, 2010.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Mr. Bernie Peterson, via U.S. mail at Felsenthal NWR, P.O. Box 1157, Crossett, AR 71635, or via e-mail at *bernie_peterson@fws.gov*. Alternatively you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under "Draft Documents." Submit comments on the Draft CCP/EA to the above postal address or e-mail address.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Dawson, Refuge Planner, telephone: 601/965–4903, Ext. 20.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Felsenthal and Overflow NWRs. We started the process through a notice in the **Federal Register** on April 2, 2008 (73 FR 17992). For more about the refuges, their purposes, and our CCP process, please see that notice.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, 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 strategy 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, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Key issues addressed in the Draft CCP/EA include water management, forestry management, greentree reservoir management, threatened and endangered species management, migratory bird and waterfowl nesting habitats, hunting and fishing program management, invasive species of plants and animals, refuge access, law enforcement, and environmental education and interpretation programs.

Felsenthal NWR was established in 1975, as a result of the Corps of Engineers' Ouachita and Black Rivers Navigation Project. Geographically, the 65,000-acre refuge is located in what is known as the Felsenthal Basin, an extensive natural depression that is laced with a vast complex of sloughs, bayous, and lakes. Overflow NWR was established in 1980, to protect one of the remaining bottomland hardwood forests considered vital for maintaining mallard, wood duck, and other waterfowl populations in the Mississippi Flyway. This 13,000-acre plus refuge is a wetland complex within the watershed of Overflow Creek, which flows southerly along the length of the refuge.

CCP Alternatives, Including Our Proposed Alternative

We developed three separate alternatives for managing the refuges and chose Alternative B, Enhanced Biological and Visitor Services Management, as the proposed alternative for each. A full description of the alternatives is in the Draft CCP/EA. We summarize each alternative below.

Felsenthal NWR

Alternative A (Current Management, No Action)

Alternative A would continue current management strategies, with little or no change in resources. We would protect, maintain, and enhance 65,000 acres of refuge lands, primarily focusing on the needs of threatened and endangered species, with additional emphasis on the needs of migratory birds, resident wildlife, and migratory non-game birds. We would continue mandated activities for protection of Federally listed species. Control of nuisance wildlife populations and invasive plant species would be undertaken on an opportunistic basis. Habitat management efforts would be concentrated on forests; water, including greentree reservoirs; and open lands. We would continue the fire management program.

The Complex, made up of Felsenthal, Overflow, and Pond Creek NWRs, with the support of volunteers and friends, manages an extensive visitor services program that includes recreation, education, and outreach programs. We would maintain the current levels of wildlife-dependent recreation activities (*e.g.,* hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation). Felsenthal NWR has an extensive network of public use facilities including 65 miles of all-terrain vehicle (ATV) trails, 8 boat ramps, and 10 primitive campgrounds. Except for two archaeological sites, all of the refuge is open to visitors. These facilities do not interfere substantially with or detract from the achievement of wildlife conservation.

The hunting program would continue to be managed via quota hunts for white-tailed deer and turkey. Special conditions of the hunt program would continue to include the use of ATVs along designated trails. Hunters with disabilities would still be allowed to extend their use of ATVs approximately 200 yards off of designated trails. The use of dogs would continue during waterfowl, squirrel, rabbit, raccoon, and opossum hunts.

About 60 percent of total consumptive public use on the refuge is fishing. There are eight boat launching facilities with parking areas on the refuge and three boat launching facilities with parking areas off the refuge that provide lake and river access. Adequate bank fishing opportunities would continue to be made available.

We would maintain the refuge as resources allow. We would continue to manage with the following staff for the Complex: Project leader, deputy project leader, biologist, forester, park ranger (public use), fire management specialist, three forestry technicians (fire), two law enforcement officers, administrative officer, administrative support assistant, equipment operator, and heavy equipment mechanic.

Alternative B (Enhanced Biological Management and Visitor Services—Proposed Alternative)

The proposed action was selected by the Service as the alternative that best signifies the vision, goals, and purposes of the refuge. Emphasis would be on restoring and improving resources needed for wildlife and habitat management, while providing additional public use opportunities. This alternative would also allow us to provide law enforcement protection that adequately meets the needs of the refuge.

This alternative would focus on augmenting wildlife and habitat management to identify, conserve, and restore populations of native fish and wildlife species, with an emphasis on migratory birds and threatened and endangered species. This would partially be accomplished by increased monitoring of waterfowl, other

migratory birds, and endemic species in order to assess and adapt management strategies and actions. The restoration of the Felsenthal South Pool would be a vital part of this proposed action and would be crucial to ensuring healthy and viable ecological communities in the greentree reservoir. This restoration would require increased water management control, invasive aquatic vegetation control, reestablishing water quality standards, and possibly reestablishing populations of game fish species. The control of nuisance wildlife populations and invasive plant species would be more aggressively managed by implementing a control plan and systematic removal.

Alternative B would enhance the visitor services opportunities by: (1) Improving the quality of fishing opportunities; (2) creating additional hunting opportunities for youth and hunters with disabilities where feasible; (3) implementing an environmental education program component for the Complex that utilizes volunteers and local schools as partners; (4) enhancing wildlife viewing and photography opportunities by implementing food plots in observational areas and evaluating the possibility of implementing an auto tour; (5) developing and implementing a visitor services management plan; and (6) enhancing personal interpretive and outreach opportunities. Volunteer programs and friends groups also would be expanded to enhance all aspects of refuge management and to increase resource availability.

In addition to the enforcement of all Federal and State laws applicable to the refuge to protect archaeological and historical sites, we would identify and develop a plan to protect all known sites. The allocation of an additional law enforcement officer to the refuge would not only provide security for these resources, but would also ensure visitor safety and public compliance with refuge regulations.

Under this alternative, additional staff needed would include: Park ranger (law enforcement), biological technician, park ranger (visitor services, environmental educator/volunteer coordinator), heavy equipment operator, and the conversion of two seasonal fire technicians to full-time employment. These positions are needed to accomplish objectives for establishing baseline data on refuge resources, for managing habitats, and for adequate protection of wildlife and visitors.

Alternative C (Enhanced Biological Management)

Alternative C would provide for the enhancement and restoration of native wildlife, fish, and plant communities and the health of those communities. This would be accomplished by maximizing wildlife and habitat management, while maintaining a portion of the current compatible public use opportunities. Threatened and endangered species would be of primary concern, but the needs of other resident and migratory wildlife would also be considered. As under Alternative B, focus would be centralized on augmenting wildlife and habitat management to identify, conserve, and restore populations of native fish and wildlife species by increased monitoring of waterfowl, other migratory birds, and endemic species in order to assess and adapt management strategies and actions. Extensive wildlife, plant, and habitat inventories would be initiated to obtain the biological information needed to implement and monitor management programs.

Habitat management would be increased to provide additional sanctuary for waterfowl, to provide additional active clusters of red-cockaded woodpeckers, to promote additional edge as a transition between habitat types for resident wildlife, and to provide additional openings for native grasslands. A minor expansion plan would be evaluated to expand the current acquisition boundary. This would allow us to expand critical or viable habitat. We would inventory and more aggressively monitor, control, and, where possible, eliminate invasive plants and nuisance wildlife through the use of staff and contracted labor.

Wildlife observation, wildlife photography, and environmental education and interpretation opportunities would continue as currently managed, but only when and where they would not conflict with wildlife management activities and objectives. The use of ATVs and campgrounds would be reduced or would require a special use permit to better control use. Night fishing and fishing tournaments would be phased out. Harvest counts for waterfowl hunting would be monitored annually to determine the species hunted. Outreach would additionally focus on providing information to the public on flooding cycles within the greentree reservoir and the importance of periodic drying cycles.

Administration plans would stress the need for increased maintenance of existing infrastructure and facilities benefitting wildlife conservation. Additional staff under this alternative would include: Park ranger (law enforcement), biological technician, biologist, heavy equipment operator, and the conversion of two seasonal fire technicians to full-time employment to accomplish objectives for establishing baseline data on refuge resources, for managing habitats, and for adequate protection of wildlife and visitors.

Overflow NWR

Alternative A (Current Management, No Action)

Alternative A would continue current management strategies, with little or no change in resources. Under this alternative, we would protect, maintain, restore, and enhance 13,973 acres of refuge lands and 2,263 additional acres included in the Oakwood Unit. We would primarily focus on the needs of migratory waterfowl, with additional emphasis on the needs of resident wildlife, migratory non-game birds, and threatened and endangered species. Control of nuisance wildlife populations and invasive plant species would be undertaken on an opportunistic basis. Habitat management efforts would be concentrated on moist-soil management, waterfowl impoundments, forest management, and crop production. We would continue cooperative farming of 400 acres.

Currently, active habitat management targeting waterfowl includes impoundments for moist-soil and crop food resource generation in open habitats, as well as greentree reservoir management in forested areas to produce complimentary food and behavioral resources. Approximately 600 acres would continue to be managed in rotation fashion in moist-soil and crops. A stop-log structure on Overflow Creek would continue to be used to manage a single 4,000-acre greentree reservoir impoundment during winter months.

Public use opportunities would continue to include hunting (*e.g.,* waterfowl, deer, turkey, small game, woodcock, and quail), wildlife observation, wildlife photography, and limited environmental education activities. A total of 3,000 acres would continue to be protected from public intrusion during the wintering waterfowl season in areas designated as waterfowl sanctuaries.

Standard management activities at the Oakwood Unit would continue to include: (1) Disking of moist-soil units on a rotational basis; (2) monitoring seedling survival and mortality; (3) bird surveys; and (4) levee and boundary line

maintenance. There are no visitor service opportunities on this unit. As compared to Overflow NWR, the Oakwood Unit is passively managed due to its location 80 miles from the refuge office.

We would maintain the refuge as resources allow, and would continue with four staff members: Refuge manager, private lands biologist, biological science technician, engineering equipment operator, and part-time biological technician. In addition, individual volunteers would continue to provide many valuable services on the refuge (*e.g.,* monitoring the migration of Monarch butterflies, beaver trapping, trail maintenance, and waterfowl counts).

Alternative B (Enhanced Biological Management and Visitor Services—Proposed Alternative)

The proposed alternative was selected by the Service as the alternative that best signifies the vision, goals, and purposes of the refuge. Under Alternative B, the emphasis would be on restoring and improving resources needed for wildlife and habitat management, while providing additional public use opportunities. This alternative would also allow us to provide the level of law enforcement protection to adequately meet the needs of the refuge.

This alternative would focus on augmenting wildlife and habitat management to identify, conserve, and restore populations of wildlife species, with an emphasis on waterfowl, migratory birds, and resident wildlife. This would partially be accomplished by increased monitoring in order to assess and adapt management strategies and actions. Habitat management would be increased to extend the moist-soil rotation to at least four or more years to reach a condition preferred by marshbirds, to adapt flooding and water management regimes in the greentree reservoir and moist-soil units, and to implement a more intensive moist-soil management program at the Oakwood Unit (300 acres/year). Land acquisition within the approved acquisition boundary would be based on importance of the habitat for target management species and public use value. The control of nuisance wildlife populations and invasive plant species would be more aggressively managed by implementing a control plan and systematic removal.

Alternative B would enhance the refuge's visitor service opportunities by: (1) Making hunting opportunities more accessible for hunters with disabilities; (2) implementing an environmental education program component for the Complex that utilizes volunteers and local schools as partners; (3) enhancing wildlife viewing and photography opportunities by implementing food plots in observational areas and promoting ATV trails as birding trails; (4) welcoming visitors by establishing a visitor center or contact station on the refuge; (5) developing and implementing a visitor services management plan; and (6) enhancing personal interpretive and outreach opportunities. Volunteer programs and friends groups also would be expanded to enhance all aspects of refuge management and to increase resource availability.

In addition to the enforcement of all Federal and State laws applicable to the refuge to protect archaeological and historical sites, we would identify and develop a plan to protect all known sites. An additional law enforcement officer would not only provide security for these resources, but would also ensure visitor safety and public compliance with refuge regulations.

In order to accomplish the objectives for establishing baseline data on refuge resources, for managing habitats, and for adequate protection of wildlife and visitors, additional staff would include: Park ranger (law enforcement), biological technician, park ranger (environmental educator/volunteer coordinator), and heavy equipment operator.

Alternative C, Enhanced Biological Management

Alternative C would provide for the enhancement and restoration of native wildlife and plant communities and the health of those communities. This would be accomplished by maximizing wildlife and habitat management, while maintaining a portion of the current compatible public use opportunities. We would continue and enhance mandated activities for protecting threatened and endangered species. As under Alternative B, our focus would be centralized on augmenting wildlife and habitat management to identify, conserve, and restore populations of wildlife species by increased monitoring of waterfowl, other migratory birds, and endemic species in order to assess and adapt management strategies and actions. Extensive wildlife, plant, and habitat inventories would be initiated to obtain the biological information needed to implement and monitor management programs.

Habitat management would be maximized to provide additional moist-soil management and more intensive forest management. We would inventory and more aggressively monitor, control, and, where possible, eliminate invasive plants and nuisance wildlife through the use of staff and contracted labor. Land acquisitions within the approved acquisition boundary would be based on importance of the habitat for target management species. Additionally, the expansion of the Oakwood Unit to provide a right-of-way to the public would be evaluated.

Wildlife observation, wildlife photography, and environmental education and interpretation opportunities would continue as currently managed, but only when and where they would not conflict with wildlife management activities and objectives. Additionally, the opening of the Oakwood Unit to deer hunting would be evaluated and the staff offices on the refuge would be updated in lieu of a new visitor center.

Administration plans would stress the need for increased maintenance of existing infrastructure and facilities benefitting wildlife conservation. Additional staff would include: Park ranger (law enforcement), biological technician, biologist, and heavy equipment operator. These positions are needed to accomplish the objectives for establishing baseline data on resources, for managing habitats, and for adequate protection of wildlife and visitors.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: April 14, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–13511 Filed 6–4–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

North San Pablo Bay Restoration and Reuse Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Report and Environmental Impact Statement (Final EIR/EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), the Federal lead agency, and Sonoma County Water Agency (SCWA), acting as project administrator of the North Bay Water Reuse Authority (NBWRA) and the State lead agency, have prepared a Final EIR/EIS for the implementation of the North San Pablo Bay Restoration and Reuse Project (Project), also referred to as the North Bay Water Recycling Program.

The purpose of the Project is to create a regional wastewater reuse project to provide recycled water for agricultural, urban, and environmental uses and to promote the expanded beneficial use of recycled water in the North Bay region. In this way, water demand issues and wastewater discharge issues of the region can be addressed in an integrated and synergistic manner. Implementation of the Project would include upgrades to treatment processes and construction of pipelines, pump station, and storage facilities to distribute recycled water for use in compliance with Article 4 in Title 22 of the California Code of Regulations, which sets water quality standards and treatment reliability criteria for recycled water. The Project may be partially Federally funded under Title XVI of Public Law 102–575, as amended, which provides a mechanism for Federal participation and cost sharing in approved water reuse projects, and also non-title XVI funds.

A Notice of Availability of the Draft EIR/EIS was published in the **Federal Register** on May 12, 2009 (74 FR 22175). The written comment period on the Draft EIR/EIS extended to July 20, 2009. The Final EIR/EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

DATES: Reclamation will not make a decision on the Project until at least 30 days after the release of the Final EIR/EIS. After the 30-day consideration period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: A compact disc or a copy of the Final EIR/EIS may be requested from Mr. Marc Bautista, SCWA, 404 Aviation Boulevard, Santa Rosa, CA 95403; by writing to the SCWA, P.O. Box 11628, Santa Rosa, CA 95406; by calling (707) 547–1998; or by e-mailing *mbautista@scwa.ca.gov.* The Final EIR/EIS is also available on the following Web site at *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=2157.*

FOR FURTHER INFORMATION CONTACT: Mr. Marc Bautista, SCWA, 707–547–1998; *mbautista@scwa.ca.gov,* or Mr. Doug Kleinsmith, Reclamation, (916) 978–5034, TDD (916) 978–5608, or via e-mail at *dkleinsmith@usbr.gov.*

SUPPLEMENTARY INFORMATION: The NBWRA, established under a Memorandum of Understanding (MOU) in August 2005, is comprised of four wastewater utilities and one water agency in the North San Pablo Bay region of California. Participants include SCWA, Las Gallinas Valley Sanitary District (LGVSD), Novato Sanitary District (Novato SD), Sonoma Valley County Sanitation District (SVCSD), and Napa Sanitation District (Napa SD). In addition, North Marin Water District and the County of Napa are participating financially and providing support. NBWRA proposes to expand the use of recycled water and reduce discharge into San Pablo Bay with this long-term inter-agency project. The area encompasses 318 square miles of land in Marin, Sonoma, and Napa counties.

The North San Pablo Bay regions of Sonoma, Marin and Napa counties are facing long-term water supply shortfalls. Surface and groundwater supplies within these areas are limited, and some local groundwater basins are overpumped, with detrimental effects on water levels and water quality. Recycled water can augment local water supplies on a regional basis, provide water that meets agricultural and municipal nonpotable quality needs, and provide increased reliability.

Additionally, reliable water supply is needed in order to continue the restoration of tidal wetlands in San Pablo Bay that contain habitat for endangered and threatened species. Wastewater treatment agencies also face strict regulatory limits on the timing and quality of the treated wastewater they can discharge to San Pablo Bay, as well as the rivers and streams that flow to it. By treating wastewater to the stricter regulatory levels required for reuse, the agencies can recycle the water productively to address water supply needs and reduce the amount released to North San Pablo Bay and its tributaries. The project would provide recycled water for agricultural, urban, and environmental uses thereby reducing reliance on local and imported surface water and groundwater supplies and reducing the amount of treated effluent released to North San Pablo Bay and its tributaries. Some of the project benefits include reduction of wastewater discharge to regional waterways and the resulting environmental benefit to fish and wildlife.

The Project consists of distribution facilities, treatment capacity improvements, and storage to recover and reuse between 6,655 and 12,750 acre-feet per year of recycled water available for environmental, agricultural, and municipal reuse.

The Draft EIR/EIS was developed to provide the public and responsible and trustee agencies reviewing the Project an analysis of the potential effects, both beneficial and adverse, on the local and regional environment associated with construction and operation of the Project. The Draft EIR/EIS documented the direct, indirect, and cumulative effects to the physical, biological, and socioeconomic environment that may result from the Project.

The Draft EIR/EIS addressed potentially significant environmental issues and recommends adequate and feasible mitigation measures to reduce or eliminate significant environmental impacts. The Draft EIR/EIS examined three alternatives at an equal level of detail: Basic System, Partially Connected System, and Fully Connected System. The Phase I Implementation Plan for these alternatives was examined at a project level of detail. The Draft EIR/EIS also examined the No Project Alternative, No Action Alternative, and other Alternatives to the Proposed Action.

A series of public meetings on the Draft EIR/EIS were held in June 2009. Copies of the Final EIR/EIS are available for public review at the following locations:

- Bureau of Reclamation, Mid-Pacific Regional Office Library, 2800 Cottage Way, Sacramento, CA 95825.
- Sonoma County Water Agency, 404 Aviation Way, Santa Rosa, CA 95403.
- Las Gallinas Valley Sanitary District, 300 Smith Ranch Road, San Rafael, CA 94903.
- Novato Sanitary District, 500 Davidson Street, Novato, CA 94945.
- Napa Sanitation District, 935 Hartle Court, Napa, CA 94559.

- Sonoma Valley Regional Library, 755 West Napa St., Sonoma, CA 95476.
- Sonoma County Central Library, 211 E Street, Santa Rosa, CA 95404.
- Marin County—Novato Branch Library, 1720 Novato Blvd., Novato, CA 94947.
- Napa City—County Library, 580 Coombs Street, Napa, CA 94559.
- Marin County—Central Branch Library, 3501 Civic Center Drive #427, San Rafael, CA 94903.

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence, including your personal identifying information, may be made publicly available at any time. While you can request in your correspondence that Reclamation withhold your personal identifying information from public review, we cannot guarantee Reclamation is able to do so.

Dated: October 30, 2009.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

Editorial Note: This document was received in the Office of the Federal Register on June 2, 2010.

[FR Doc. 2010–13512 Filed 6–4–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on May 28, 2010, a proposed Consent Decree ("Decree") in *United States* v. *The Scrap Yard, LLC, d/b/a/Cleveland Scrap,* Civil Action No. 1:10–cv–01206, was lodged with the United States District Court for the Northern District of Ohio.

In this action the United States, on behalf of the U.S. Environmental Protection Agency ("U.S. EPA"), sought penalties and injunctive relief under the Clean Air Act ("CAA") against The Scrap Yard, LLC, d/b/a/Cleveland Scrap ("Defendant") relating to Defendant's Cleveland, Ohio facility ("Facility"). The Complaint alleges that Cleveland Scrap has violated Section 608(b)(1) of the CAA, 42 U.S.C. 7671g(b)(1) (National Recycling and Emission Reduction Program), and the regulations promulgated thereunder, 40 CFR part 82, subpart F, by failing to follow the requirement to recover or verify recovery of refrigerant from appliances it accepts for disposal. The Consent Decree provides for a civil penalty of $5,000 based upon ability to pay. The Decree also requires Defendant to (1) purchase equipment to recover refrigerant or contract for such services and provide such service at no additional cost; (2) no longer accept appliances with cut lines unless the supplier can provide appropriate verification that such appliances have not leaked; (3) require its suppliers to use the verification statement provided in appendix A; and (4) keep a refrigerant recovery log regarding refrigerant that it has recovered.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *The Scrap Yard, LLC, d/b/a/ Cleveland Scrap,* D.J. Ref. 90–5–2–1–09613. The Decree may be examined at U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–13501 Filed 6–4–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Idaho Orthopaedic Society, Timothy Doerr, Jeffrey Hessing, Idaho Sports Medicine Institute, John Kloss, David Lamey, and Troy Watkins; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Idaho in *United States of America* v. *Idaho Orthopaedic Society, Timothy Doerr, Jeffrey Hessing, Idaho Sports Medicine Institute, John Kloss, David Lamey, and Troy Watkins,* Civil Case No. 10–268. On May 28, 2010, the United States filed a Complaint alleging that each of the Defendants, and other competing orthopedists and orthopedic practices in Idaho, formed and participated in one or more conspiracies to gain more favorable fees and other contractual terms by agreeing to coordinate their actions, including denying medical care to injured workers and to threaten to terminate their contracts with Blue Cross of Idaho, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and Idaho Code Section 48–101 *et seq.* of the Idaho Competition Act. The proposed Final Judgment, filed the same time as the Complaint, enjoins the Defendants from jointly agreeing with competing physicians regarding the amount of pay to accept from any payer or groups of payers or jointly boycotting any payer or group of payers.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Idaho. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust

Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0827).

J. Robert Kramer II,

Director of Operations and Civil Enforcement.

Christine A. Varney, Assistant Attorney General; Peter J. Mucchetti, Trial Attorney (DCB No. 463202); U.S. Department of Justice Antitrust Division, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, *peter.j.mucchetti@usdoj.gov*. Telephone: (202) 353–4211. Facsimile: (202) 307–5802. Attorneys for the United States.

Lawrence Wasden, Attorney General; Brett T. DeLange, Deputy Attorney General (ISB No. 3628); Consumer Protection Division, Office of the Attorney General, 954 W. Jefferson St., 2nd Floor, P.O. Box 83720, Boise, Idaho 83720–0010, *brett.delange@ag.idaho.gov*. Telephone: (208) 334–4114. Facsimile: (208) 334–4151. Attorneys for the State of Idaho.

(See signature page for the complete list of plaintiffs' attorneys).

United States District Court for the District of Idaho

Civil Case No. 10–268

United States of America and the State of Idaho, Plaintiffs, vs. Idaho Orthopaedic Society, Timothy Doerr, Jeffrey Hessing, Idaho Sports Medicine Institute, John Kloss, David Lamey, and Troy Watkins, Defendants; Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Idaho, acting under the direction of the Attorney General of the State of Idaho, bring this action for equitable and other appropriate relief against Defendants Idaho Orthopaedic Society, Dr. Timothy Doerr, Dr. Jeffrey Hessing, Idaho Sports Medicine Institute, Dr. John Kloss, Dr. David Lamey, and Dr. Troy Watkins, to restrain Defendants' violations of Section 1 of the Sherman Act and Idaho Code Section 48–101 *et seq.* of the Idaho Competition Act. Plaintiffs allege as follows:

I. Nature of the Action

1. Defendants and other competing orthopedists and orthopedic practices in the Boise, Idaho area formed two conspiracies to deny, or to threaten to deny, medical care to patients to force those patients' insurers to increase fees for orthopedic services.

2. In the first conspiracy, Defendants and their co-conspirators agreed, through a series of meetings and other communications, not to treat most patients covered by workers' compensation insurance. Defendants entered into this group boycott to force the Idaho Industrial Commission to increase the rates at which orthopedists are reimbursed for treating injured workers. Defendants' group boycott, which resulted in a shortage of orthopedists willing to treat workers' compensation patients, caused the Idaho Industrial Commission to increase rates for orthopedic services substantially above levels set just a year earlier.

3. In the second conspiracy, Defendants (except for Defendant Lamey) and other conspirators agreed, through a series of meetings and other communications, to threaten to terminate their contracts with Blue Cross of Idaho ("BCI") to force it to offer better contract terms to orthopedists. Their collusion caused BCI to offer orthopedists more favorable contract terms than BCI would have offered but for Defendants' group boycott of BCI.

4. The United States and the State of Idaho, through this suit, ask this Court to declare Defendants' conduct illegal and to enter injunctive relief to prevent further injury to the State of Idaho and other purchasers of orthopedic services, including self-insured employers and health and workers' compensation insurers in the Boise, Idaho area and elsewhere.

II. Defendants

5. The Idaho Orthopaedic Society ("IOS") is a non-profit corporation organized and doing business under the laws of the State of Idaho, with its principal place of business in Boise. The IOS is a membership organization that, from 2006 to 2008, consisted of approximately 75 economically independent, competing orthopedists in solo and group practices in Idaho.

6. Timothy Doerr, MD is an orthopedic surgeon practicing in Boise. He was at all relevant times a member of the IOS.

7. Jeffrey Hessing, MD is an orthopedic surgeon practicing in Boise. He was at all relevant times a member of the IOS.

8. Idaho Sports Medicine Institute, P.A. ("ISMI"), an orthopedic practice group consisting of four physicians, is a corporation organized and doing business under the laws of the State of Idaho, with its principal place of business in Boise.

9. John Kloss, MD is an orthopedic surgeon practicing in Boise who formerly practiced with Orthopedic Centers of Idaho, P.A., d.b.a. Boise Orthopedic Clinic ("BOC"). He was at all relevant times a member of the IOS.

10. David Lamey, MD is an orthopedic surgeon practicing in Boise who formerly practiced with BOC. He was at all relevant times a member of the IOS.

11. Troy Watkins, MD is an orthopedic surgeon practicing in Boise, and was from 2006 through 2008 the President of the IOS. He was at all relevant times a member of the IOS.

III. Jurisdiction and Venue

12. The Court has subject-matter jurisdiction over this action under 15 U.S.C. 4 and 15 U.S.C. 26, which authorize the United States and the State of Idaho, respectively, to bring actions in district courts to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. 1. Subject-matter jurisdiction also exists pursuant to 28 U.S.C. 1331, 1337 and 1345.

13. The Court has jurisdiction over the State of Idaho's claim under Idaho Code Section 48–101 *et seq.,* under the doctrine of pendent jurisdiction, 28 U.S.C. 1367.

14. The IOS and ISMI are both found, have transacted business, and committed acts in furtherance of the alleged violations in the District of Idaho. Defendants Doerr, Hessing, Kloss, Lamey, and Watkins all provide orthopedic services and reside in Idaho. Consequently, this Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. 1391(b).

IV. Conspirators

15. Various persons not named as defendants in this action have participated as conspirators with Defendants in the offenses alleged and have performed acts and made statements in furtherance of the alleged conspiracies.

V. Effects on Interstate and Idaho Commerce

16. The activities of Defendants that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

17. Defendants have treated patients who are not residents of Idaho. Defendants have also purchased equipment and supplies that were shipped across state lines.

18. Most Idaho employers provide workers' compensation and health insurance for their employees. The rates that Idaho employers pay for providing workers' compensation and health insurance are based in part on the cost of orthopedic services. Anticompetitive conduct that increases the cost of

orthopedic services increases the cost of producing goods and services, which many Idaho employers sell in interstate commerce.

VI. Idaho Workers' Compensation System Conspiracy

19. The Idaho Workers' Compensation Act, Idaho Code Section 72–101 *et seq.,* requires that most public and private employers in Idaho carry workers' compensation insurance for their employees.

20. The Idaho Industrial Commission is the state agency responsible for regulating workers' compensation insurance in Idaho. Since 2006, the Idaho Industrial Commission has set the fee schedule that determines the amount that orthopedists and other healthcare providers usually receive for treating patients covered by workers' compensation insurance. The fee schedule uses a methodology for determining physician payments called a Resource-Based Relative Value System or RBRVS.

21. The RBRVS methodology uses a "relative value unit" and a "conversion factor" to determine physician payment. The relative value unit measures the resources necessary to perform a medical service. For example, a complicated surgical procedure has a higher relative value unit than a simple office visit. The conversion factor is a set dollar amount, for example, $100.

22. A physician's payment for any medical service is generally calculated by multiplying the relative value unit by the conversion factor. For example, a physician would receive $500 for a medical service with a relative value unit of 5 and a conversion factor of $100.

23. In February 2006, the Idaho Industrial Commission announced a new fee schedule using the RBRVS methodology and setting a conversion factor of $88 for many orthopedic procedures. The new fee schedule had an effective date of April 1, 2006. Many orthopedists believed this conversion factor would result in lower payments to orthopedists. In response, Defendants and their co-conspirators agreed, through the actions discussed below, not to treat most patients covered by workers' compensation insurance.

24. Shortly after the Idaho Industrial Commission announced the February 2006 fee schedule, many Boise-area orthopedists from competing practices discussed with one another whether to accept the proposed rates or, alternatively, to stop treating workers' compensation patients. For example, at Defendant Doerr's invitation, orthopedists from several competing practices met on March 2, 2006 to talk about "the physician response to the new fee schedule." Also on March 2, 2006, an orthopedist specializing in hand surgery sent an e-mail to several competing orthopedic hand surgeons saying that the new conversion factors represented a severe cut in workers' compensation payments and that, at Defendant Doerr's meeting that night, orthopedists would examine their options. On the same day, Defendant Lamey wrote to a competing orthopedist that he did "not have much problem dropping out of work comp."

25. The day after the March 2, 2006 meeting, orthopedists from two competing practices sent letters to the Idaho Industrial Commission announcing their intention to stop treating workers' compensation patients.

26. Many of the orthopedists who initially boycotted the workers' compensation system were orthopedists who specialized in hand surgery. For example, on April 12, 2006, seven hand surgeons met "to discuss the various docs' interest in continuing to participate" in Idaho's workers' compensation system. An e-mail describing this meeting noted that Defendant Lamey and a competing orthopedist favored "ditching" workers' compensation and that Defendant Kloss agreed but wanted to negotiate a rate increase with the Idaho Industrial Commission. The day after that meeting, Defendants Kloss and Lamey stopped treating workers' compensation patients, with the exception of emergency room patients.

27. A June 6, 2006 letter from the IOS leadership, including Defendants Watkins and Kloss, to members instructed them that they "'must, indeed, all hang together or, most assuredly, we shall all hang separately.'" The letter noted that orthopedists "must act together" concerning the workers' compensation fee schedule and "collectively join our efforts for our practices" to negotiate a more favorable fee schedule.

28. Minutes from a BOC board of directors meeting on June 12, 2006, state that BOC's president told the board that Boise-area orthopedists specializing in hand surgery "have stopped taking new work comp patients." The minutes continue, saying, "Dr. Kloss confirmed this, except for [emergency room] call patients. [Defendant Kloss] said there has been an appeal for orthopedists to support the hand surgeons in their effort to demonstrate the inadequacy of payment for some orthopedic procedures."

29. On September 12, 2006, orthopedists from competing practices attended a meeting organized by Defendants Doerr and Hessing to discuss workers' compensation fees. Within ten days of the meeting, ISMI and two other large orthopedic practices in the Boise area stopped treating workers' compensation patients.

30. By October 2006, most of the approximately 65 orthopedists in the Boise area had stopped seeing most workers' compensation patients.

31. Five of the few remaining Boise orthopedists who continued to care for workers' compensation patients worked at BOC. Other orthopedists encouraged and pressured those BOC orthopedists to join the boycott and stop seeing workers' compensation patients. In an October 24, 2006 e-mail, BOC's president also encouraged these five BOC orthopedists to join the boycott. He explained that if the doctors were to stop treating new workers' compensation patients, the workers' compensation system would "be brought to a virtual standstill," increasing the doctors' negotiating leverage.

32. Over the following months, orthopedists and practice administrators regularly monitored adherence with the group boycott and pressured doctors to maintain a disciplined front. For example, on November 27, 2006, an ISMI administrator assured a competing practice that although ISMI had recently accepted one workers' compensation patient to offer a second opinion, it would not do so again, lest it "risk the rath [*sic*] of all the orthopedic surgeons because we're doing this." The ISMI administrator assured the competing practice group that ISMI was "turning away all other worker's comp cases," and asked the recipient to "[p]lease tell your docs what we did so it doesn't come back and sound worse than it already is!"

33. Defendants and their co-conspirators refused to treat most workers' compensation patients because they believed that if injured workers were unable to find orthopedists willing to treat them, the Idaho Industrial Commission would be forced to increase the orthopedist fee schedule. An ISMI employee explained that her practice's "lack of participation, along with others in the area, may cause them [*i.e.,* the Idaho Industrial Commission] to review their current Proposed Rule, which also includes the fee schedule." A January 2007 IOS newsletter notes that "lack of access [to orthopedists] is the key" to increased workers' compensation rates.

34. According to the February 5, 2007 minutes of the Idaho House of Representatives Commerce & Human Resources Committee, Defendant Watkins openly discussed that

physicians had agreed not to treat most workers' compensation patients. The minutes describe Defendant Watkins as stating that "[a] group of physicians met and decided that the [fee] table was not satisfactory. They decided to stop seeing workers' compensation patients [except] in the emergency room, and stop seeing and giving second opinions until discussion happened about [the] conversion factor chart."

35. In the face of an effective and widely adhered to group boycott, in February 2007, the Idaho Industrial Commission announced workers' compensation rates that were up to 61% higher than the rates that the Commission had announced a year earlier.

36. After the new rates were announced, Defendants and their co-conspirators agreed to end their boycott and accept the new rates. In a February 13, 2007 letter to IOS membership, Defendant Watkins wrote, "We * * * all think this [the higher fee schedule] represents a major accomplishment, and that we should accept it now." Shortly thereafter, Defendants and almost all of the orthopedists who had participated in the conspiracy resumed participation in the workers' compensation system.

VII. Blue Cross of Idaho Conspiracy

37. BCI is a not-for-profit mutual insurance company that offers a wide range of healthcare plans to employers and other groups in Boise and other areas of Idaho.

38. To offer these plans, BCI contracts with orthopedists and other physicians to provide medical services. BCI's contracts with orthopedists set the reimbursement amounts that BCI pays orthopedists for providing covered health care to BCI's enrollees.

39. In December 2007, BCI informed its network of orthopedists and other physicians of new rates that would take effect on April 1, 2008. Some of the Defendants and other orthopedists were concerned that the new rates were lower than BCI's previous rates.

40. Before the rates became effective, several of the Defendants and other competing orthopedists communicated with each other their dissatisfaction with BCI's proposed rates. In addition, on February 22, 2008, Defendant Watkins sent a letter to BCI saying that "[m]any of our members are worried that they may not be able to sustain some of the reductions they are facing with the proposed 2008 rates."

41. On April 9, 2008—eight days after the new BCI rates took effect—the IOS sponsored an "Orthopedic Open House" at Defendants Hessing and Doerr's office. At this meeting, the orthopedists discussed how to respond to BCI's adoption of new rates and encouraged others to send termination notices to BCI. Defendants Doerr and Hessing encouraged the orthopedists in attendance to put an ad in the newspaper to alert their patients and to assure other orthopedists that they were joining the boycott.

42. Shortly after the Orthopedic Open House, orthopedists began issuing termination notices to BCI and advertising their intended withdrawals in local newspapers. Between April and June 2008, twelve practice groups—representing approximately 31 of 67 orthopedists in the Boise area at the time—gave BCI notice that they would withdraw from BCI's network. This group included many IOS practice groups, including the practice group of Defendants Hessing and Doerr, and ISMI.

43. From April to June 2008, while orthopedic groups were sending termination notices to BCI, orthopedists communicated with each other to encourage others to withdraw from the BCI network. As part of this communication, many practices placed newspaper advertisements announcing their withdrawal from the BCI network. In addition, orthopedists discussed how the successful boycott of workers' compensation patients provided the model for collectively standing up to BCI and negotiating higher rates.

44. In June 2008, Defendant Watkins attempted to negotiate with BCI on behalf of competing orthopedists. He asked that BCI representatives meet with himself, Defendant Hessing, and Defendant Kloss (all of whom were in competing practices). In a separate June 2008 meeting, Defendant Watkins told BCI representatives that Idaho's orthopedists were a "very cohesive group" that had been successful in their efforts related to workers' compensation payments the previous year. Defendant Watkins also encouraged BCI to negotiate with practices that had already sent termination notices to BCI because otherwise BCI would experience a severe shortage of orthopedists in its network.

45. In response to the orthopedists' group boycott, on June 18, 2008, BCI offered orthopedists an additional contracting option to encourage orthopedists to continue to participate in BCI's provider network. The new option allowed orthopedists to choose between continuing to participate in BCI's network at current rates for one year with the possibility for higher rates the next year or to lock in existing rates for a three-year period. The new offer from BCI divided Boise's orthopedists, as several orthopedic practices accepted the new BCI offer.

46. In July 2008, when the conspirators failed to convince a large Boise orthopedic practice to join the boycott of BCI and that practice decided to continue its participation with BCI, BCI was able to contract with a sufficient number of orthopedists to maintain a viable physician network. Realizing that no further concessions beyond BCI's new offer would be forthcoming, practice groups began rescinding their termination notices. By the end of August 2008, most orthopedic practices had rescinded their termination notices and remained in the BCI network.

VIII. No Integration

47. Other than in their separate practices, IOS members do not share any financial risk in providing physician services, do not collaborate in a program to monitor and modify their clinical practice patterns to control costs or ensure quality, and do not otherwise integrate their delivery of care to patients.

IX. Violations Alleged

A. Claim 1: Conspiracy To Boycott Workers' Compensation Patients

48. Plaintiffs reiterate the allegations contained in paragraphs 1 through 36 and 47.

49. Beginning at least as early as February 2006 and continuing until at least February 2007, Defendants and their co-conspirators engaged in a combination or conspiracy in restraint of trade or commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and Section 48–104 of the Idaho Competition Act, by collectively refusing to treat workers' compensation patients. The Defendants' group boycott to refuse to treat workers' compensation patients led to Defendants' obtaining higher reimbursement rates from the Idaho Industrial Commission.

B. Claim 2: Conspiracy To Boycott Participation in BCI

50. Plaintiffs reiterate the allegations contained in paragraphs 1 through 47.

51. Beginning in or about January 2008, and continuing through at least August 2008, the participating Defendants and their co-conspirators engaged in a combination or conspiracy in restraint of interstate trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and Section 48–104 of the Idaho Competition Act, by collectively threatening to terminate their contracts with BCI. The participating Defendants'

group boycott to terminate their contracts with BCI led to Defendants' obtaining more favorable contract terms from BCI.

X. Request for Relief

52. To remedy these illegal acts, the United States of America and the State of Idaho request that the Court:

a. Adjudge and decree that Defendants entered into two unlawful contracts, combinations, or conspiracies in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and Idaho Code Section 48–104 of the Idaho Competition Act;

b. Enjoin the Defendant IOS and its members, officers, agents, employees and attorneys and their successors; Defendant ISMI; the individual physician Defendants; and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement to fix health care services prices, collectively negotiate on behalf of competing independent physicians or physician groups, or collectively boycott patients or health care insurers or other payors of health care services; and

c. Award to plaintiffs their costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

DATE: May 28, 2010.

FOR PLAINTIFFS
UNITED STATES OF AMERICA:

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MOLLY S. BOAST,

Deputy Assistant Attorney General, Antitrust Division.

WILLIAM F. CAVANAUGH, Jr.,

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United States District Court for the District of Idaho

Civil Case No. 10–268–S.EJL

United States of America and the State of Idaho, *Plaintiffs*, v. Idaho Orthopaedic Society, Timothy Doerr, Jeffrey Hessing, Idaho Sports Medicine Institute, John Kloss, David Lamey, and Troy Watkins, *Defendants*; Final Judgment.

Whereas, Plaintiffs, the United States of America and the State of Idaho, filed their joint Complaint on May 28, 2010, alleging that the defendants, the Idaho Orthopaedic Society, Dr. Timothy Doerr, Dr. Jeffrey Hessing, Idaho Sports Medicine Institute, Dr. John Kloss, Dr. David Lamey, and Dr. Troy Watkins, participated in agreements in violation of Section 1 of the Sherman Act, and the State of Idaho has also alleged in the Complaint that the defendants violated Idaho Code Section 48–104 of the Idaho Competition Act; and the Plaintiffs and the defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And whereas this Final Judgment does not constitute any admission by the defendants that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true;

And whereas the defendants agree to be bound by the provisions of this Final Judgment, pending its approval by this Court;

And whereas, the United States requires the defendants to agree to certain procedures and prohibitions for the purposes of preventing recurrence of the alleged violation and restoring the loss of competition alleged in the Complaint;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of plaintiffs and the defendants, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. 1, and Idaho Code Section 48–101 *et seq.* of the Idaho Competition Act.

II. Definitions

As used in this Final Judgment:

(A) "Communicate" means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner;

(B) "Competing physician" means any orthopedist and orthopedic practice other than the defendant's practice, physicians in that practice, or that practice's employees or agents, in any of the following counties: Ada, Boise, Canyon, Gem, and Owyhee, Idaho;

(C) "Defendants" means the Idaho Orthopaedic Society, Dr. Timothy Doerr, Dr. Jeffrey Hessing, Idaho Sports Medicine Institute, Dr. John Kloss, Dr. David Lamey, and Dr. Troy Watkins, who have consented to entry of this Final Judgment, and all persons acting as agents on behalf of any of them;

(D) "On-call coverage" means any arrangement between a hospital and physicians whereby the physicians agree to provide medical services on an as needed basis to the hospital's emergency department;

(E) "Payer" means any person that purchases or pays for all or part of a physician's services for itself or any other person and includes but is not limited to independent practice associations, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, employers, and governmental or private workers' compensation insurers;

(F) "Payer contract" means a contract between a payer and a physician or physician practice by which that physician or physician practice agrees to provide physician services to persons designated by the payer; and

(G) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, organization, or other legal entity.

III. Applicability

This Final Judgment applies to the defendants and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

The defendants each are enjoined from, in any manner, directly or indirectly:

(A) Encouraging, facilitating, entering into, participating in, or attempting to engage in any actual or potential agreement or understanding with, between, or among competing physicians about:

(1) Any fee, or other payer contract term or condition, with any payer or group of payers, including the acceptability or negotiation of any fee or other payer contract term with any payer or group of payers;

(2) The manner in which the defendant or any competing physician will negotiate with, contract with, or otherwise deal with any payer or group of payers, including participating in or terminating any payer contract; or

(3) Any refusal to deal or threatened refusal to deal with any payer; or

(B) Communicating with any competing physician or facilitating the exchange of information between or among competing physicians about:

(1) The actual or possible view, intention, or position of any defendant or his or her medical practice group, or any competing physician concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including the negotiating or contracting status of the defendant, his or her medical group, or any competing physician with any payer or group of payers, or

(2) Any proposed or existing term of any payer contract that affects:

(a) The amount of fees or payment, however determined, that the defendant, his or her medical practice group, or any competing physician charges, contracts for, or accepts from or considers charging, contracting for, or accepting from any payer or group of payers for providing physician services;

(b) The duration, amendment, or termination of any payer contract; or

(c) The manner of resolving disputes between any parties to any payer contract.

V. Permitted Conduct

(A) Subject to the prohibitions of Section IV of this Final Judgment, the defendants:

(1) May discuss with any competing physician any medical topic or medical issue relating to patient care; and

(2) May participate in activities of any medical society.

(B) Nothing in this Final Judgment shall prohibit the defendants from:

(1) Advocating or discussing, in accordance with the *Noerr-Pennington* doctrine, legislative, judicial, or regulatory actions, or other governmental policies or actions;

(2) Participating, or engaging in communications necessary to participate, in lawful surveys or activities by clinically or financially integrated physician network joint ventures and multi-provider networks as those terms are used in Statements 5, 6, 8, and 9 of the 1996 Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153; or

(3) Engaging in conduct solely related to the administrative, clinical, financial, or other terms of providing on-call coverage at a hospital or hospital system. Section V(B)(3) of this Final Judgment is not a determination that such conduct does not violate any law enforced by the United States Department of Justice or the Office of the Idaho Attorney General.

VI. Required Conduct

(A) Within 60 days from the entry of this Final Judgment, each defendant shall distribute a copy of this Final Judgment and the Competitive Impact Statement in the following manner:

(1) In the case of individual defendants Drs. Doerr, Hessing, Kloss, Lamey, and Watkins, to their respective practices' chief administrative employee and to all physicians that practice or have practiced in the same practice group as that defendant since January 1, 2006;

(2) In the case of Idaho Sports Medicine Institute, to its practice's chief administrative employee and physicians that practice or have practiced with that practice group since January 1, 2006; and

(3) In the case of the Idaho Orthopaedic Society, to all members of that organization since January 1, 2006.

(B) For a period of ten years following the date of entry of this Final Judgment, each defendant shall certify to the United States annually on the anniversary date of the entry of this Final Judgment whether the defendant has complied with the provisions of this Final Judgment.

VII. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment or whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice or the Office of the Idaho Attorney General (including their consultants and other retained persons) shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Office of the Idaho Attorney General and on reasonable notice to each defendant, be permitted:

(1) Access during each defendant's office hours to inspect and copy, or, at the United States' or the State of Idaho's option, to require that each defendant provide hard or electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants and their officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee without restraint or interference by defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Office of the Idaho Attorney General, each defendant shall submit written reports or a response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) No information or documents obtained by the means provided in this section shall be divulged by the State of Idaho to any person other than an authorized representative of the executive branch of the State of Idaho, except in the course of legal proceedings to which the State of Idaho is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(E) If at the time information or documents are furnished by defendants to the United States or the State of Idaho, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of

protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States and the State of Idaho shall give defendants ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

X. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and plaintiff United States's response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and pursuant to Idaho Code § 48–108(3) of the Idaho Competition Act

Dated: _____

United States District Judge

Peter J. Mucchetti (DCB No. 463202);

U.S. Department of Justice Antitrust Division, 450 Fifth Street, NW, Suite 4100, Washington, DC 20530, peter.j.mucchetti@usdoj.gov, Telephone: (202) 353–4211, Facsimile: (202) 307–5802, Attorneys for the United States.

United States District Court for the District of Idaho

Civil Case No. 10–268–S.EJL

United States of America and the State of Idaho, *Plaintiffs,* vs. Idaho Orthopaedic Society, Timothy Doerr, Jeffrey Hessing, Idaho Sports Medicine Institute, John Kloss, David Lamey, and Troy Watkins, *Defendants;* Competitive Impact Statement.

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 28, 2010, the United States and the State of Idaho filed a civil antitrust Complaint, alleging that the Defendants Idaho Orthopedic Society ("IOS"), Dr. Timothy Doerr, Dr. Jeffrey Hessing, Idaho Sports Medicine Institute ("ISMI"), Dr. John Kloss, Dr. David Lamey, and Dr. Troy Watkins violated Section 1 of the Sherman Act and Idaho Code Section 48–101 *et seq.* of the Idaho Competition Act. The Defendants and other competing orthopedists in the Boise, Idaho, area formed two conspiracies to gain more favorable fees and other contractual terms by agreeing to coordinate their actions, including denying medical care to injured workers.

The Complaint alleges that, in the first conspiracy, Defendants and their co-conspirators agreed, through a series of meetings and other communications, not to treat most patients covered by workers' compensation insurance. Defendants entered into this group boycott to force the Idaho Industrial Commission to increase the rates at which orthopedists are reimbursed for treating injured workers. Defendants' group boycott, which resulted in a shortage of orthopedists willing to treat workers' compensation patients, caused the Idaho Industrial Commission to increase rates for orthopedic services substantially above levels set just a year earlier.

In a second conspiracy, the Complaint alleges that Defendants (except for Defendant Lamey) and other conspirators agreed, through a series of meetings and other communications, to threaten to terminate their contracts with Blue Cross of Idaho ("BCI") to force it to offer better contract terms to orthopedists. Their collusion caused BCI to offer orthopedists more favorable contract terms than BCI would have offered but for the participating Defendants' group boycott of BCI.

With the Complaint, the United States and the State of Idaho filed a proposed Final Judgment that enjoins the Defendants from agreeing with competing physicians to threaten to terminate contracts with payers or deny medical care to patients, as more fully explained below. The United States, the State of Idaho, and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants

The IOS is a membership organization that, from 2006 to 2008, consisted of approximately 75 orthopedists, each of whom practiced in a solo or group practice. These solo and group practices were economically independent of, and competed with, each other. Defendants Doerr, Hessing, Kloss, Lamey, and Watkins are physicians who provide orthopedic services in the Boise, Idaho, area and who were members of the IOS. Defendants Kloss and Lamey formerly practiced with Orthopedic Centers of Idaho, P.A., d.b.a. Boise Orthopedic Clinic ("BOC"). ISMI is an orthopedic practice group in Boise. Most of the orthopedists that practice with ISMI were members of the IOS. The Defendants were the principal actors in the boycotts of Idaho's workers' compensation system and BCI.

B. The Alleged Violations

1. Idaho Workers' Compensation System Conspiracy

The Idaho Workers' Compensation Act, Idaho Code Section 72–101 *et seq.,* requires that most public and private employers in Idaho carry workers' compensation insurance for their employees. The Idaho Industrial Commission is the state agency responsible for regulating workers' compensation insurance in Idaho.

Since 2006, the Idaho Industrial Commission has set the fee schedule that determines the amount that orthopedists and other healthcare providers usually receive for treating patients covered by workers' compensation insurance. The fee schedule uses a methodology for determining physician payments called a Resource-Based Relative Value System or RBRVS. The RBRVS methodology uses a "relative value unit" and a "conversion factor" to determine physician payment. The relative value unit measures the resources necessary to perform a medical service. For example, a complicated surgical procedure has a higher relative value unit than a simple office visit. The conversion factor is a set dollar amount, for example, $100. A physician's payment for any medical

service is generally calculated by multiplying the relative value unit by the conversion factor. For example, a physician would receive $500 for a medical service with a relative value unit of 5 and a conversion factor of $100.

In February 2006, the Idaho Industrial Commission announced a new fee schedule using the RBRVS methodology and setting a conversion factor of $88 for many orthopedic procedures. The new fee schedule had an effective date of April 1, 2006. Many orthopedists believed this conversion factor would result in lower payments to orthopedists. In response to the Idaho Industrial Commission's new fee schedule, Defendants and their co-conspirators agreed, through a series of meetings and other communications that took place over a year-long period, not to treat most patients covered by workers' compensation insurance.

Shortly after the Idaho Industrial Commission announced the February 2006 fee schedule, many Boise-area orthopedists from competing practices discussed with one another whether to accept the proposed rates or, alternatively, to stop treating workers' compensation patients. For example, at Defendant Doerr's invitation, orthopedists from several competing practices met on March 2, 2006, to talk about "the physician response to the new fee schedule." Also on March 2, 2006, an orthopedist specializing in hand surgery sent an e-mail to several competing orthopedic hand surgeons saying that the new conversion factors represented a severe cut in workers' compensation payments and that, at Defendant Doerr's meeting that night, orthopedists would examine their options. On the same day, Defendant Lamey wrote to a competing orthopedist that he did "not have much problem dropping out of work comp." The day after the March 2, 2006 meeting, orthopedists from two competing practices sent letters to the Idaho Industrial Commission announcing their intention to stop treating workers' compensation patients.

Many of the orthopedists that initially boycotted the workers' compensation system were orthopedists who specialized in hand surgery. For example, on April 12, 2006, seven hand surgeons met "to discuss the various docs' interest in continuing to participate" in Idaho's workers' compensation system. An e-mail describing this meeting noted that Defendant Lamey and a competing orthopedist favored "ditching" workers' compensation and that Defendant Kloss agreed but wanted to negotiate a rate increase with the Idaho Industrial Commission. The day after that meeting, Defendants Kloss and Lamey stopped treating workers' compensation patients, with the exception of emergency room patients.

A June 6, 2006 letter from the IOS leadership, including Defendants Watkins and Kloss, to members instructed them that they "'must, indeed, all hang together or, most assuredly, we shall all hang separately.'" The letter noted that orthopedists "must act together" concerning the workers' compensation fee schedule and "collectively join our efforts for our practices" to negotiate a more favorable fee schedule.

Minutes from a BOC board of directors meeting on June 12, 2006, state that BOC's president told the board that Boise-area orthopedists specializing in hand surgery "have stopped taking new work comp patients." The minutes continue, saying, "Dr. Kloss confirmed this, except for [emergency room] call patients. [Defendant Kloss] said there has been an appeal for orthopedists to support the hand surgeons in their effort to demonstrate the inadequacy of payment for some orthopedic procedures."

On September 12, 2006, orthopedists from competing practices attended a meeting organized by Defendants Doerr and Hessing to discuss workers' compensation fees. Within ten days of the meeting, ISMI and two other large orthopedic practices in the Boise area stopped treating workers' compensation patients.

By October 2006, most of the approximately 65 orthopedists in the Boise area had stopped seeing most workers' compensation patients. Five of the few remaining Boise orthopedists who continued to care for workers' compensation patients worked at BOC. Other orthopedists encouraged and pressured those BOC orthopedists to join the boycott and stop seeing workers' compensation patients. The October 9, 2006 BOC board of directors meeting minutes report that BOC's president also encouraged these five BOC orthopedists to join the boycott. He explained that if the doctors were to stop treating new workers' compensation patients, the workers' compensation system would "be brought to a virtual standstill," increasing the doctors' negotiating leverage.

Over the following months, orthopedists and practice administrators regularly monitored adherence with the group boycott and pressured doctors to maintain a disciplined front. For example, on November 27, 2006, an ISMI administrator assured a competing practice that although ISMI had recently accepted one workers' compensation patient to offer a second opinion, it would not do so again, lest it "risk the rath [*sic*] of all the orthopedic surgeons because we're doing this." The ISMI administrator assured the competing practice group that ISMI was "turning away all other worker's comp cases," and asked the recipient to "[p]lease tell your docs what we did so it doesn't come back and sound worse than it already is!"

Defendants and their co-conspirators refused to treat most workers' compensation patients because they believed that if injured workers were unable to find orthopedists willing to treat them, the Idaho Industrial Commission would be forced to increase the orthopedist fee schedule. An ISMI employee explained that her practice's "lack of participation, along with others in the area, may cause them [*i.e.,* the Idaho Industrial Committee] to review their current Proposed Rule, which also includes the fee schedule." A January 2007 IOS newsletter notes that "lack of access [to orthopedists] is the key" to increased workers' compensation rates.

According to the February 5, 2007 minutes of the Idaho House of Representatives Commerce & Human Resources Committee, Defendant Watkins openly discussed that physicians had agreed not to treat most workers' compensation patients. The minutes describe Dr. Watkins as stating that "[a] group of physicians met and decided that the [fee] table was not satisfactory. They decided to stop seeing workers' compensation patients [except] in the emergency room, and stop seeing and giving second opinions until discussion happened about [the] conversion factor chart."

In the face of an effective and widely adhered to group boycott, in February 2007, the Idaho Industrial Commission announced workers' compensation rates that were up to 61% higher than the rates that the Commission had announced a year earlier. After the new rates were announced, the Defendants and their co-conspirators agreed to end their boycott and accept the new rates. In a February 13, 2007 letter to IOS membership, Defendant Watkins wrote, "We * * * all think this [the higher fee schedule] represents a major accomplishment, and that we should accept it now." Shortly thereafter, Defendants and almost all of the orthopedists who had participated in the conspiracy resumed participation in the workers' compensation system.

2. Blue Cross of Idaho Conspiracy

BCI is a not-for-profit mutual insurance company that offers a wide range of healthcare plans to employers and other groups in Boise and other areas of Idaho. To offer these plans, BCI contracts with orthopedists and other physicians to provide medical services. BCI's contracts with orthopedists set the reimbursement amounts that BCI pays orthopedists for providing covered health care to BCI's enrollees.

In December 2007, BCI informed its network of orthopedists and other physicians of new rates that would take effect on April 1, 2008. Some of the Defendants and other orthopedists were concerned that the new rates were lower than BCI's previous rates. Before the rates became effective, several of the Defendants and other competing orthopedists communicated with each other their dissatisfaction with BCI's proposed rates. In addition, on February 22, 2008, Defendant Watkins sent a letter to BCI saying that "[m]any of our members are worried that they may not be able to sustain some of the reductions they are facing with the proposed 2008 rates."

On April 9, 2008—eight days after the new BCI rates took effect—the IOS sponsored an "Orthopedic Open House" at Defendants Hessing and Doerr's office. At this meeting, the orthopedists discussed how to respond to BCI's adoption of new rates and encouraged others to send termination notices to BCI. Defendants Doerr and Hessing encouraged the orthopedists in attendance to put an ad in the newspaper to alert their patients and to assure other orthopedists that they were joining the boycott. Shortly after the Orthopedic Open House, orthopedists began issuing termination notices to BCI and advertising their intended withdrawals in local newspapers. Between April and June 2008, twelve practice groups—representing approximately 31 of 67 orthopedists in the Boise area at the time—gave BCI notice that they would withdraw from BCI's network. This group included many IOS practice groups, including the practice group of Defendants Hessing and Doerr, and ISMI.

From April to June 2008, while orthopedic groups were sending termination notices to BCI, orthopedists communicated with each other to encourage others to withdraw from the BCI network. As part of this communication, many practices placed newspaper advertisements announcing their withdrawal from the BCI network. In addition, orthopedists discussed how the successful boycott of workers' compensation patients provided the model for collectively standing up to BCI and negotiating higher rates.

In June 2008, Defendant Watkins attempted to negotiate with BCI on behalf of competing orthopedists. He asked that BCI representatives meet with himself, Defendant Hessing and Defendant Kloss (all of whom were in competing practices). In a separate June 2008 meeting, Defendant Watkins told BCI representatives that Idaho's orthopedists were a "very cohesive group" that had been successful in their efforts related to workers' compensation payments the previous year. Defendant Watkins also encouraged BCI to negotiate with practices that had already sent termination notices to BCI because otherwise BCI would experience a severe shortage of orthopedists in its network.

In response to the orthopedists' group boycott, on June 18, 2008, BCI offered orthopedists an additional contracting option to encourage orthopedists to continue to participate in BCI's provider network. The new option allowed orthopedists to choose between continuing to participate in BCI's network at current rates for one year with the possibility for higher rates the next year or to lock in existing rates for a three-year period.

The new offer from BCI divided Boise's orthopedists. In July 2008, when the conspirators failed to convince a large Boise orthopedic practice to join the boycott of BCI and that practice decided to continue its participation with BCI, BCI was able to contract with a sufficient number of orthopedists to maintain a viable physician network. Realizing that no further concessions beyond BCI's new offer would be forthcoming, practice groups began rescinding their termination notices. By the end of August 2008, most orthopedic practices had rescinded their termination notices and remained in the BCI network.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and preserve competition for patients and other purchasers of orthopedic services, including self-insured employers and health and workers' compensation insurers in the Boise, Idaho area and elsewhere.

Under the proposed Final Judgment, the Defendants each are enjoined from, in any manner, directly or indirectly:

(A) Encouraging, facilitating, entering into, participating, or attempting to engage in any actual or potential agreement or understanding with, between or among competing physicians about:

(1) Any fee, or other payer contract term or condition, with any payer or group of payers, including the acceptability or negotiation of any fee or other payer contract term with any payer or group of payers;

(2) The manner in which the defendant or any competing physician will negotiate with, contract with, or otherwise deal with any payer or group of payers, including participating in or terminating any payer contract; or

(3) Any refusal to deal or threatened refusal to deal with any payer; or

(B) Communicating with any competing physician or facilitating the exchange of information between or among competing physicians about:

(1) The actual or possible view, intention, or position of any defendant or his or her medical practice group, or any competing physician concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including the negotiating or contracting status of the defendant, his or her medical group, or any competing physician with any payer or group of payers, or

(2) Any proposed or existing term of any payer contract that affects:

(a) The amount of fees or payment, however determined, that the defendant, his or her medical practice group or any competing physician charges, contracts for, or accepts from or considers charging, contracting for, or accepting from any payer or group of payers for providing physician services;

(b) The duration, amendment, or termination of any payer contract; or

(c) The manner of resolving disputes between any parties to any payer contract.

Subject to these restrictions, Section V of the proposed Final Judgment permits Defendants to discuss with any competing physician any medical topic or medical issue relating to patient care and participate in activities of any medical society. Moreover, nothing in the proposed Final Judgment prohibits Defendants from advocating or discussing, in accordance with the *Noerr-Pennington* doctrine, legislative, judicial, or regulatory actions, or other governmental policies or actions; participating, or engaging in communications necessary to participate, in lawful surveys or activities by clinically or financially integrated physician network joint ventures and multi-provider networks as those terms are used in Statements 5, 6, 8 and 9 of the 1996 Department of Justice and Federal Trade Commission

Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153.

Finally, Section V(B)(3) of the proposed Final Judgment does not prohibit Defendants from engaging in conduct solely related to the administrative, clinical, financial, or other terms of providing on-call coverage at a hospital or hospital system. Such conduct might not violate the antitrust laws if it creates significant efficiencies and, on balance, is not anticompetitive.[1] However, the proposed Final Judgment makes clear that Section V(B)(3) of the proposed Final Judgment is not a determination that such conduct does not violate any law enforced by the United States Department of Justice or the Office of the Idaho Attorney General. Rather, the United States has made no determination with respect to the legality of any such conduct. The United States retains its ability to challenge any conduct related to providing on-call coverage if it later determines that such a challenge is warranted under the law.

To promote compliance with the decree, the proposed Final Judgment also requires that the Defendants provide to their respective practices' chief administrative employee, other physicians in their practices, and/or members, copies of the Final Judgment and this Competitive Impact Statement. For a period of ten years following the date of entry of the Final Judgment, the Defendants separately must certify annually to the United States whether they have complied with the provisions of the Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

[1] *See* Dep't of Justice and Federal Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care § 8(B) (1996).

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States is satisfied, however, that the relief in the proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and preserve competition for patients and other purchasers of orthopedic services in Idaho. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.")[2]

[2] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006);

Continued

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 28, 2010

Respectfully submitted,

Peter J. Mucchetti,
Julie A. Tenney,
United States Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Telephone: (202) 353–4211, Facsimile: (202) 307–5802, peter.j.mucchetti@usdoj.gov.

Certificate of Service

I hereby certify that on May 28, 2010, I filed the foregoing Complaint, Explanation of Consent Decree Procedures, Stipulation, proposed Final Judgment, and Competitive Impact Statement electronically through the CM/ECF system and that on this date, I served the following non-CM/ECF Registered Participants in the manner indicated:

see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[4] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

Via first class mail, postage prepaid and e-mail addressed as follows:

For Defendants Idaho Orthopaedic Society, Timothy Doerr, Jeffrey Hessing, Idaho Sports Medicine Institute, John Kloss, and Troy Watkins:

Mark J. Botti, Akin Gump Strauss Hauer & Feld, LLP, 1333 New Hampshire Ave., NW., Washington, DC 20036–1564, *mbotti@akingump.com.*

For Defendant David Lamey:

Steven J. Hippler, Givens Pursley LLP, 601 W. Bannock St., Boise, Idaho 83702, *sjh@givenspursley.com.*

Peter J. Mucchetti,

United States Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW., Suite 4100, Washington, D.C. 20530, Telephone: (202) 353–4211, Facsimile: (202) 307–5802, peter.j.mucchetti@usdoj.gov.

[FR Doc. 2010–13610 Filed 6–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,420A]

Alticor, Inc., Including Access Business Group International, LLC, and Amway Corporation, Including On-Site Leased Workers from Otterbase, Manpower, Kforce and Robert Half, Ada, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 12, 2010, applicable to workers of Alticor, Inc., including Access Business Group International, LLC and Amway Corporation. The notice was published in the **Federal Register** on May 12, 2010 (75 FR 26794–26795).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to financial and procurement.

The company reports that workers leased from Otterbase, Manpower, Kforce and Robert Half were employed on-site at the Ada, Michigan location of Alticor, Inc., including Access Business Group International, LLC and Amway Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Otterbase, Manpower, Kforce and Robert Half working on-site at the Ada, Michigan location of Alticor, Inc., including Access Business Group International, LLC and Amway Corporation.

The amended notice applicable to TA–W–73,420A is hereby issued as follows:

All workers of Alticor, Inc., including Access Business Group International, LLC and Amway Corporation, Buena Park, California, (TA–W–73–420) and Alticor, Inc., including Access Business Group International, LLC and Amway Corporation, including on-site leased workers from Otterbase, Manpower, Kforce and Robert Half, Ada, Michigan, (TA–W–73–420A), who became totally or partially separated from employment on or after February 1, 2009, through April 28, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 24th day of May 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–13505 Filed 6–4–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,585]

Whirlpool Corporation, Evansville Division, Including On-Site Leased Workers from Andrews International, Inc., Evansville, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on January 19, 2010, applicable to workers of Whirlpool Corporation, Evansville Division, Evansville, Indiana. The notice was published in the **Federal Register** on March 5, 2010 (75 FR 10321).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of top freezer refrigerators and residential ice makers.

The company reports that workers leased from Andrews International, Inc. were employed on-site at the Evansville, Indiana location of Whirlpool Corporation, Evansville Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Andrews International, Inc. working on-site at the Evansville, Indiana location of Whirlpool Corporation, Evansville Division.

The amended notice applicable to TA–W–72,585 is hereby issued as follows:

All workers of Whirlpool Corporation, Evansville Division, including on-site leased workers from Andrews International, Inc., Evansville, Indiana, who became totally or partially separated from employment on or after December 6, 2008, through January 19, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–13510 Filed 6–4–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of May 17, 2010 through May 21, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Under Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under Section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under Section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under Section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under Section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under Section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding Section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–71,647: Vacumet Corporation, Scholle Corporation, Paper Division, Morristown, TN: July 13, 2008.

TA–W–71,795: Suburban Tool, Inc., DBA Taft-Pierce Metrology, Auburn Hills, MI: July 20, 2008.

TA–W–72,106: Gasbarre Products, Inc., Sinerite Furnace Division, St. Mary's, PA: August 15, 2008.

TA–W–72,186: Lebanon Apparel Corporation, Lebanon, VA: August 31, 2008.

TA–W–72,398: SAPA Extrusions, LLC, Delhi, LA: September 23, 2008.

TA–W–72,660: Turbine Engine Components Technologies Corporation, Tect Power Division, Newington, CT: October 19, 2008.

TA–W–72,919: Nelson Frames, Inc., Sophia, NC: November 20, 2008.

TA–W–72,920: Albany International Corp., Corrugator Belts Division, Menands, NY: November 11, 2008.

TA–W–73,035: Midwest Stamping, LLC, Brown Company of America, BHM Technologies, Leased Workers of Manpower, Edgerton, OH: November 15, 2008.

TA–W–73,190: Stanley Assembly Technologies, Stanley Black and Decker, On-site Independent

Contractors, Cleveland, OH: December 29, 2008.

TA–W–73,195: PIAD Precision Casting Corporation, Greensburg, PA: December 29, 2008.

TA–W–73,211: Wapakoneta Machine Company, Wapakoneta, OH: December 8, 2008.

TA–W–73,215: Central Manufacturing Company, Lift-A-Loft Holding Company, Parker City, IN: January 6, 2009.

TA–W–73,359: Tardy-Connors Group, LLC, DBA Moosehead Furniture, Monson, ME: January 22, 2009.

TA–W–73,360: Mann+Hummel Advanced Filtration Concepts, Inc., Louisville, KY: January 21, 2009.

TA–W–73,373: FLSmidth Spokane, Inc., DBA Racho; Leased Workers from Humanix Staffing Services, Spokane, WA: January 27, 2009.

TA–W–73,382: Holcim (US) Inc., Corporate Division, Leased Workers Manpower and Office Team, Dundee, MI: January 2, 2009.

TA–W–73,444A: Geocycle, LLC, Holcim (US) Inc., Detroit, MI: January 8, 2009.

TA–W–73,444: Geocycle, LLC, Holcim (US) Inc., Dundee, MI: January 8, 2009.

TA–W–73,455: Chromalox, Strips and Rings Product Line, Leased Workers Kelly Services, Ogden, UT: February 3, 2009.

TA–W–73,494: Air-Way Manufacturing Company, Plants 1 and 2, Olivet, MI: February 9, 2009.

TA–W–73,562: Colville Indian Plywood and Veneer, Colville Tribal Enterprise Corporation Wood Products, Omak, WA: February 24, 2009.

TA–W–73,596: Colville Indian Precision Pine, Colville Tribal Enterprise Corporation Wood Products Division, Omak, WA: February 24, 2009.

TA–W–73,647: Cut Loose Inc., San Francisco, CA: March 3, 2009.

TA–W–73,691: R. E. Phelon Company, Inc., Leased Workers from Aiken Staffing and SC Vocation Rehabilitation, Aiken, SC: March 10, 2009.

TA–W–73,709: Kurrmi, Inc., New York, NY: March 1, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–72,160: Rohm and Haas Chemicals LLC, The Dow Chemical Co., Leased Workers Kelly Services, Philadelphia, PA: August 27, 2008.

TA–W–72,268: Ceridian Corporation, Human Resources Outsourcing Div., Kelly Services, Select Group, Morrisville, NC: August 28, 2008.

TA–W–72,742: Cooper Standard Automotive, Bowling Green Hose Fluids Division, Bowling Green, OH: November 2, 2008.

TA–W–73,054: Spirit AeroSystems, Inc., Information Technology Department, Wichita, KS: December 3, 2008.

TA–W–73,094: Trane Springhill, Division of Ingersoll Rand, Leased Workers of Remedy, Cullen, LA: December 11, 2008.

TA–W–73,106: Open Solutions, Inc., Harpoon Acquisition Corp., Leased Workers Lauren Staffing, Target Temps, Windsor Locks, CT: December 15, 2008.

TA–W–73,109: Dayco Products, LLC, Walterboro, SC: December 9, 2008.

TA–W–73,128: Apria Healthcare, Billing Center, Minnetonka, MN: December 21, 2008.

TA–W–73,191: HSBC Bank USA, Trade and Supply Chain (TSC) Department, Brooklyn, NY: December 22, 2008.

TA–W–73,239: Walbar, Inc., Leased Workers of Adecco and Outsource Technical, Chandler, AZ: January 8, 2009.

TA–W–73,245: Fiserv Fulfillment Services, Inc., ISGN Solutions, Inc., Title Insurance/Lien Release Dept., Rocky Hill, CT: January 11, 2009.

TA–W–73,246: Rexnord Gear, Horsham, PA: January 7, 2009.

TA–W–73,268: Hewlett-Packard, Enterprise Services, EDS; Leased Workers Pinnacle Technical Resources, Fort Worth, TX: January 12, 2009.

TA–W–73,315: Apria Healthcare, Southeast Private Pay Management Center, Jackson, TN: January 15, 2009.

TA–W–73,327: Bartlett Corporation, Leased Workers from Pro Resources and Staffmark, Muncie, IN: January 19, 2009.

TA–W–73,342: WestPoint Home, Inc., Engineering Office, Valley, AL: January 15, 2009.

TA–W–73,350: Pechiney Plastic Packaging, Inc. (PPPI), dba Alcan Packaging, Leased Workers Express Employment Professionals etc., Washington, NJ: February 1, 2009.

TA–W–73,375: Target Corporation, Accounts Payable Department, Leased Workers of CDI Corporation, Brooklyn Park, MN: January 27, 2009.

TA–W–73,437: Samuel, Son and Co., Midwest, Inc., Formerly Located in Detroit, Michigan, Troy, MI: January 27, 2009.

TA–W–73,461: Nationwide Mutual Insurance Company, Finance Shared Service Center, Nationwide Life Company, Grove City, OH: February 10, 2009.

TA–W–73,477A: International Game Technology (IGT), Casinolink, Engineering, Leased Workers from Appleone, HCLAmerica, etc., Carlsbad, CA: February 5, 2009.

TA–W–73,477: International Game Technology (IGT), Machine Accounting and ABS, Leased Workers from Appleone HCLAmerica, etc., Corvallis, OR: February 5, 2009.

TA–W–73,504: Telscape Communications, Inc., Customer Service, Monrovia, CA: February 16, 2009.

TA–W–73,516: Nifco America Corporation, Lavergne Manufacturing Plant, LaVergne, TN: February 17, 2009.

TA–W–73,528: Sara Lee Corporation, Information Technology Department, Leased Workers Adecco, Crossfire etc., Mason, OH: February 3, 2009.

TA–W–73,537: Peter Wolters of America, Leased Workers of Richmar, West Springfield, MA: February 10, 2009.

TA–W–73,549: Caterpillar, Inc., DBA Dyersburg Transmission Facility, Dyersburg, TN: February 22, 2009.

TA–W–73,555: Hewlett-Packard Company, Corporate Administration & Shared Services, Leased Workers Various States, Omaha, NE: February 17, 2009.

TA–W–73,570: The Wichita Eagle, McClatchy Company, Finance Division, Wichita, KS: February 15, 2009.

TA–W–73,575: Springs Window Fashions, LLC, Leased Workers from QTI Qualitemps, Middleton, WI: February 24, 2009.

TA–W–73,603: Apria Healthcare, Southeast–National Cash Processing Center, Morrisville, NC: March 1, 2009.

TA–W–73,604: Apria Healthcare, Great Lakes–Patient Pay Management Center, Minster, OH: March 1, 2009.

TA–W–73,605: Apria Healthcare, Great Lakes–Patient Pay Management Center, Indianapolis, IN: March 1, 2009.

TA–W–73,611: PricewaterhouseCoopers, LLP, Internal Firm Services Client Account Administrators Group, Boston, MA: March 2, 2009.

TA–W–73,616: Experian, Global Technology Services Division, Leased Workers from Tapfin, Allen, TX: March 1, 2009.

TA–W–73,623: LSI Corporation, Test and Product Engineering Group, Fort Collins, CO: March 3, 2009.

TA–W–73,627: Pratt and Whitney International Aerospace Tubes, LLC, Leased Workers Manpower Professional Services and Creative Financial, Indianapolis, IN: March 1, 2009.

TA–W–73,630: PricewaterhouseCoopers, LLP, Division of Internal Firm Services, Atlanta, GA: March 2, 2009.

TA–W–73,668: Swets Information Services, Operations Department, Runnemede, NJ: March 9, 2009.

TA–W–73,672: Continental Automotive Systems, Inc., Formerly Temic Automotive of North American, Inc., Elma, NY: April 16, 2010.

TA–W–73,675: Franklin Resources, Inc., Global Branding and Advertising Division, Leased Workers Kelly Services, San Mateo, CA: February 24, 2009.

TA–W–73,711: Air Products and Chemicals, Inc., Global Information Technology, Leased Workers of Kelly Vendor Management, Allentown (Trexlertown), PA: March 5, 2009.

TA–W–73,713: General Electric Company, Consumer and Industrial Division, Wire Department, Euclid, OH: March 3, 2009.

TA–W–73,746: PricewaterhouseCoopers LLP, Internal Firm Services Client Account Administrators Group, New York, NY: March 17, 2009.

TA–W–73,758: Bluescope Buildings North America, Laurinburg, NC: March 19, 2009.

TA–W–73,780: Toyota Tsusho America, Inc., Logistics and Manufacturing Support, Leased Workers From Prologistix, Memphis, TN: March 22, 2009.

TA–W–73,793: TCM America, Inc., Previously TCM USA Holdings, Inc., Leased Workers From Roper Personnel, West Columbia, SC: March 11, 2009.

TA–W–73,794: TCM America, Inc., Previously TCM USA Holdings, Inc., Leased Workers from Roper Personnel, Houston, TX: March 11, 2009.

TA–W–73,795: TCM America, Inc., Previously TCM USA Holdings, Inc., Leased Workers From Roper Personnel, Swedesboro, NJ: March 11, 2009.

TA–W–73,813: Fortis Plastics, LLC, Henderson Division, Henderson, KY: March 22, 2009.

TA–W–73,881: WM Coffman, LLC, P&F Industries, Marion, VA: April 7, 2009.

TA–W–73,883: Amphenol Sine Systems, Sine Systems Corporation and Amphenol, Leased Workers of Rita Staffing, Lake Wales, FL: April 8, 2009.

TA–W–74,017: AstenJohnson, Jonesboro Press, Jonesboro, GA: April 21, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–71,595A: Motion Control Industries, Inc., Carlisle Companies, Inc. Leased Workers from St. Louis Staffing, Charlottesville, VA: June 29, 2008.

TA–W–71,595: Motion Control Industries, Inc., Carlisle Companies, Inc. Leased Workers from St. Louis Staffing, South Hill, VA: June 29, 2008.

TA–W–71,737: Asyst Technologies, Inc., Austin Connectivity Software Group, Austin, TX: July 19, 2008.

TA–W–72,913: McNulty Hicken Smith, Inc., DBA MHSI, Inc., DBA Material Handling Systems, Inc., Rochester Hills, MI: October 26, 2008.

TA–W–72,918: Northeast Machine & Tool Company, Mt. Pleasant, TX: November 20, 2008.

TA–W–73,254: KS Automotive, Inc., Leased Workers from Snelling Personnel Services, San Leandro, CA: January 12, 2009.

TA–W–73,564: Thieman Stamping Company, Inc., New Bremen, OH: February 23, 2009.

TA–W–73,600: Kyowa America Corporation, Warehouse Department, Westminster, CA: March 1, 2009.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–73,535: Little Rock Express, Inc., Houlton, ME: February 19, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W–73,033: Fujifilm Holdings Corporation, Valhalla, NY

TA–W–73,122: General Mills Services, Inc., A Subsidiary of General Mills, Inc., Golden Valley, MN.

TA–W–73,241: KPMG, LLP, Engagement Management Coordinator Group (EMC Group), Seattle, WA.

TA–W–73,438: Casa Decor, Sherman Oaks, CA.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–73,346: Western Reserve Group, IT Department, Wooster, OH.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–72,045: Barfield, Inc., Miami, FL.

TA–W–72,417: Hewlett-Packard Company, Technology Services Division; Americas Software Manufacturing Group, Andover, MA.

TA–W–72,461: FutureWei Technologies, Inc., DBA Huawei Technologies (USA) Wireless Research and Standards Group, Plano, TX.

TA–W–72,528: JW Kitko & Sons Wood Products, Inc., Glen Hope, PA.

TA–W–72,541: TriMark Corporation, New Hampton, IA.

TA–W–72,546: Carlisle Tire and Wheel Company, Carlisle Companies, Carlisle, PA.

TA–W–72,719: Voith Paper Fabrics Appleton, Inc., Appleton, WI.

TA–W–72,794: Unitex Chemical Corporation, Greensboro, NC.

TA–W–72,926: Freescale Semiconductor, Inc., Libraries Group, Austin, TX.

TA–W–73,199: Dow Jones & Company, Sharon Pennsylvania Print Plant, News Corporation, West Middlesex, PA.

TA–W–73,201: Louisville Bedding Company, Munfordville, KY.

TA–W–73,334: GBR Systems Corporation, Chester, CT.

TA–W–73,361: Microsoft Corporation, Enterprise Experience Division (EXD), Issaquah, WA.

TA–W–73,388: Basic Energy Services, Rental and Fishing Tool Division, Sonora, TX.

TA–W–73,472: Porter's Wood Products, Inc., Boykins, VA.

TA–W–73,601: Semperian, Greeley Administration Center, Greeley, CO.

TA–W–73,626: Magna Powertrain of America, Inc., MPT Group Office, Troy, MI.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–73,674: Edward W. Daniel, LLC, Cleveland, OH.

TA–W–73,799: Appleseed's, Inc., Beverly, MA.

TA–W–73,803: Hewlett-Packard Company, Corporate Administration and Shared Services, Syracuse, NY.

TA–W–73,837: B. Braun Medical, Inc., Atlanta, GA.

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W–73,296: The Montreal, Maine & Atlantic (MMA) Railway, Inc., Hermon, ME.

TA–W–73,838: Entree Alaska, Entree Canada Destinations, Inc., Langley, WA.

TA–W–73,879: Applied Materials, Inc., Quality and Reliability Division, Santa Clara, CA.

TA–W–74,031: Moore Flame Cutting Company, Sterling Heights, MI.

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W–73,677: Robert Bosch, LLC, Plymouth, MI.

TA–W–73,929: Chrysler Group, St. Louis North Assembly Plant, Fenton, MO.

I hereby certify that the aforementioned determinations were issued during the period of May 17, 2010 through May 21, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Date: May 26, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–13508 Filed 6–4–10; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 17, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 17, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 27th day of May 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 5/10/10 and 5/14/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74062	ESPG Management Services (State/One-Stop).	Burbank, CA	05/10/10	05/07/10
74063	TRG Insurance Solutions (Workers)	Beckley, WV	05/10/10	05/07/10
74064	Aviat U.S., Inc. (Company)	San Antonio, TX	05/10/10	05/07/10
74065	Shopko Stores Operating Company, LLC (Workers).	Green Bay, WI	05/10/10	05/07/10
74066	Ceva Logistics (Union)	Plainfield, IN	05/10/10	05/10/10
74067	Kartheiser Trucking, Incorporated (Company)	Columbia Falls, MT	05/11/10	05/10/10
74068	Redbox Automated Tretail, LLC (State/One-Stop).	Downers Grove, IL	05/11/10	05/10/10
74069	Nestaway, LLC (Workers)	McKenzie, TN	05/11/10	05/07/10
74070	California Redwood Company (Workers)	Arcata, CA	05/11/10	04/29/10
74071	Birdseye Veneer Company (Workers)	Butternut, WI	05/11/10	04/20/10
74072	Allegiance Industries (Workers)	Columbia, SC	05/11/10	05/02/10
74073	Seagate Technology (Company)	Freemont, CA	05/11/10	05/10/10

APPENDIX—Continued

[TAA petitions instituted between 5/10/10 and 5/14/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74074	Cut Right Wood Products (State/One-Stop)	McKenzie, TN	05/11/10	05/10/10
74075	Covance Research Products (Workers)	Kalamazoo, MI	05/12/10	05/11/10
74076	Feng Sheng Garments, Inc. (Workers)	San Francisco, CA	05/12/10	05/05/10
74077	Robb and Stucky Limited, LLLP (Company)	Fort Myers, FL	05/12/10	05/11/10
74078	Scapa North America (State/One-Stop)	Carlstadt, NJ	05/13/10	05/12/10
74079	San Francisco Chronicle (Workers)	San Francisco, CA	05/13/10	05/08/10
74080	General Electric (Workers)	Dothan, AL	05/13/10	05/10/10
74081	General Motors (State/One-Stop)	Shreveport, LA	05/13/10	05/12/10
74082	Alcoa, Inc. (Union)	Lafayette, IN	05/13/10	05/11/10
74083	Siemens (Company)	Ballefontaine, OH	05/13/10	05/04/10
74084	Tenaris Global Services (USA) Corporation (Company).	Houston, TX	05/13/10	05/06/10
74085	Avery Dennison (Company)	Lenoir, NC	05/14/10	05/13/10
74086	Unisys Corporation (State/One-Stop)	Austin, TX	05/14/10	05/13/10
74087	IMS Health (Workers)	Bethlehem, PA	05/14/10	05/13/10
74088	ABB Incorporated (Company)	Mount Pleasant, PA	05/14/10	05/10/10
74089	The Eastridge Group of Staffing Companies (State/One-Stop).	San Diego, CA	05/14/10	05/12/10
74090	Detroit Diesel (Workers)	Detroit, MI	05/14/10	05/13/10
74091	Moore Flame Cutting Company (Workers)	Sterling Heights, MI	05/14/10	04/30/10

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BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 17, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 17, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov*.

Signed at Washington, DC this 27th day of May 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

Appendix

TAA Petitions Instituted between 5/17/10 and 5/21/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74092	Cytec Engineered Materials, Inc. (Company)	Winona, MN	05/17/10	05/13/10
74093	Cytec Engineered Materials, Inc. (Company)	Greenville, TX	05/17/10	05/13/10
74094	Cytec Carbon Fibers, LLC (Company)	Piedmont, SC	05/17/10	05/13/10
74095	Cytec Engineered Materials, Inc. (Company)	Anaheim, CA	05/17/10	05/13/10
74096	Cytec Engineered Materials, Inc. (Company)	Havre de Grace, MD	05/17/10	05/13/10
74097	Cytec Surface Specialties, Inc. (Company)	Smyrna, GA	05/17/10	05/13/10
74098	Building Block Chemicals (Company)	Westwego, LA	05/17/10	05/13/10
74099	Cytec Industries, Inc. (Company)	Mount Pleasant, TN	05/17/10	05/13/10
74100	Cytec Industries, Inc. (Company)	Stamford, CT	05/17/10	05/13/10
74101	Cytec Surface Specialties, Inc. (Company)	North Agusta, SC	05/17/10	05/13/10
74102	Cytec Engineered Materials, Inc. (Company)	Tempe, AZ	05/17/10	05/13/10
74103	Anthem Blue Cross/Blue Shield (Workers)	Denver, CO	05/18/10	05/18/10
74104	Metalsa Structual Products, Inc. (Workers)	Pottstown, PA	05/18/10	05/15/10
74105	Liz Clairborne (Company)	North Bergen, NJ	05/18/10	05/12/10
74106	Verisk Health, Inc. (Workers)	Waltham, MA	05/18/10	05/10/10
74107	ATK Launch Systems, Inc. (Company)	Bringham City, UT	05/18/10	05/10/10
74108	Harris Corporation (Workers)	Englewood, CO	05/18/10	05/17/10
74109	General Electric (GE) (Union)	Bloomington, IL	05/18/10	05/17/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74110 ...	Microsemi Corporation (Company)	Scottsdale, AZ	05/18/10	05/17/10
74111 ...	Alstom Transportation (Company)	Hornell, NY	05/18/10	05/14/10
74112 ...	Edwards Vaccum, Inc. (Company)	Tewksbury, MA	05/18/10	05/17/10
74113 ...	Serena Software, Inc. (State/One-Stop)	Bellevue, WA	05/18/10	04/29/10
74114 ...	Hagemeyer North America (Company)	Hagerstown, MD	05/18/10	05/17/10
74115 ...	Qwest Services Corporation (State/One-Stop)	Seattle, WA	05/18/10	05/11/10
74116 ...	Washington Department of Transportation (Union)	Aberdeen, WA	05/19/10	05/18/10
74117 ...	Mark Machine (State/One-Stop)	Fairfield, NJ	05/19/10	05/18/10
74118 ...	Ach Food Company, Inc. (Workers)	Jacksonville, IL	05/19/10	05/14/10
74119 ...	Design Metal Plating, Inc. (Company)	Emporium, PA	05/19/10	05/11/10
74120 ...	Graphics Microsystems, Inc. (State/One-Stop)	Rockwell, TX	05/19/10	05/17/10
74121 ...	AIM Systems—St. Louis (Company)	Dupo, IL	05/19/10	05/18/10
74122 ...	Markovitz Enterprises, Inc. (Company)	New Castle, PA	05/20/10	05/19/10
74123 ...	Advanstar (State/One-Stop)	Duluth, MN	05/20/10	05/17/10
74124 ...	Precision Wire Components (State/One-Stop)	Tualatin, OR	05/20/10	04/23/10
74125 ...	Bently Arbuckle, Inc. (Workers)	Dallas, TX	05/20/10	05/14/10
74126 ...	Broadview Networks (Workers)	King of Prussia, PA	05/20/10	05/07/10
74127 ...	Dyrsmith, LLC (Company)	Berthoud, CO	05/20/10	05/17/10
74128 ...	Okidata America (State/One-Stop)	Mount Laurel, NJ	05/21/10	05/20/10
74129 ...	Vertafore, Inc. (Workers)	College Station, TX	05/21/10	05/19/10
74130 ...	Eagle Express Trucking, Inc. (Workers)	Saint Marys, PA	05/21/10	05/20/10
74131 ...	Thomas Reuters—West (Workers)	Rochester, NY	05/21/10	05/20/10

[FR Doc. 2010–13507 Filed 6–4–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,600; TA–W–71,600A]

The Gemological Institute of America, Carlsbad, CA; the Gemological Institute of America, New York, NY; Notice of Revised Determination on Reconsideration

The initial investigation, initiated on July 8, 2009, resulted in a negative determination, issued on January 20, 2010, that was based on the findings that the workers' firm did not import services like or directly competitive with the services performed by the workers in 2007, 2008, or in January through June 2009 nor did the firm shift those services to a foreign country during the relevant time period; and that the workers' firm is not a supplier or downstream producer to a firm with a TAA-certified worker group. The notice of negative determination was published in the **Federal Register** on March 5, 2010 (75 FR 10323).

To support the request for reconsideration, the petitioner asserted that there had been a shift in production from the United States to India.

During the request for reconsideration, the Department obtained additional information that, since 2007, the subject firm had significantly increased its reliance on revenues from its overseas operations.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of The Gemological Institute of America, Carlsbad, California and New York, New York, who provide jewelry grading and educational services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of The Gemological Institute of America, Carlsbad, California (TA–W–71,600) and The Gemological Institute of America, New York, New York (TA–W–71,600A), who became totally or partially separated from employment on or after July 7, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 19th day of May 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–13509 Filed 6–4–10; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors' Audit and Operations & Regulations Committees of the Legal Services Corporation will meet by telephone jointly on June 9, 2010. The meeting will begin at 1 p.m., Eastern Time, and continue until conclusion of the Committees' agenda.

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

Public Observation: For all meetings and portions thereof open to public observation, members of the public that wish to listen to the proceedings may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the Chairman may solicit comments from the public.

Call-In Directions for Open Session(s):

- Call toll-free number: 1–(866)–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please "MUTE" your telephone immediately.

Status of Meeting: Open.

Matters To Be Considered:

Open Session:

1. Approval of agenda.
2. Approval of draft minutes of April 17, 2010 joint meeting of the committees.
3. Consider and act on revisions to the LSC Accounting Guide for LSC Recipients:
   - Presentation by Danilo Cardona, Director, Office of Compliance & Enforcement.
   - Public Comment.
4. Public comment.
5. Consider and act on other business.
6. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President for Legal Affairs, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

June 2, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–13639 Filed 6–3–10; 11:15 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2010–4 CRB Satellite Rate]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of voluntary negotiation period.

SUMMARY: The Copyright Royalty Judges are announcing the voluntary negotiation period for the purpose of determining the royalty fees to be paid by satellite carriers under the satellite carrier compulsory license.

DATES: The voluntary negotiation period commences on June 7, 2010, and concludes on June 17, 2010.

ADDRESSES: [1] If hand delivered by a private party, an original and five copies of voluntary agreements should be brought to the Library of Congress, U.S. Copyright Office, Room LM–401, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office. If delivered by a commercial courier, an original and five copies of voluntary agreements must be delivered to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of voluntary agreements should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

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

The satellite carrier compulsory license establishes a statutory copyright licensing scheme for satellite carriers that retransmit television broadcast signals to satellite dish owners for their private home viewing. 17 U.S.C. 119. Congress created the license in 1988 with the passage of the Satellite Home Viewer Act of 1988. Congress reauthorized the license for additional five-year periods in 1994, 1999, and 2004, and the license was slated to expire on December 1, 2009. However, Congress again reauthorized the satellite license for another five years with the passage of the Satellite Television Extension and Localism Act of 2010, ("STELA"), Public Law No. 111–175, which was signed into law by the President on May 27, 2010.

Satellite carriers pay royalties based on a flat, per-subscriber, per-month fee. These rates were set initially by Congress in the Satellite Home Viewer Act of 1988 and then later adjusted by a three-person arbitration panel convened by the former Copyright Royalty Tribunal. 57 FR 129052 (May 1, 1992). When the license was reauthorized in 1994, Congress directed that the rates be adjusted by the Librarian of Congress using the system that replaced the Copyright Royalty Tribunal, namely, *ad hoc* Copyright Arbitration Royalty Panels ("CARPs") administered by the Librarian of Congress and the Copyright Office. Accordingly, the Librarian adjusted the rates in 1997. 62 FR 55742 (October 28, 1997). In the Satellite Home Viewer Improvement Act of 1999, which reauthorized the license for an additional five years, Congress reduced the rates set by the Librarian. When Congress again reauthorized the license under the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), copyright owners and satellite carriers reached separate voluntary agreements regarding the rates to be paid for analog and digital signals carried by satellite carriers; and the Librarian adopted the respective rates. *See* 70 FR 17320 (April 6, 2005) and 70 FR 39178 (July 7, 2005).

STELA, in which Congress authorizes the Copyright Royalty Judges to determine the applicable satellite royalty rates moving forward, requires adjustment of the current rates to be paid by satellite carriers for the secondary transmission of the primary transmission of network stations and superstations. *See* 17 U.S.C. 119(c)(1)(B) & (F). This notice begins the process mandated by the statute.

Voluntary Negotiation Period

Sections 119(c)(1)(B) of the Copyright Act, title 17 of the United States Code, provides that "[o]n or before June 1, 2010, the Copyright Royalty Judges shall cause to be published in the **Federal Register** [notice] of the initiation of the voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers * * * under subsection (b)(1)(B)." [2] This notice initiates the voluntary negotiation period.

The statute provides that "[w]ithin 10 days after publication in the **Federal Register** of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening a proceeding under subparagraph (F)." 17 U.S.C. 119(c)(1)(D)(ii)(I). In accordance with this provision, the voluntary negotiation period commences today, June 7, 2010, and concludes June 17, 2010.

If a voluntary agreement is reached by the end of the negotiation period, the parties can request that the Judges publish the agreement for notice and comment in accordance with section 119(c)(1)(D)(ii)(II) and adopt the rates in the voluntary agreement if no objections are received from a party with a significant interest and intention to participate in a proceeding. 17 U.S.C. 119(c)(1)(D)(ii)(III). If an objection to the voluntary agreement is received or if the parties are unable to reach a voluntary agreement, the Judges will commence a rate proceeding in accordance with

[1] Section 119(c)(D)(i) of the Copyright Act, title 17 of the United States Code, requires that voluntary agreements be filed with the Copyright Office within 30 days of execution of the agreement. The Satellite Television Extension and Localism Act of 2010 does not change this provision.

[2] Since STELA was not signed until May 27, 2010, this notice is being published as soon as practicable after its enactment.

section 119(c)(1)(F). Therefore, should a rate proceeding become necessary, the Judges will publish a subsequent notice commencing the proceeding and calling for the filing of petitions to participate.

Dated: June 2, 2010.

James S. Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2010–13575 Filed 6–4–10; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: June 21, 2010 from 10 a.m. to 11:30 a.m.

ADDRESSES: Capitol Visitor Center, Congressional Meeting Room South.

FOR FURTHER INFORMATION CONTACT: Richard H. Hunt, Director; Center for Legislative Archives; (202) 357–5350.

SUPPLEMENTARY INFORMATION:

Agenda

(1) Chair's opening remarks—Clerk of the House.

(2) Recognition of Co-chair—Secretary of the Senate.

(3) Recognition of the Archivist of the United States.

(4) Approval of the minutes of the last meeting.

(5) Discussion of on-going projects and activities.

(6) Annual Report of the Center for Legislative Archives.

(7) Other current issues and new business.

The meeting is open to the public.

Dated: May 26, 2010.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2010–13577 Filed 6–4–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

National Declassification Center (NDC)

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 3.7(d) of Executive Order 13526, Classified National Security Information, announcement is made for the National Declassification Center (NDC) Prioritization Plan Public Meeting. The meeting is being held to solicit public input regarding declassification priorities as identified by the Draft Prioritization Plan developed by The National Declassification Center. This draft plan is available for review at *http://www.archives.gov/declassification/prioritization-plan.html.*

This meeting will be open to the public. To ensure that all interested parties have the opportunity to comment, individual remarks may be limited to 10 minutes. Due to access procedure requirements, the name and telephone number of individuals planning to attend must be submitted to the National Declassification Center. Information may be submitted via e-mail, *ndc@nara.gov* or via phone 301–837–0587. NDC will provide additional instructions for gaining access to the location of the meeting.

DATES: The meeting will be held on June 23, 2010 from 2 p.m.–4 p.m.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., McGowan Theater, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Don McIlwain, Supervisory Archivist, National Declassification Center, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740; 301–837–0587.

Dated: June 1, 2010.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2010–13580 Filed 6–4–10; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on ABWR

The ACRS Subcommittee on Advanced Boiling Water Reactor (ABWR) will hold a meeting on June 23–24, 2010, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

June 23, 2010—1:30 p.m.–5 p.m., June 24, 2010—8:30 a.m. until 5 p.m.

The purpose of this meeting is to review Chapters 6, 10, and 13 of the Safety Evaluation Report with Open Items associated with the combined license application for the South Texas Project Units 3 and 4. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the South Texas Project Nuclear Operating Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301–415–6973 or E-mail *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check

with these references if such rescheduling would result in a major inconvenience.

Dated: June 1, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–13621 Filed 6–4–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Meetings; Sunshine Act

DATE: Week of June 7, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Wednesday, June 9, 2010

1:25 p.m. Affirmation Session (Public Meeting) (Tentative).

a. Review of Final Rule Package, Export and Import of Nuclear Equipment and Material; Updates and Clarifications (10 CFR part 110, RIN 3150–AI16) (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555, (301)–415–1969, or send an e-mail to *darlene.wright@nrc.gov.*

Dated: June 2, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–13667 Filed 6–3–10; 4:15 pm]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12107 and #12108]

New Jersey Disaster Number NJ–00014

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1897–DR), dated 04/02/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 through 04/15/2010.

DATES: *Effective Date:* 05/18/2010.

Physical Loan Application Deadline Date: 07/01/2010.

EIDL Loan Application Deadline Date: 01/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Jersey, dated 04/02/2010 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 07/01/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–13546 Filed 6–4–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity financing to Bill.com, Inc., 3520 Ash Street, Palo Alto, CA 94306. The financing is contemplated for working capital and general operating purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Bill.com, Inc. Therefore, Bill.com, Inc. is considered an Associate of Emergence Capital Partners SBIC, L.P. and this transaction is considered *Financing an Associate,* requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 18, 2010.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2010–13536 Filed 6–4–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0247]

Solutions Capital I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Solutions Capital I, L.P., 1100 Wilson Blvd., Suite 3000, Arlington, VA 22209, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Solutions Capital I, L.P. proposes to provide equity/debt security financing to GSDM Holdings, LLC, 66 Route 17 North, 2nd Floor, Paramus, NJ 07652. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because MCG Capital Corporation, an Associate of Solutions Capital I, L.P., owns more than ten

percent of GSDM Holdings, LLC; therefore, GSDM Holdings, LLC is considered an Associate of Solutions Capital I, L.P., as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 22, 2010.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2010–13548 Filed 6–4–10; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for configured tape library storage equipment.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a class waiver of the Nonmanufacturer Rule for Configured Tape Library Storage Equipment. SBA is initiating a request that an class waiver be granted for Configured Tape Library Storage Equipment, Product Service Code (PSC) 7025 Automated Data Processing (ADP) Input/Output and Storage Devices, 7035 ADP Support Equipment, and 7045 ADP Supplies, under the North American Industry Classification System (NAICS) code 334112 (Computer Storage Device Manufacturing). According to our research, no small business manufacturers supply these classes of products to the Federal government. Thus, SBA is seeking information on whether there are small business Configured Tape Library Storage Equipment manufacturers. If granted, the waiver would allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses or Participants in the SBA's 8(a) Business Development (BD) program.

DATES: Comments and source information must be submitted June 22, 2010.

ADDRESSES: You may submit comments and source information to Edith Butler, Program Analyst, Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Edith Butler, Program Analyst, by telephone at (202) 619–0422; by Fax at (202) 481–1788; or by e-mail at *Edith.Butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal supply contracts set aside for small businesses, SDVO small businesses, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(c). The SBA defines "class of products" based on the Office of Management and Budget's NAICS.

In addition, SBA uses PSCs to further identify particular products within the NAICS code to which a waiver would apply. The SBA may then identify a specific item within a PSC and NAICS to which a class waiver would apply.

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Configured Tape Library Storage Equipment, PSC 7025 (ADP Input/Output and Storage Devices), 7035 (ADP Support Equipment), and 7045 (ADP Supplies), under NAICS code 334112 (Computer Storage Device Manufacturing). The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for the product within 15 days after date of publication in the **Federal Register** and on FedBizOpps.

Dated: May 26, 2010.

Randall Johnston,

Deputy Director, Office of Government Contracting.

[FR Doc. 2010–13549 Filed 6–4–10; 8:45 am]

BILLING CODE 8025–01–P

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.

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 August 6, 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. *Certificate of Coverage Request—20 CFR 404.1913—0960–0554.* The United States has agreements with 21 foreign countries to eliminate double Social Security coverage and taxation where, except for the provisions of the agreement, a worker would be subject to coverage and taxes in both countries. These agreements contain rules for determining the country under whose laws the worker's period of employment is covered, and to which country the worker will pay taxes. The agreements further dictate that, upon the request of the worker or employer, the country under whose system the period of work is covered will issue a certificate of

coverage. The certificate serves as proof of exemption from coverage and taxation under the system of the other country. The information we collect assists us in determining a worker's coverage and in issuing a U.S. certificate of coverage as appropriate. Respondents are workers and employers wishing to establish exemption from foreign Social Security taxes.

Type of Request: Revision of an OMB-approved information collection.

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Individuals	30,000	1	30	15,000
Private Sector	20,000	1	30	10,000
Totals	50,000			25,000

2. *Incorporation by Reference of Oral Findings of Fact and Rationale in Wholly Favorable Written Decisions (Bench Decision Regulation)—20 CFR 404.953 and 416.1453—0960–0694.* If an Administrative Law Judge (ALJ) makes a wholly favorable oral decision that includes all the findings and rationale for the decision for a claimant of Title II or Title XVI payments at an administrative appeals hearing, the records from the oral hearing preclude the need for a written decision. This is known as the incorporation-by-reference process. These regulations also state that if the involved parties want a record of the oral decision, they may submit a written request for these records. Therefore, SSA uses the identifying information collected under the aegis of sections *20 CFR 404.953* and *416.1453* to determine how to send interested individuals written records of a favorable incorporation-by-reference oral decision made at an administrative review hearing. Since there is no prescribed form to request a written record of the decision, the involved parties send SSA their contact information and reference the hearing for which they would like a record. The respondents are applicants for Disability Insurance Benefits and Supplemental Security Income (SSI) payments or their representatives to whom SSA gave a wholly favorable oral decision under the regulations cited above.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,500.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 208 hours.

3. *Cost Reimbursable Research Request—20 CFR 401.165—0960–0754.* Qualified researchers need SSA administrative data for a variety of projects. To request SSA's program data for research, a researcher must submit a completed research application, Form SSA–9901 (How to Request SSA Program Data for Research) for SSA's evaluation. In the application, the requesting researcher must provide basic project information and describe the way in which the proposed project will further SSA's mission to promote the economic security of the Nation's people through its administration of the Old Age, Survivors, and Disability Insurance Programs, and/or the SSI Program. SSA reviews the application, and once we approve it, the researcher signs Form SSA–9903, SSA Agreement Regarding Conditions for Use of SSA Data, which outlines the conditions and safeguards for the research project data exchange. The researcher may use the data for research and statistical purposes only and must complete Form SSA–9902, Confidentiality Agreement. SSA recovers all expenses incurred in providing this information as part of this reimbursable service. The respondents are Federal and state government agencies and/or their contractors, private entities, and colleges/universities.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 15.

Frequency of Response: 1.

Average Burden per Response: 240 minutes.

Estimated Annual Burden: 60 hours.

4. *Request to Decision Review Board to Vacate the Administrative Law Judge Dismissal of Hearing—20 CFR 405.427—0960–0755.* When an ALJ dismisses a hearing for a claim for Title II or Title XVI disability payments, the claimant may request to vacate or stop this decision by completing and submitting Form SSA–525 to the SSA Decision Review Board (Board). The Board uses this information to: (1) Establish the continued involvement of the requestor in the claim; (2) consider the requestor's arguments for vacating the dismissal; and (3) vacate or decline to vacate the ALJ's dismissal order. The respondents are Social Security disability or SSI claimants who are requesting the Board to vacate their dismissal order.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 5,000 hours.

5. *Authorization to Release Medical Report to Physician—20 CFR 401.55 & 401.100—0960–0761.* When evidence provided by a disability claimant is inadequate for SSA to determine the disability, SSA requests a consultative examination (CE) for additional information or clarification. If the claimant, his/her court appointed representative, or a parent of a minor child wants the CE report sent to the claimant's treating physician, he/she completes Form SSA–91 and sends it to SSA for processing. SSA uses the information on the SSA–91 to release the CE report to the authorized physician. Respondents are applicants for disability claims.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 7,922.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 660 hours.

6. *Authorization for SSA to Disclose Tax Information for Your Appeal of Your Medicare Part B Income-Related Monthly Adjustment Premium Amount—20 CFR 418.1350—0960–0762.* Medicare Part B beneficiaries who wish to appeal SSA's reconsideration of their Income-Related Monthly Adjustment Amount (IRMAA) must ensure the relevant Internal Revenue Service (IRS) income tax data is available to the Health and Human Services ALJ who will consider their appeal. Through Form SSA–54, SSA obtains beneficiary authorization to disclose the IRS beneficiary tax data to the ALJ. The respondents are Medicare Part B recipients who want to appeal SSA's reconsideration of their IRMAA amount.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 6,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 1,500 hours.

7. *Appointment of Representative—20 CFR 404.1707, 404.1720, 404.1725, 410.684 and 416.1507—0960–0527.* *Correction Notice:* SSA inadvertently published this information collection request on May 13, 2010 at 75 FR 27036, although we were not yet ready to solicit public comment. We will publish this request again at a future date.

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 August 6, 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 e-mail address.

1. *Wage Reports and Pension Information—20 CFR 422.122(b)—0960–0547.* Pension plan administrators annually file plan information with the IRS, who then forwards the information to SSA. SSA maintains and organizes this information by plan numbers, plan participant's name, and Social Security number. Under Section *1131(a)* of the *Social Security Act,* pension plan participants are entitled to request this information from SSA. The Wage Reports and Pension Information regulation, *20 CFR 422.122(b)* of the *Code of Federal Regulations,* stipulates that before SSA disseminates this information, the requestor must first submit a written request with identifying information to SSA. The respondents are requestors of pension plan information.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 600.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 300 hours.

2. *Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421, 408.1009—0960–0622.* SSA uses Form SSA–561–U2 to initiate and document the reconsideration process for determining an individual's eligibility or entitlement to Social Security benefits (Title II), SSI payments (Title XVI), Special Veterans Benefits (Title VIII), Medicare (Title XVIII), and for initial determinations regarding Medicare Part B income-related premium subsidy reductions. The respondents are individuals filing for reconsideration.

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)
Paper & Modernized Claims System	730,850	1	8	97,447
i561	730,850	1	20	243,617
Totals	1,461,700			341,064

3. *Identifying Information for Possible Direct Payment of Authorized Fees—0960–0730.* SSA collects information from claimants' appointed representatives on Form SSA–1695 to process and facilitate direct payment of authorized fees to a financial institution. SSA also needs this information to issue a Form 1099–MISC, if applicable. Finally, SSA uses Form SSA–1695 to establish a link between each claim for benefits and the data that we collect on the SSA–1699 for our appointed representative database. The respondents are attorneys and other individuals who represent claimants for benefits before SSA.

Type of Request: Extension of an OMB approved information collection.

Number of Respondents: 10,000.

Frequency of Response: 40.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 66,667 hours.

Elizabeth Davidson,

Center Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–13530 Filed 6–4–10; 8:45 am]

BILLING CODE 4191–02–P

SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

Privacy Act of 1974; Notice of Privacy Act System of Records

AGENCY: Special Inspector General for Iraq Reconstruction.

ACTION: Notice.

SUMMARY: The Special Inspector for Iraq Reconstruction (SIGIR) has reviewed its management records to identify its Privacy Act systems and to ensure that all such systems are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. This is the second notice published by this agency. It includes three SIGIR-wide systems of records including system managers, office titles, addresses, or locations. These are:

SIGIR–4—Employee Claims for Miscellaneous Reimbursement.

SIGIR–5—Travel Reimbursement Records.

SIGIR–6—Employee Training Requests and Payment Records.

DATES: Effective June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Call or e-mail Kirt West, Deputy General Counsel, Telephone—703–604–0489; e-mail—*kirt.west@sigir.mil.*

ADDRESSES: SIGIR Deputy General Counsel, Office of General Counsel, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

SUPPLEMENTARY INFORMATION: SIGIR has undertaken an agency-wide review of its records to identify all Privacy Act systems of records. As a result of this review, SIGIR is publishing its second Privacy Act systems of records notice, which includes three of its systems.

Dated: May 18, 2010.

Kirt West,

Deputy General Counsel, Special Inspector General for Iraq Reconstruction.

Table of Contents

List of Notices

SIGIR–4

SYSTEM NAME:

Employee Claims for Miscellaneous Reimbursement.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Director, Resource Management and Budget, SIGIR, 2011 Crystal Drive, Suite #1101, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

SIGIR employees who request reimbursement for losses, damage, or other miscellaneous claims relating to their SIGIR employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

SIGIR employees' claim forms (SF Forms 1034), supporting evidence, and related documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The SIGIR's enabling legislation, § 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Pub. L. 108–106; 117 Stat. 1209, 1234–1238; 5 U.S.C. app. 8G note), as cumulatively amended, and the Inspector General Act of 1978, as amended, Public Law 95–452, 5 U.S.C. App. 3. The Privacy Act, 5 U.S.C. 552a; Employee Loss or Damage Claims, SIGIR Policy 5001.

PURPOSE(S):

To conduct necessary research and/or investigations into employee claims for reimbursement for loss, damage, or other miscellaneous claims, and to reimburse employees for verified claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act the records or information contained therein may specifically be disclosed outside the SIGIR as a "blanket" routine use pursuant to 5 U.S.C. 552a(b)(3) as set forth in SIGIR's System of Records Notice SIGIR–1—Investigative Files.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

SIGIR files consist of paper records maintained in file folders. The folders are stored in SIGIR's file cabinets and offices.

RETRIEVABILITY:

The records are retrieved by the name of the individual or by a unique control number assigned to each claim.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file rooms or locked offices at all other times.

RETENTION AND DISPOSAL:

These files are kept in accordance with SIGIR's record retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Resource Management and Budget, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURES:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the SIGIR Chief Freedom of Information Act Officer, 400 Army Navy Drive, Arlington, VA 22202–4704. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS AND CONTESTING PROCEDURES:

Same as "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by individuals claiming loss or damage or submitting other miscellaneous claims and witnesses or other persons involved in the process of verifying and processing employee claims.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SIGIR–5

SYSTEM NAME:

Travel Reimbursement Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Director, Resource Management and Budget, SIGIR, 2011 Crystal Drive, Suite #1101, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

SIGIR employees who travel on official duty and are reimbursed for related expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

SIGIR employees' reimbursement claims for TDY and local travel, travel expense statements, and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SIGIR's enabling legislation, § 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Pub. L. 108–106; 117 Stat. 1209, 1234–1238; 5 U.S.C. app. 8G note), as cumulatively amended, and the Inspector General Act of 1978, as amended, Pub. L. 95–452, 5 U.S.C. App. 3. The Privacy Act, 5 U.S.C. 552a. SIGIR Official Travel policy, SIGIR .7154.

PURPOSE(S):

To provide a travel management process for SIGIR employees and provide for tracking and appropriate reimbursement of expenses incurred in such travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act the records or information contained therein may specifically be disclosed outside the SIGIR as a "blanket" routine use pursuant to 5 U.S.C. 552a(b)(3) as set forth in SIGIR's System of Records Notices SIGIR–1—Investigative Files.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

SIGIR files consist of paper records maintained in file folders, and in computer-processable storage media.

RETRIEVABILITY:

The records are retrieved by the name of the individual or by a unique control number assigned to each record.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file rooms or locked offices at all times.

RETENTION AND DISPOSAL:

These records are kept in accordance with SIGIR's records retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Resource Management and Budget, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURES:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the SIGIR Chief Freedom of Information Act Officer, 400 Army Navy Drive, Arlington, VA 22202–4704. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCCESS AND CONTESTING PROCEDURES:

Same as "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by the employee, information from travel authorizations, information from the finance function of the management division regarding reimbursement, and information from the SIGIR Travel Officer regarding reservations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SIGIR–6

SYSTEM NAME:

Employee Training Requests and Payment Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Director, Resource Management and Budget, SIGIR, 2011 Crystal Drive, Suite #1101, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

SIGIR employees who request and are granted training related to their official duties and are reimbursed for related expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

SIGIR employees' training requests (DD Forms 1556), authorization forms, expense statements, vouchers, and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The SIGIR's enabling legislation, § 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Pub. L. 108–106; 117 Stat. 1209, 1234–1238; 5 U.S.C. app. 8G note), as cumulatively amended, and the Inspector General Act of 1978, as amended, Public Law 95–452, 5 U.S.C. App. 3. The Privacy Act, 5 U.S.C. 552a. SIGIR Training policy, SIGIR .7151.

PURPOSE(S):

To provide a system that covers payments to vendors and/or employee reimbursement related to official training expenses for SIGIR employees. This includes tracking of expenses incurred in such training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act the records or information contained therein may specifically be disclosed outside the SIGIR as a "blanket" routine use pursuant to 5 U.S.C. 552a(b)(3) as set forth in SIGIR's System of Records Notices SIGIR–1—Investigative Files.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

SIGIR training files consist of paper records maintained in file folders, and in computer databases.

RETRIEVABILITY:

The records are retrieved by the name of the individual or by a unique control number assigned to each record.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file rooms or locked offices at all times.

RETENTION AND DISPOSAL:

These records are kept in accordance with SIGIR's records retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Resource Management and Budget, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURES:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the SIGIR Chief Freedom of Information Act Officer, 400 Army Navy Drive, Arlington, VA 22202–4704. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCCESS AND CONTESTING PROCEDURES:

Same as "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by the employee, training providers, and other information related to training requests, provision, and expenses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–13481 Filed 6–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 7036]

Exchange Visitor Program—Secondary School Students

AGENCY: Department of State.

ACTION: Notice of public meeting.

SUMMARY: The Department is announcing a public meeting to provide interested members of the public the opportunity to discuss the proposed amendments to the secondary school student regulatory provisions published in the **Federal Register** on May 3, 2010 (*see* 75 FR 23196). As stated in that Notice, the Department proposes to amend existing regulations regarding the screening, selection, school enrollment, orientation, and monitoring of student participants and their placement with host families as well as the screening, selection, orientation, and monitoring of hosting families. Given the widespread interest in secondary school student exchange programs among the general public, the Department will hold this public meeting to further solicit comment and discussion on the proposed amendments to these regulations.

The proposed rule, published May 3, 2010, provided a 30-day written comment period which, by its terms, closes June 2, 2010. Prior to the publication of the proposed rule, the Department also published an advance notice of proposed rulemaking to solicit comments from sponsors and the public on current best practices in the secondary school student exchange industry (*See* 74 FR 45385, Sept. 2, 2009). In response to the advanced notice of proposed rulemaking, the Department received 97 comments that contributed significantly to the identification of the sixteen areas outlined in the proposed rule. As of June 1, approximately 1,000 comments have been received in response to the May 1 proposed rule publication. Public comments received for both the advanced notice of proposed rulemaking and the notice of proposed rulemaking are available for public inspection at *http://www.regulations.gov/search/Regs/home.html#home* (for "keyword," enter 1400–AC56).

DATES: The public hearing will be held 9 a.m.–11 a.m. on Thursday, June 17, 2010.

ADDRESSES: The public hearing will take place in the Dean Acheson auditorium at the U.S. Department of State, Harry S. Truman Building, 2100 C Street, NW., Washington, DC 20522 (Metro stop:

Foggy Bottom, on Blue and Orange Line).

REGISTRATION: To gain entry into the Harry S. Truman Building, a member of the public should provide the following information to the Department of State not later than Friday, June 11: The individual's full name, date of birth, type of identification (valid driver's license or passport) and its identification number, and whether there is a request for reasonable accommodation. This data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 Stat.272, 10/26/2001 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. Please provide to Michele Peregrin by E-mail: *PeregrinMS@state.gov* or by phone: 202–632–6445.

FOR FURTHER INFORMATION CONTACT: Michele Peregrin, Staff Assistant, Office of the Assistant Secretary, 202–632–6445.

Dated: June 2, 2010.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchange, Department of State.

[FR Doc. 2010–13585 Filed 6–4–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) extension of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 8, 2010, vol. 75, no. 44, page 10550. A letter of application and related documents which set forth an applicant's ability to conduct operations in compliance with FAR Part 125 provisions are submitted to the appropriate FSDO.

DATES: Please submit comments by July 7, 2010.

FOR FURTHER INFORMATION CONTACT: *Carla Scott at Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification and Operation FAR 125.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0085.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 163 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 1.33 hours per response.

Estimated Annual Burden Hours: An estimated 61,388 hours annually.

Abstract: Part A of Subtitle VII of the Revised Title 49 United States Code authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR Part 125 prescribes requirements for leased aircraft, Aviation Service Firms, and Air Travel. A letter of application and related documents which set forth an applicant's ability to conduct operations in compliance with the Part 125 provisions are submitted to the appropriate Flight Standards District Office. Inspectors in FAA FSDO's review the submitted information to determine eligibility.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202)395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 28, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–13590 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0005–N–12]

Information Collection Requirement; Notice and Request for Comments

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2010 (75 FR 16228).

DATES: Comments must be submitted on or before July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On March 31, 2010, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 75 FR 16228. FRA

received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden for the ICR being submitted for clearance by OMB as required by the PRA.

Title: Notice of Funding Availability and Solicitation of Applications for Grants under the Railroad Safety Technology Grant Program.

OMB Control Number: 2130–0587.

Type of Request: Regular Approval of an Emergency Clearance.

Affected Public: 40 Railroads.

Abstract: The Rail Safety Technology Program is a newly authorized program under the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432; October 16, 2008). The program was directed by Congress and passed into law in the aftermath of a series of major rail accidents that culminated in an accident at Chatsworth, California, in 2008. Twenty-five people were killed and 135 people were injured in the Chatsworth accident. This event turned the Nation's attention to rail safety and the possibility that new technologies, such as PTC, could prevent such accidents in the future. The RSIA ordered installation of PTC by all Class I railroads on any of their mainlines carrying poisonous inhalation hazard (PIH) materials and by all passenger and commuter railroads on their main lines not later than December 31, 2015.

As part of the RSIA, Congress provided $50 million to FRA to award, in one or more grants, to eligible projects by passenger and freight rail carriers, railroad suppliers, and State and local Governments. Funds will be awarded to projects that have a public benefit of improved railroad safety and efficiency, with priority given to projects that make PTC technologies interoperable between railroad systems; projects that accelerate the deployment of PTC technology on high-risk corridors, such as those that have high volumes of hazardous material shipments; and for projects over which commuter or passenger trains operate, or that benefit both passenger and freight safety and efficiency.

Funds provided under this grant program may constitute a maximum of 80 percent of the total cost of a selected project, with a minimum of 20 percent of costs funded from other sources. The funding provided under these grants will be made available to grantees on a reimbursement basis. FRA anticipates awarding grants to multiple eligible participants. FRA may choose to award a grant or grants within the available funds in any amount. Funding made available through grants provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, must be sufficient to complete the funded project and achieve the anticipated technology development. FRA began accepting grant applications 10 days after publication of the Notice of Funds Availability, which was published on March 29, 2010, in the **Federal Register** detailing the terms of the Railroad Safety Technology Grant Program. Applications may be submitted until July 1, 2010. Selection announcements will be made on or around September 3, 2010.

Form Number(s): FRA F 6180.146; SF–269; SF–270.

Annual Estimated Burden Hours: 11,385 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 1, 2010.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–13462 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Information Collection Requirements

[Docket No. FRA–2010–0005–N–11]

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on April 2, 2010 (75 FR 16896).

DATES: Comments must be submitted on or before July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5,

1320.8(d)(1), 1320.12. On April 2, 2010, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 75 FR 16896. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for 15 days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Annual Estimated Burden Hours: 60,038 hours.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: Under 49 CFR part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a "bad order" tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged "bad order" so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the "bad order" tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Form Number(s): N/A.

Annual Estimated Burden Hours: 15,750 hours.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Type of Request: without change of a previously approved collection.

Affected Public: Railroads.

Abstract: Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stencilling to identify freight cars.

Annual Estimated Burden Hours: 18,750 hours.

Title: Rear-End Marking Devices.

OMB Control Number: 2130–0523.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: The collection of information is set forth under 49 CFR part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current "Guidelines for Testing of Rear End Marking Devices." Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests, number of samples tested, and the test results in order to demonstrate compliance with the performance standard.

Annual Estimated Burden Hours: 39 hours.

Title: Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: Part 210 of title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA's noise enforcement procedures which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under Part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.

Annual Estimated Burden Hours: 2,767 hours.

Title: Grade Crossing Signal System Safety.

OMB Control Number: 2130–0534.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment

malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

Form Number(s): FRA F 6180.83.

Annual Estimated Burden: 8,152 hours.

Title: Bridge Worker Safety Rules.

OMB Control Number: 2130–0535.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: Section 20139 of Title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including for "bridge safety equipment" such as nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water. FRA has added 49 CFR part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, section 214.15(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system; after major repairs; and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce Federal regulations. The information that is maintained at the job site promotes safe bridge worker practices.

Form Number(s): N/A.

Annual Estimated Burden: 1 hour.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Abstract: Under 49 CFR part 207, railroads are required to notify states of all designated police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Form Number(s): N/A.

Annual Estimated Burden: 175 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on *June 1, 2010.*

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–13498 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA–DC–2010–01–D]

Notice of Availability and Notice of Public Hearing for the Environmental Assessment for the Klingle Valley Trail

AGENCIES: Federal Highway Administration, District of Columbia Division; and District Department of Transportation; in cooperation with the National Park Service.

ACTION: Notice of availability of the Environmental Assessment for the Klingle Valley Trail Project; Notice of public hearing for and request for comments on the Environmental Assessment for Klingle Valley Trail Project.

SUMMARY: The U.S. Federal Highway Administration (FHWA) and the District Department of Transportation (DDOT) as lead agencies, and in cooperation with the National Park Service (NPS), announce the availability of the Environmental Assessment (EA) for the Klingle Valley Trail Project, pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and the FHWA Environmental Impact and Related Procedures (23 CFR 771). FHWA and DDOT will also be hosting a Public Hearing to provide citizens an opportunity to comment on the proposed project and EA. FHWA and DDOT will consider comments received (*see* **DATES** and **ADDRESSES**, below) in finalizing the EA. FHWA and DDOT will then determine whether to prepare an environmental impact statement or issue a finding of no significant impact if appropriate for the proposed action.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1990 K Street, NW., Suite 510, Washington, DC 20006–1103, (202) 219–3536; or District Department of Transportation: Austina Casey, Project Manager, Planning, Policy and Sustainability Administration, 2000 14th Street, NW., 7th Floor, Washington, DC 20009, (202) 671–2740.

SUPPLEMENTARY INFORMATION: The EA has been prepared to evaluate a range of alternatives and impacts for the construction of a multi-use trail facility within the 0.7 mile barricaded portion of Klingle Road between Porter Street, NW., and Cortland Place, NW.; including the restoration of Klingle Creek. The purpose of the proposed action is to construct a multi-use trail facility using context sensitive design, to provide safe non-motorized transportation and recreational opportunities to the residents and visitors of the District of Columbia. The project needs are a culmination of safety concerns due to the deteriorated roadway and structures; social demands as presented in the Park and Recreation Open Space District element in the *District Comprehensive Plan;* system linkage provisions tying points west of Connecticut Avenue to the Rock Creek Park multi-use trail system; deficiencies in the existing infrastructure resulting in degraded habitat within Klingle Valley; and legislation: The District's Klingle Road Sustainable Development Act of 2008.

Four Alternatives for the proposed Klingle Valley Multi-Use Trail, including the No Action Alternative, were developed in accordance with the project objectives established to meet the project purpose and need and are analyzed in detail in the EA. The proposed trail alignment for all Action Alternatives (Alternatives 2, 3, and 4) lies within the existing DDOT right-of-way. The EA examines and evaluates the existing environmental conditions within the project area along with the environmental consequences and cumulative impacts of several alternatives for the proposed improvement.

DATES: The public hearing will be held on June 23, 2010 at the National Zoological Park, Visitor Center Auditorium, 3001 Connecticut Avenue, NW., Washington, DC 20008. The Public Hearing will consist of an open house from 6 p.m. to 6:30 p.m. followed by a formal presentation and opportunity to comment from 6:30 p.m. to 8 p.m. *Comments on the EA must be received on or before July 6, 2010.*

ADDRESSES: In addition to attending the Public Hearing, you may submit comments or requests for copies of the EA by any of the following methods:

- *Project Web Site: http://www.klingletrail.com.* Follow the instructions for submitting comments on the Web site.
- *E-mail: comments@klingletrail.com.*
- *Mail:* Austina Casey, Project Manager, Planning, Policy and Sustainability Administration, District Department of Transportation, 2000 14th Street, NW., 7th Floor, Washington, DC 20009.

Electronic copies may be downloaded for review from the project Web site and hard copies of the EA may also be viewed at the following locations:

District Department of Transportation, Planning, Policy, and Sustainability Administration, 2000 14th Street, NW., 7th Floor, Washington, DC 20009;

National Capital Planning Commission Library, 401 9th Street, NW., North Lobby, Suite 500, Washington, DC 20004;

Martin Luther King, Jr. Memorial Library, 901 G Street, NW., Washington, DC 20001;

Cleveland Park Branch Library, 3310 Connecticut Avenue, NW., Washington, DC 20008;

Mount Pleasant Library, 3162 Mt. Pleasant Street, NW., Washington, DC 20010.

Issued: May 27, 2010.

Joseph C. Lawson,

Division Administrator, Federal Highway Administration, District of Columbia Division.

[FR Doc. 2010–13485 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

[FHWA–DC–2010–01–D]

Notice of Withdrawal of the Notice of Intent for Klingle Road Environmental Impact Statement; Washington, DC

AGENCIES: Federal Highway Administration, District of Columbia Division; and District Department of Transportation.

ACTION: Notice of Withdrawal of the Notice of Intent to prepare an Environmental Impact Statement for Klingle Road.

SUMMARY: The U.S. Federal Highway Administration (FHWA) is issuing this notice to advise the public that, effective immediately, the Notice of Intent (NOI) (**Federal Register** Vol. 69, No 52; FR Doc 04–6027) to prepare an Environmental Impact Statement (EIS) for the proposed reopening of Klingle Road, NW., to vehicular access in Washington, DC, is being withdrawn. The NOI for the EIS was announced on March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1990 K Street, NW., Suite 510, Washington, DC 20006–1103, (202) 219–3536; or District Department of Transportation: Austina Casey, Project Manager, Planning, Policy and Sustainability Administration, 2000 14th Street, NW., 7th Floor, Washington, DC 20009, (202) 671–2740.

SUPPLEMENTARY INFORMATION: In June 2008, the District of Columbia Council passed legislation called the Klingle Road Sustainable Development Amendment Act of 2008 (DC Law 17–219; DC Official Code § 9–115.11). This legislation ended studies to reopen the barricaded segment of Klingle Road to vehicular traffic, and specifies that District Department of Transportation (DDOT) shall allocate and use Federal aid highway funds for the environmental remediation of Klingle Valley and the construction of a pedestrian and bicycle trail along the barricaded portion of Klingle Road, between Porter Street, NW., and Cortland Place, NW. Based on this legislation, the NOI to prepare an EIS will be withdrawn.

FHWA in conjunction with DDOT have determined that an Environmental Assessment (EA) will instead be prepared to evaluate a range of alternatives and impacts for the construction of a multi-use trail facility within the 0.7 mile barricaded portion of Klingle Road; including the restoration of Klingle Creek, in cooperation with the National Park Service (NPS). The proposed multi-use trail facility will be constructed using context sensitive design, to provide safe non-motorized transportation and recreational opportunities to the residents and visitors of the District of Columbia.

Issued: May 27, 2010.

Joseph C. Lawson,

Division Administrator, Federal Highway Administration, District of Columbia Division.

[FR Doc. 2010–13490 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Draft Tier II Environmental Impact Statement: Southeast High Speed Rail Corridor-Richmond, VA (Main Street Station) to Raleigh, NC (Boylan Wye)

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Availability of the Tier II Draft Environmental Impact Statement and public hearings for the Southeast High Speed Rail, Richmond, VA to Raleigh, NC Project (Project).

SUMMARY: The Federal Railroad Administration announces the availability of the Southeast High Speed Rail, Richmond, VA to Raleigh, NC Project Draft Tier II Environmental Impact Statement (DEIS) for public review and comment. The DEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.,* the Council on Environmental Quality NEPA implementing regulations, 40 CFR parts 1500–1508, and the FRA NEPA guidance, 64 FR 28545 (May 26, 1999). FRA is the lead Federal agency; the Federal Highway Administration, United States Coast Guard, United States Army Corps of Engineers, United States Environmental Protection Agency, and the United States Fish and Wildlife Service are cooperating Federal agencies. The North Carolina Department of Transportation Rail Division (NCDOT) and the Virginia

Department of Rail and Public Transportation (DRPT) are co-lead State agencies. The Environmental Protection Agency included the DEIS in the Notice of Availability published on June 4, 2010.

DATES: FRA invites interested Members of Congress, state and local governments, other Federal agencies, Native American tribal governments, organizations, and members of the public to provide comments on the DEIS. The public comment period opened on May 28, 2010, and will continue until August 30, 2010. Written and oral comments will be given equal weight, and FRA will consider all comments received or postmarked by that date in the preparing the Final EIS. Comments received or postmarked after that date will be considered to the extent practicable. Dates and locations for the public hearings are listed below. "Open House" information sessions will be held from 5–7 p.m. followed by public hearings at 7 p.m. Eastern Standard Time:

1. Norlina, NC: July 13, 2010, Northside Elementary School, 164 Elementary Avenue, Norlina, NC 27563.
2. Alberta, VA: July 15, 2010, Southside Virginia Community College, Christanna Campus, 109 Campus Drive, Alberta, VA 23821.
3. Richmond, VA: July 20, 2010, Virginia Department of Motor Vehicles Cafeteria, 2300 West Broad Street, 1st floor, Richmond, VA 23269.
4. Petersburg, VA: July 21, 2010, Union Station, 103 River Street, Petersburg, VA 23804.
5. McKenney, VA: July 22, 2010, Sunnyside Elementary School, 10203 Sunnyside Road, McKenney, VA 23872.
6. Raleigh, NC: July 26, 2010, Raleigh Convention Center, 500 South Salisbury Street, Raleigh, NC 27601.
7. Henderson, NC: July 27, 2010, Aycock Elementary School, 305 Carey Chapel Road, Franklin County, NC 27537.
8. Franklinton, NC: July 29, 2010, Franklinton High School Gym, 6948 N. Cheatham Street, Franklinton, NC 27525.

ADDRESSES: Comments may be submitted at the public hearings both verbally and in writing. Written comments may be submitted electronically via the project Web site at *http://www.sehsr.org* or mailed to SEHSR Comments, NCDOT Rail Division, 1553 Mail Service Center, Raleigh, NC 27699–1553, or SEHSR Comments, Virginia Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: For further information regarding the environmental review, please contact one of the following three individuals: Mr. Patrick Simmons, NCDOT Rail Division, 1553 Mail Service Center, Raleigh, NC 27699–1553 (telephone 919–733–7245), or by e-mail at *pbsimmons@ncdot.gov,* with "SEHSR Richmond to Raleigh," in the subject heading; or Ms. Christine Fix, Virginia Department of Rail & Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219 (telephone 804–786–1052) or by e-mail at *christine.fix@drpt.virginia.gov,* with "SEHSR Richmond to Raleigh" in the subject heading; or Mr. John Winkle, Transportation Industry Analyst, Office of Passenger Programs, Federal Railroad Administration, 1200 New Jersey Ave., SE., Room W38–311, Washington, DC 20590 (telephone 202 493–6067), or by e-mail at *John.Winkle@DOT.Gov* with "SEHSR Richmond to Raleigh" in the subject heading.

SUPPLEMENTARY INFORMATION: The Tier II DEIS evaluates alternatives and the environmental impacts for proposed high speed passenger rail service with a maximum authorized speed of 110 miles per hour within the preferred corridor described in the Tier I Record of Decision for the SEHSR Corridor from Washington, DC to Charlotte, NC. This Tier II DEIS is focused on the approximately 162 mile portion of the corridor between Main Street Station in Richmond, VA and the Boylan Wye in Raleigh, NC. The project corridor generally follows the CSX S-line from Main Street Station, Richmond, VA, to Centralia, VA, then the CSX A-line to Collier Yard, Petersburg, VA. South of Collier Yard the corridor follows the Burgess Connector rail line to Burgess, VA, and the former Seaboard Air Line (S-line) to Norlina, NC, where the S-line returns to an active freight railroad. In Raleigh, NC, the study corridor includes two alternatives: the western branch follows the existing Norfolk Southern (NS) NS-line; the eastern branch continues to follow the CSX S-line. The two branches rejoin before the terminus of the project at the Boylan Wye. Included in the project are nearly 100 new bridges/overpasses that, when combined with existing bridges/overpasses, will create a fully grade-separated system to ensure the safety of both passengers and the surrounding community.

For engineering purposes and discussions of impacts, the project corridor is divided into 26 sections. There are three alternatives in each section, and each rail alternative includes an associated set of highway improvements. In many areas, the alternatives are concurrent. The endpoints of each of the 26 sections are in locations where the alternative alignments are in a common location. The alternatives are evaluated section by section, allowing a "best-fit" preferred alternative to be developed for the entire study corridor. The Tier I EIS established the purpose and need for the project; and evaluated nine build alternatives, as well as a No-Build Alternative; therefore, a no-build alternative was not evaluated in this Tier II document. Potential environmental impacts of the alternatives include increased noise and vibration, local traffic impacts associated with consolidation of existing at-grade crossings to new or existing bridges and underpasses, impacts on historic properties and archeological sites, impacts on parks and recreation resources, impacts on sensitive biological resources and wetlands, and use of energy. Potential mitigation strategies are described to avoid or minimize potential impacts. Such strategies would be further refined when the preferred alternative is selected, and discussed in the Final Environmental Impact Statement.

Availability of the DEIS

Copies of the Draft EIS and appendices are available for review at the following locations:

- Richmond Main Public Library, 101 East Franklin Street, Richmond, VA.
- Richmond Regional Planning District Commission, 9211 Forest Hill Avenue, Suite 200, Richmond, VA.
- Chesterfield County Central Public Library, 9501 Lori Road, Chester, VA.
- Colonial Heights Public Library, 1000 Yacht Basin Drive, Colonial Heights, VA.
- Petersburg Central Public Library, 137 S. Sycamore Street, Petersburg, VA.
- Crater District Planning Commission, 1964 Wakefield Street, Petersburg, VA.
- Dinwiddie County Planning Department, 14016 Boydton Plank Road, Dinwiddie, VA.
- Southside Virginia Community College Library, Christiana Campus, 109 Campus Drive, Alberta, VA.
- Southside Planning District Commission, 200 S. Mecklenburg Avenue, South Hill, VA.
- Norlina Town Hall, 101 Main Street, Norlina, NC.
- NCDOT District 3 Office, 321 Gillburg Road, Henderson, NC.
- Franklinton Branch Public Library, 9 West Mason Street, Franklinton, NC.

• NCDOT District 1 Office, 4009 District Drive, Raleigh, NC.

The project Web site *http://www.sehsr.org* includes a complete list of locations and addresses. The document is also available at the Virginia Department of Rail and Public Transportation Office at 600 East Main Street, Suite 2102, Richmond, VA; and the North Carolina Department of Transportation Rail Division at 1 South Wilmington Street, Raleigh, NC. In addition, electronic versions of the Draft Tier II EIS and appendices are available through FRA's Web site at *www.fra.dot.gov,* on the DRPT Web site at *http://www.drpt.virginia.gov* and on the project Web site at *www.sehsr.org.*

Issued in Washington, DC, on June 2, 2010.

Mark E. Yachmetz,

Associate Administrator for Policy and Development.

[FR Doc. 2010–13587 Filed 6–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0149]

Rules of Practice

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

ACTION: Notice of suspension of informal hearing procedure; request for comments.

SUMMARY: The FMCSA announces that it is re-evaluating the appropriateness and effectiveness of the informal hearing procedure authorized under the Agency's Rules of Practice. Although proceedings where an informal hearing has already been requested will continue to be processed under the Rules of Practice, the Agency will not entertain any new requests for informal hearings pending its re-evaluation of the procedure.

DATES: Effective June 7, 2010. Comments must be received by August 6, 2010.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket Number, FMCSA–2010–0149, by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site, which is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

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

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management Unit; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this regulatory action. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. The Department of Transportation's (DOT) complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at *http://docketsinfo.dot.gov.*

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the "help" section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in the docket: FMCSA–2010–0149. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be considered to the extent practicable. FMCSA may, however, issue a final determination at any time after the close of the comment period. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

FOR FURTHER INFORMATION CONTACT: Michael J. Falk, Office of Chief Counsel, Adjudications Counsel (MC–CCA), FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Tel. (202) 366–9304.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 113(f), Congress directed FMCSA to carry out the duties and powers related to motor carriers or motor carrier safety vested in the Secretary of Transportation by chapters 5, 51, 55, 57, 59, 133 through 149, 311, 313, 315 and 317 of title 49 of the U.S. Code, except as otherwise delegated by the Secretary. Regulations implementing this statutory authority include the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 380–399), the Federal Motor Carrier Commercial Regulations (FMCCRs) (49 CFR parts 360–379), and the Federal Hazardous Materials Regulations (HMRs) (49 CFR parts 171–180).

FMCSA's enforcement powers include the general authority to conduct administrative enforcement proceedings for violations of the FMCCRs (49 U.S.C. 14701) as well as to assess civil penalties for violations related to commercial motor vehicle safety (49 U.S.C. chapter 5) and hazardous materials (49 U.S.C. chapter 51).

In accordance with this authority, the Agency promulgated regulations governing civil penalty and driver disqualification proceedings before the Agency. These regulations are known as the Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings (Rules of Practice) and are codified at 49 CFR part 386.

In May 2005, the Agency amended the Rules of Practice to establish, among other things, an informal hearing process as an option for adjudicating administrative enforcement proceedings (see 70 FR 28467, May 18, 2005). Civil penalty proceedings are initiated by issuance of a Notice of Claim by a representative of the Agency (Claimant) pursuant to 49 CFR 386.11(c). Under 49 CFR 386.14(b)(2), the party against whom a claim is made (Respondent) must reply to the Notice of Claim by electing one of three options: (1) Paying the full amount of the claim; (2) contesting the claim by requesting administrative adjudication pursuant to section 386.14(d); or (3) seeking binding arbitration in accordance with the Agency's arbitration program. Under section 386.14(d)(1)(iii), a respondent electing administrative adjudication may request that the matter be adjudicated either through: (A) Submission of written evidence without hearing; (B) an informal hearing; or (C) a formal hearing.

The informal hearing process was intended to provide expedited consideration of a civil penalty case by a neutral third party without the formalities attendant to a hearing before an Administrative Law Judge (see 69 FR 61620, Oct. 20, 2004). Section 386.2 defines an informal hearing as "a hearing in which the parties have the opportunity to present relevant evidence to a neutral Hearing Officer, who will prepare findings of fact and recommendations for the Agency decisionmaker. The informal hearing will not be on the transcribed record and discovery will not be allowed. Parties will have the opportunity to discuss their case and present testimony and evidence before the Hearing Officer without the formality of a formal hearing." After receiving the hearing officer's report and recommendations, the Assistant Administrator has the discretion to either adopt the report or issue other orders as he or she deems appropriate. [See sections 386.16(b)(4)(i)(A) and 386.61(b)].

FMCSA implemented informal hearings on a graduated basis in order to evaluate the efficacy of this new process. In the first phase of implementation, FMCSA considered requests for informal hearings only from respondents in the Midwestern Service Center's geographical area (*see* 71 FR 13894, Mar. 17, 2006). In the second phase, FMCSA expanded eligibility to respondents in the Eastern Service Center's geographical area (*see* 72 FR 6806, Feb. 13, 2007). To date, only respondents located in States within the Agency's Eastern and Midwestern Service Centers have been eligible to request informal hearings.

Having evaluated the implementation of the informal hearing procedure, FMCSA has concerns about the appropriateness of the personnel the Agency assigned to serve as hearing officers. Section 386.2 defines "hearing officer" as "a neutral Agency employee designated by the Assistant Administrator to preside over an informal hearing." The Agency selected two FMCSA employees—one located in the Southern Service Center and one located in the Western Service Center—to serve as hearing officers. However, the Agency did not receive enough informal hearing requests to dedicate these employees as full-time hearing officers. As a result, these employees continued to carry out their existing responsibilities related to the implementation of the enforcement programs in their respective Service Center areas. Although, as noted above, informal hearings are not available to respondents located in the Southern and Western Service Centers, there is legitimate concern that FMCSA personnel involved in the Agency's enforcement program may not be considered sufficiently neutral.

Suspension of Current Informal Hearing Procedure

After careful consideration, and as a result of the issues discussed above, FMCSA has decided to suspend the use of informal hearings for enforcement actions initiated after publication of this notice pending re-evaluation of the informal hearing procedure. This re-evaluation will include consideration of possible regulatory changes as well as implementation strategies.

Five cases assigned to hearing officers are still awaiting informal hearings. There are 15 additional cases in which claimants have consented to respondents' informal hearing requests, but have not been assigned to a hearing officer. Furthermore, in 13 additional cases, claimants in the Eastern and Midwestern Service Centers have objected to requests for informal hearings. The Agency has not yet ruled on these objections because of its concerns regarding the informal hearing procedure. In order to avoid further delaying the resolution of the 20 pending cases awaiting informal hearings or assignment of a hearing officer, the Agency will assign these cases to one or more hearing officers not connected with the Agency's enforcement program, who will be responsible for initiating and concluding the informal hearing process. The Agency will also make it a priority to consider the pending objections to informal hearings and may thus assign additional cases to the hearing officer(s), as appropriate.

Notices of Claim issued after publication of this notice in the **Federal Register** will advise respondents seeking to contest a claim through administrative adjudication that they may either submit written evidence without a formal hearing or request a formal hearing.

FMCSA has determined that no Respondent has suffered substantive harm or prejudice as a result of disposition under the informal hearing option. Of the 11 cases assigned to hearing officers, only three were finally resolved under the informal hearing procedure. In these cases, the hearing officer issued a final report recommending that the Assistant Administrator approve settlement agreements entered into by the parties. The Assistant Administrator accepted the recommendations, resulting in final disposition of these cases. With respect to the other eight cases, six are awaiting informal hearings following assignment of a hearing officer, one was settled before a specific hearing officer was assigned, and the final case is awaiting further action following issuance of the hearing officer's report.

Finally, FMCSA believes that, if implemented more effectively, re-establishment of an informal hearing process would be beneficial to both the Agency and to respondents seeking more informal resolution of enforcement matters. FMCSA seeks public comment on options for implementing an effective informal hearing process.

Issued on: May 28, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–13591 Filed 6–4–10; 8:45 am]

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Federal Register

Vol. 75, No. 108

Monday, June 7, 2010

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FEDERAL REGISTER PAGES AND DATE, JUNE

30267–30686 1
30687–31272 2
31273–31662 3
31663–32074 4
32075–32244 7

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR
2339 31273

3 CFR
Proclamations:
8527 32075
8528 32077
8529 32079
8530 32081
8531 32083
8532 32085
Administrative Orders:
Memorandums:
Memorandum of May 21, 2010 32087

5 CFR
875 30267

7 CFR
916 31275
917 31275
923 31663
1218 31279
1470 31610
Proposed Rules:
319 30303
930 31719
1215 31730

10 CFR
440 32089
Proposed Rules:
430 ..... 31224, 31323

12 CFR
205 31665
230 31673
611 30687
613 30687
615 30687
619 30687
620 30687
Proposed Rules:
1282 32099

14 CFR
39 ..... 30268, 30270, 30272, 30274, 30277, 30280, 30282, 30284, 30287, 30290, 30292, 30687, 31282, 32090
65 31283
71 ..... 30295, 30689, 31677
73 32093
91 30690
97 ..... 32094, 32096
406 30690
Proposed Rules:
39 ..... 30740, 31324, 31327, 31329, 31330, 31332, 31731, 31734
65 30742
71 ..... 30746, 32117, 32119, 32120

15 CFR
734 31678
744 31678
740 31678
748 31678
750 31678
766 31678
774 31678
Proposed Rules:
700 32122

16 CFR
320 31682
1215 ..... 31688, 31691

20 CFR
404 30692
439 31273

21 CFR
Proposed Rules:
1301 32140
1309 32140

24 CFR
Proposed Rules:
3500 31334

25 CFR
900 31699
1000 31699

26 CFR
Proposed Rules:
1 31736

27 CFR
478 31285

29 CFR
1404 30704
Proposed Rules:
1910 32142

33 CFR
100 30296
117 ..... 30299, 30300
165 ..... 30706, 30708
Proposed Rules:
117 ..... 30305, 30747, 30750
165 30753

34 CFR
Proposed Rules:
Ch. VI 31338

38 CFR
Proposed Rules:
17 30306

39 CFR

111 .....30300, 31288, 31702

Proposed Rules:

111.....32143
501.....30309

40 CFR

7.....31702
51.....31514
52 .....30710, 31288, 31290, 31306, 31514, 31709, 31711
63.....31317
70.....31514
71.....31514
180.....31713
260.....31716
261.....31716
262.....31716
263.....31716
264.....31716
265.....31716
266.....31716
268.....31716
270.....31716

Proposed Rules:

7.....31738
52.....30310, 31340
60.....31938
63.....31896, 32006
241.....31844

42 CFR

Proposed Rules:

412.....30756, 30918
413.....30756, 30918

44 CFR

Proposed Rules:

67.....31361, 31368

45 CFR

Proposed Rules:

301.....32145
302.....32145
303.....32145
307.....32145

46 CFR

501.....31320

47 CFR

36.....30301

Proposed Rules:

73.....30756

49 CFR

1002.....30711
1011.....30711
1152.....30711
1180.....30711

Proposed Rules:

611.....31321

50 CFR

223.....30714
600.....30484
635 .....30484, 30730, 30732
648.....30739
679.....31321, 31717

Proposed Rules:

17 .....30313, 30319, 30338, 30757, 30769, 31387
223.....30769
224.....30769

LIST OF PUBLIC LAWS

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H.R. 1121/P.L. 111–167
Blue Ridge Parkway and Town of Blowing Rock Land Exchange Act of 2009 (May 24, 2010; 124 Stat. 1188)

H.R. 1442/P.L. 111–168
To provide for the sale of the Federal Government's reversionary interest in approximately 60 acres of land in Salt Lake City, Utah, originally conveyed to the Mount Olivet Cemetery Association under the Act of January 23, 1909. (May 24, 2010; 124 Stat. 1190)

H.R. 2802/P.L. 111–169
To provide for an extension of the legislative authority of the Adams Memorial Foundation to establish a commemorative work in honor of former President John Adams and his legacy, and for other purposes. (May 24, 2010; 124 Stat. 1192)

H.R. 5148/P.L. 111–170
To amend title 39, United States Code, to clarify the instances in which the term "census" may appear on mailable matter. (May 24, 2010; 124 Stat. 1193)

H.R. 5160/P.L. 111–171
Haiti Economic Lift Program Act of 2010 (May 24, 2010; 124 Stat. 1194)

S. 1067/P.L. 111–172
Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009 (May 24, 2010; 124 Stat. 1209)

H.R. 5014/P.L. 111–173
To clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage. (May 27, 2010; 124 Stat. 1215)

S. 1782/P.L. 111–174
Federal Judiciary Administrative Improvements Act of 2010 (May 27, 2010; 124 Stat. 1216)

S. 3333/P.L. 111–175
Satellite Television Extension and Localism Act of 2010 (May 27, 2010; 124 Stat. 1218)

Last List May 20, 2010

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